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GREGORY M. GRAY
Clerk of the House

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[ II ]
FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 76th Legislature, 2003; the Constitutional Amendments of the Second Extraordinary Session and the Third Extraordinary Session of the 75th Legislature, 2002.

First Regular Session, 2003

The First Regular Session of the 76th Legislature convened on January 8, 2003. The Constitutional sixty-day limit on the duration of the session was midnight, March 8, 2003. The Governor issued Proclamations on March 5 and March 15, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned sine die on March 16, 2003.

Bills totaling 1,882 were introduced in the two houses during the session (1,219 House and 663 Senate). The Legislature passed 259 bills, 139 House and 120 Senate.

The Governor vetoed eight House bills (Com. Sub. for H. B. 2122, Relating to medical professional liability generally; Com. Sub. for H. B. 2414, Relating to horse and dog racing generally; H. B. 2670, Continuing the office of judges until July 1, 2009; H. B. 2840, Increasing the number of members on the Greater Huntington Park and making other changes in the act; H. B. 2953, Establishing a mechanism to eliminate any actuarially projected unfunded liability in the Prepaid Tuition Trust Fund; Com. Sub. for H. B. 3051, Altering the certain reportable threshold dollar amounts on legislative member financial disclosure statements and lobbyist reports; H. B. 3207, Supplemental appropriation to the department of military affairs and public safety - division of juvenile services; and H. B. 3217, Establishing a fund and making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated) and six Senate bills (Com. Sub. for S. B. 178, Relating to subject matter jurisdiction in family courts; Com. Sub. for S. B. 329, Authorizing miscellaneous agencies and boards to promul-

There were 160 Concurrent Resolutions introduced during the session, 99 House and 61 Senate, of which 32 House and 19 Senate were adopted. Seventeen House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which none were adopted. The House introduced 22 House Resolutions, and the Senate introduced 36 Senate Resolutions, of which 15 House and 35 Senate were adopted.

The Senate failed to pass 91 House bills passed by the House, and 61 Senate bills failed passage by the House.

* * * * * * * * * *

First Extraordinary Session, 2003

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, March 16, 2003, contained supplemental appropriation bills for consideration.

The Legislature passed 5 bills, all of which were House bills. The Senate adopted 4 Senate Resolutions.
The Legislature adjourned the Extraordinary Session *sine die* 3:15 P.M. the same day.

* * * * * * *

**Constitutional Amendments, Second Extraordinary Session, 2002**

Two Joint Resolutions were introduced and adopted, proposing amendments to the State Constitution, which were ratified by the voters on November 5, 2002. The Joint Resolutions were: H. J. R. 201, County and Municipal Option Economic Development Amendment; and H. J. R. 202, Maximum Number of Years of Excess Levies Amendment.

* * * * * * *

**Third Extraordinary Session, 2002**

The Proclamation calling the Legislature into Extraordinary Session at 4:00 P.M., September 17, 2002, contained supplemental appropriation bills for consideration.

The Legislature passed 6 bills, all of which were Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 4:54 P.M. 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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Clerk — Gregory M. Gray, Charleston
Sergeant at Arms — Oce Smith, Fairmont
Doorkeeper — John A. Roberts, Hedgesville

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[XXXV]
MEMBERS OF THE HOUSE OF DELEGATES - Continued

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(D) Democrats .................................................. 69
(R) Republicans .................................................. 31

TOTAL .......................................................... 100
# MEMBERS OF THE SENATE

## REGULAR SESSION, 2003

### OFFICERS

*President* — Earl Ray Tomblin, Chapmanville

*Clerk* — Darrell E. Holmes, Charleston

*Sergeant at Arms* — Tony DeRaimo, St. Albans

*Doorkeeper* — Andrew J. Trail, Charleston

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<td>Edwin J. Bowman (D)</td>
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<td>Andy McKenzie (R)</td>
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(D) Democrats ................................................. 24  
(R) Republicans ............................................. 10  

TOTAL ...................................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2003

STANDING

AGRICULTURE AND NATURAL RESOURCES
Stemple (Chair of Agriculture), Boggs (Vice Chair of Agriculture), Yeager (Chair of Natural Resources), Beach (Vice Chair of Natural Resources), Crosier, DeLong, Long, Louisos, Manuel, Paxton, Pethtel, Poling, Shaver, Swartzmiller, Tabb, R. Thompson, Williams, Anderson, Border, Duke, Evans, Leggett, Overington, Romine and Schoen.

BANKING AND INSURANCE
R. M. Thompson (Chair of Banking), Perry (Vice Chair of Banking), H. White (Chair of Insurance), Hrutkay (Vice Chair of Insurance), Beach, Butcher, Cann, Craig, Foster, Hartman, Hatfield, Iaquinta, Morgan, Perdue, Pino, Spencer, Webster, Azinger, Canterbury, Carmichael, Faircloth, Frich, Hamilton, Walters and G. White.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Webster (Vice Chair), Caputo, Crosier, Fragale, Houston, Kominar, Long, Louisos, Manuel, Pino, Renner, Spencer, Staton, Talbott, Varner, H. White, Armstead, Blair, Calvert, Hamilton, Overington, Schoen, Sobonya and Webb.

EDUCATION
Mezzatesta (Chair), Williams (Vice Chair), Beach, Crosier, Fragale, Hartman, Long, Louisos, Paxton, Perry, Poling, Renner, Shaver, Shelton, Stemple, Swartzmiller, Tabb, Canterbury, Duke, Hamilton, Howard, Romine, Sobonya, Sumner and Wakim.

[ XXXVIII ]
FINANCE
Michael (Chair), Doyle (Vice Chair), Boggs, Browning, Campbell, Cann, Foster, Frederick, Houston, Leach, Mezzatesta, Proudfoot, Susman, R. M. Thompson, Varner, Warner, H. White, Stalnaker, Anderson, Ashley, Azinger, Border, Carmichael, Evans, Hall and G. White.

GOVERNMENT ORGANIZATION
Beane (Chair), Kuhn (Vice Chair), Butcher, Ennis, Ferrell, Hatfield, Iaquinta, Manchin, Manuel, Martin, Perdue, Spencer, Talbott, Tucker, Wright, Yeager, Yost, Blair, Caruth, Frich, Leggett, Romine, Schoen and Walters.

HEALTH AND HUMAN RESOURCES
Perdue (Chair), Hatfield (Vice Chair), Brown, DeLong, Fleischauer, Foster, Frederick, Hrutkay, Iaquinta, Leach, Mahan, Paxton, Spencer, Susman, Warner, Webster, Yost, Ashley, Carmichael, Hall, Howard, Schadler, Sobonya, Sumner and Wakim.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS
Pethtel (Chair of Industry & Labor), Tucker (Vice Chair of Industry & Labor), Cann (Chair of Economic Development & Small Business), Frederick (Vice Chair of Economic Development & Small Business), Browning, Caputo, Coleman, Fragale, Hartman, Kuhn, Martin, Palumbo, Perry, Poling, Talbott, Williams, Wright, Canterbury, Caruth, Ellem, Frich, Howard, Sobonya, Walters and G. White.

JUDICIARY
Amores (Chair), Kominar (Vice Chair), Caputo, Craig, Brown, DeLong, Fleischauer, Coleman, Hrutkay, Mahan, Morgan, Palumbo, Pethtel, Pino, Stemple, R. Thompson, Webster, Armstead, Calvert, Ellem, Faircloth, Overington, Schadler, Smirl and Webb.
POLITICAL SUBDIVISIONS
Proudfoot (Chair), Susman (Vice Chair), Brown, Caputo, Campbell, Doyle, Ferrell, Houston, Martin, Morgan, Palumbo, Perry, Shaver, Swartzmiller, Tabb, Varner, Yost, Anderson, Armstead, Calvert, Duke, Schadler, Smirl, Stalnaker and Sumner.

ROADS AND TRANSPORTATION
Warner (Chair), Shelton (Vice Chair), Beach, Boggs, Butcher, Coleman, Craig, Ennis, Hartman, Kominar, Manchin, Renner, Susman, R. Thompson, R. M. Thompson, Wright, Yeager, Blair, Border, Caruth, Evans, Leggett, Romine, Schadler and Stalnaker.

RULES
Kiss (Chair), Amores, Beane, Kominar, Mahan, Mezzatesta, Michael, Pino, Staton, Varner, Warner, Trump, Anderson, Faircloth, Hall and Smirl.

VETERANS AFFAIRS AND HOMELAND SECURITY
Ennis (Chair of Veterans Affairs), Manchin (Vice Chair of Veterans Affairs), Browning (Chair of Homeland Security), Swartzmiller (Vice Chair of Homeland Security), Coleman, Butcher, Hrutkay, Kuhn, Paxton, Poling, Proudfoot, Shelton, Stemple, R. M. Thompson, Tucker, H. White, Yeager, Ashley, Azinger, Ellem, Howard, Schoen, Smirl, Wakim and Webb.

JOINT

ENROLLED BILLS
Spencer (Chair), Butcher (Vice Chair), Varner and Overington.

LEGISLATIVE RULE-MAKING REVIEW
Mahan (Chair), R. Thompson (Vice Chair), Cann, Kominar, Armstead and Faircloth.
HOUSE OF DELEGATES COMMITTEES  

PENSIONS AND RETIREMENT
Campbell (Chair), Craig (Vice Chair), Browning, Frederick, Williams, Duke and Hall.

RULES
Kiss (Chair), Staton and Trump.
COMMITTEES OF THE SENATE
Regular Session, 2003

STANDING

AGRICULTURE
Edgell (Chair), Love (Vice Chair), Bailey, Dempsey, Hunter, Ross, Unger, Weeks, Facemyer and Guills.

BANKING AND INSURANCE
Minard (Chair), Jenkins (Vice Chair), Chafin, Fanning, Helmick, Kessler, Prezioso, Sharpe, Snyder, Deem, Facemyer, Harrison and Minear.

CONFIRMATIONS
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EDUCATION
Plymale (Chair), Edgell (Vice Chair), Bailey, Bowman, Caldwell, Dempsey, Hunter, Oliverio, Unger, White, Boley, Guills, Harrison and Sprouse.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Dempsey (Vice Chair), Chafin, Fanning, Helmick, Hunter, Jenkins, Kessler, Oliverio, Ross, Deem, Guills, McKenzie and Weeks.
FINANCE
Helmick (Chair), Sharpe (Vice Chair), Bailey, Bowman, Chafin, Dempsey, Edgell, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Minear and Sprouse.

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Caldwell, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear, Smith and Weeks.

HEALTH AND HUMAN RESOURCES
Prezioso (Chair), Unger (Vice Chair), Edgell, Hunter, Jenkins, McCabe, Ross, Rowe, Sharpe, Snyder, Boley, Guills, Smith and Weeks.

INTERSTATE COOPERATION
Caldwell (Chair), Dempsey (Vice Chair), Minard, Rowe, Unger, Minear and Smith.

JUDICIARY
Kessler (Chair), Snyder (Vice Chair), Caldwell, Fanning, Hunter, Jenkins, Minard, Oliverio, Ross, Rowe, White, Deem, Harrison, McKenzie, Smith and Weeks.

LABOR
Snyder (Chair), Rowe (Vice Chair), Dempsey, Edgell, Hunter, Love, Prezioso, Boley, Deem and Harrison.

MILITARY
Hunter (Chair), Caldwell (Vice Chair), Bailey, Dempsey, Minard, Oliverio, Boley, Deem and Weeks.

NATURAL RESOURCES
Fanning (Chair), White (Vice Chair), Bowman, Helmick, Love, McCabe, Plymale, Prezioso, Ross, Snyder, Deem, Facemyer, Minear and Smith.
SENATE COMMITTEES

PENSIONS
Jenkins (Chair), Fanning (Vice Chair), Edgell, McCabe, Plymale, Boley and Harrison.

RULES
Tomblin (Chair), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Minear and Sprouse.

TRANSPORTATION
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JOINT

ENROLLED BILLS
Rowe (Chair), Bailey, Caldwell, White and Facemyer.

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

PENSIONS AND RETIREMENT
Jenkins (Chair), Fanning (Vice Chair), Edgell, McCabe, Plymale, Boley and Harrison.

RULES
Tomblin (Chair), Chafin and Sprouse.
AN ACT to amend article seven, chapter fifty-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 immunity from civil liability for members of a national ski patrol system under certain circumstances; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter fifty-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 7. ACTIONS FOR INJURIES.

§55-7-16. Immunity from liability for ski patrol rendering emergency care.

(a) A member in good standing of a national ski patrol system who, without compensation, provides emergency aid or assistance to an injured or ill person at the scene of a ski resort rescue operation, outdoor emergency rescue operation or while otherwise performing ski patrol or while transporting an injured or ill person to a place for transfer to an available emergency medical center or hospital as the result of being on ski patrol, may not be held liable for civil damages for any alleged act or omission which is claimed to have occurred during the rendering of the emergency aid or assistance. The limitation of liability established by the provisions of this section apply to acts or omissions rendered in good faith.

(b) For the purposes of this section, a national ski patrol system is a national organization whose members are volunteers and do not receive compensation and are required to obtain training in safety and emergency medical treatment.

(c) For purposes of this section, the term “compensation” does not include access to a recreational facility, complimentary lift tickets, food, lodging or other gifts or discounts that may be offered or accessible to a person.
CHAPTER 2

(S. B. 636 — By Senators Kessler, Snyder, Rowe, Ross, Deem, Oliverio, McKenzie, Smith, White, Harrison, Minard, Weeks, Hunter and Jenkins)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article three-a of said chapter, all relating to exemption of commodities and services offered or produced by nonprofit workshops from competitive bidding requirement.

Be it enacted by the Legislature of West Virginia:

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

Article
3. Purchasing Division.
3A. Central Nonprofit Coordinating Agency and Committee for the Purchase of Commodities and Services from the Handicapped.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.
A purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.

The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed ten thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this ten thousand dollar maximum. The director may permit bids by facsimile transmission machine to be accepted in lieu of sealed bids: Provided, That an original bid is received within two working days following the date specified for bid opening. Bids shall be obtained by public notice. The notice may be published by any advertising medium the director deems advisable. The director may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in his office: Provided, however, That the director shall, without competitive bidding, purchase commodities and services produced and offered for sale by nonprofit workshops, as defined in section one, article one of this chapter, which are located in this state: Provided further, That such commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director with the advice of the committee on the purchase of commodities and services from the handicapped.

Toward the end of effecting the making of contracts for commodities and services of nonprofit workshops, the director shall employ a person whose responsibilities in addition to other duties shall be to identify all commodities and services available for purchase from such nonprofit workshops, to evaluate the need of the state for such commodities and services to coordinate the various nonprofit workshops in their production efforts and to make available to such workshops information about available opportunities within state government for purchase of commodities or services which might be produced
and sold by such workshops. Funds to employ such a person shall be included annually in the budget.

ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND COMMITTEE FOR THE PURCHASE OF COMMODITIES AND SERVICES FROM THE HANDICAPPED.


The purchasing unit is exempt from the operation of the mandatory provisions of section ten, article three of this chapter when:

(1) The director of purchasing determines that the commodity or service so produced or provided does not meet the reasonable requirements of the purchasing unit;

(2) The committee or central nonprofit agency determines that a nonprofit workshop cannot reasonably provide the commodity or service;

(3) The purchasing director determines, after considering any recommendation of the committee or bids which may have been offered, that the commodity or service is not of a fair market price; or

(4) The purchasing director determines, after consulting with the committee, that the commodity or service is not of like quality to other commodities or services available.

No purchasing unit may evade the intent of this section when required goods or services are reasonably available from nonprofit workshops: Provided, That if a purchasing unit is required or may be required by federal statute or regulations to purchase commodities or services with competitive bidding, or may otherwise be disqualified from federal funding or assistance if it fails to purchase commodities or services with competitive bidding, the purchasing unit shall not be required
to purchase commodities or services from nonprofit workshops. Such purchasing units not required to purchase commodities or services from nonprofit workshops include military installations of the national guard.

CHAPTER 3

(S. B. 337 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections nine hundred one, nine hundred two and nine hundred three, all relating to recognizing the adoption of a child from a foreign country; requirements for filing a petition for recognition of foreign adoption decree in circuit court; and setting forth the procedures taken by the court in recognizing the adoption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. ADOPTION.
§48-22-901. Recognition of foreign adoption decree.

When an adoption occurs in a foreign country and the adopted child has immigrated to the United States with the permission of the United States, this state shall recognize the adoption. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the adoption decree was issued by a court of this state.


(a) At any time after the child has immigrated to the United States, the adoptive parent or parents may commence proceedings with the circuit court in their county of residence to have the foreign adoption decree recognized by filing a petition for recognition of foreign adoption decree. The verified petition shall set forth the following:

(1) The name and address of the petitioner or petitioners;

(2) The name of the child adopted in a foreign country;

(3) The name by which the child shall be known henceforth;

(4) The child's country of origin and date of birth, if known;

(5) That the child has been issued a visa or other document authorizing entry into the United States and the date of entry. A copy of such a document shall be attached to the petition;
(6) That a home study of the petitioner or petitioners was prepared. A copy of the same shall be attached to the petition;

(7) The date on which the adoption was decreed in the foreign country. A copy of the foreign adoption decree or such other document or documents which evidence finalization of the adoption in the foreign country shall be attached to the petition, along with an English translation thereof.

(b) The verified petition may set forth requests for specific relief or findings to meet the best interests of the child which may be granted, in the court’s discretion, specifically including, but not limited to, a revised birth date if a physician has recommended a revision of the child’s birth date.


The court shall review the petition and accompanying documentation and, if the court finds the petition and documentation to be satisfactory, it shall enter an order of adoption stating that the documentation required has been submitted and is satisfactory and that the adoption must be recognized in West Virginia and shall have the same force and effect as if the decree of adoption was granted in accordance with the provisions of the West Virginia adoption act. The order shall further set forth the name by which the child shall be known henceforth and such other pertinent findings of the court. The court shall enter the order without the necessity of a hearing unless it deems a hearing necessary or a hearing is requested. The provisions of subsections (a), (d) and (e), section seven hundred two of this article shall apply to all orders issued hereunder and a new birth certificate shall be issued forthwith.
CHAPTER 4

(S. B. 430 — By Senators Ross, Sharpe and Oliverio)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing certain restrictions on outdoor advertising in addition to existing restrictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-4. General restrictions as to outdoor advertising.

1 The following restrictions shall apply to all advertising signs, displays and devices erected and maintained adjacent to any roads within the state road system, including federal-aid interstate and primary roads.

5 (1) No advertising sign shall be erected or maintained which involves rapid motion or rotation of the structure or any part thereof: Provided, That an advertising sign that does involve motion or rotation which is not rapid to effect changeable messages shall be permitted in accordance with legislative
rules to be proposed by the division of highways of the depart-
ment of transportation in accordance with the provisions of
article three, chapter twenty-nine-a of this code;

(2) No advertising display or device shall use the word
"stop" or "danger" or present or imply the need or requirement
of stopping or the existence of danger;

(3) No advertising sign, display or device shall be a copy or
imitate a traffic sign or other official sign;

(4) No advertising display or device shall attempt or purport
to direct traffic;

(5) No advertising sign shall contain lighting which is not
shielded and any lighting shall be of such low intensity as not
to cause glare or impair the vision of the operator of any motor
vehicle;

(6) No advertising display or device shall be illuminated by
any rapid flashing, intermittent light or lights;

(7) No advertising display or device shall be painted,
affixed or attached to any natural feature;

(8) No advertising sign, display or device shall hinder the
clear, unobstructed view of approaching or merging traffic or
obscure from view any traffic sign or other official sign;

(9) No advertising sign, display or device shall be so
located as to obscure the view of any connecting road or
intersection;

(10) No advertising sign, display or device shall be erected,
outside of any municipality, within five hundred feet of any
church, school, cemetery, public park, public reservation, public
(11) No advertising sign, the permit for which has been applied for subsequent to the thirty-first day of December, two thousand three, that is composed of stacked sign faces, one on top of the other, on the same structure, facing the same direction, each having more than three hundred square feet is permitted;

(12) No advertising device which is composed of separate sign faces in a side-by-side formation, on the same structure, facing the same direction, each having an area of more than three hundred square feet is permitted;

(13) No advertising device, the permit for which has been applied for subsequent to the thirty-first day of December, two thousand three, which contains a sign facing a single direction may have an area greater than six hundred seventy-two square feet: Provided, That cutouts and extensions which expand the area may be allowed to the extent the area is expanded by no more than thirty percent of its original permitted configuration;

(14) No more than one sign structure is permitted at a location.

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CHAPTER 5

(Com. Sub. for H. B. 2357 — By Mr. Speaker, Mr. Kiss)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section three-a, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the aeronautics commissioner to expend funds.

Be it enacted by the Legislature of West Virginia:

That section three-a, article two-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 2A. STATE AERONAUTICS COMMISSION.

§29-2A-3a. Expenses of civil air patrol; commission may expend funds pursuant to rules.

(a) The commission, in addition to all other powers and functions authorized by law, may expend state funds: (1) For educational purposes of the civil air patrol, including, but not limited to, the purchase of civil air patrol aviation education training aid books, materials and equipment; (2) to defray maintenance, repair and replacement costs of civil air patrol aircraft; (3) to purchase and obtain supplies and equipment for the civil air patrol; and (4) to maintain the communications network for the civil air patrol.

(b) No expenditure of state funds for these purposes may be made unless the purchase order is first approved by the commission in accordance with the commission’s rules relating to the expenditure. Only funds specifically appropriated by the Legislature for these purposes may be expended by the commission and funds appropriated shall be expended for no other purposes.
AN ACT to amend and reenact section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of the commissioner of agriculture; and eliminating administrative duties on state rural development council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The commissioner of agriculture shall perform the following duties:

2 (a) Devise means of advancing the agricultural interests of the state and, in the performance of such duty, he or she shall have authority to call upon any state department, or officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner to render the assistance desired;
(b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state’s agricultural, horticultural and kindred interests, especially in production, processing for market and distribution;

c) Conduct cooperative work with the United States department of agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers and shipping points;

d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities and advantages of the state;

e) Investigate and report upon the kinds, conditions and extent of the mineral products of the state and their value;

f) Take charge of the museum of the department of agriculture, collect, preserve and exhibit therein specimens of agricultural, horticultural and kindred products, products of the forests, minerals, flora and fauna of the state;

g) Publish and distribute, from time to time, such reports and bulletins concerning agriculture, horticulture and kindred subjects as may be of value to the farmers of the state and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture and kindred interests;

(h) Submit a biennial report to the governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disburse-
ments during the biennial period covered thereby and giving the name of every person employed during such period, the time employed and the amount paid each employee;

(i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law; and

(j) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the purpose of carrying out the requirements of this chapter.

CHAPTER 7

(H. B. 2696 — By Delegates Stemple, Michael, Varner, Stalnaker, Mezzatesta, Shaver and Williams)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the commissioner of agriculture to increase certain fees to cover the costs of certain services and removing certain limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.
§19-1-4b. Authority of commissioner to increase certain fees by rules or regulations.

1 The commissioner is hereby authorized to promulgate and adopt rules in accordance with the provisions of chapter twenty-nine-a of this code, fixing dues for permits, licenses, certificates, registrations and laboratory tests when, in the opinion of the commissioner, it becomes necessary to increase these fees in order to cover the costs of providing the services involved or issuing the permits, licenses, certificates or registrations applicable.

CHAPTER 8

(Com. Sub. for H. B. 2694 — By Delegates Stemple, Boggs, Crosier, Williams, Anderson, Evans and Schoen)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections eight and ten, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, six, seven and eleven of said article, all relating to regulation of bees; removing pesticide poisoning and certain violations; adding, deleting and amending definitions; authorizing commissioner of agriculture to seize infected bees and bee equipment; establishing expiration date for certificates of registration; strengthening commissioner’s inspection and quarantine powers; clarifying manner of dealing with abandoned apiaries and interstate movement of bees; making technical corrections and modifying penalties.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-3. Commissioner’s powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.
§19-13-4. Registration of bees; identification of apiaries.
§19-13-5. Right of entry; apiary inspections; quarantines.
§19-13-6. Abandoned apiaries and equipment; notice.
§19-13-7. Bees brought into state to carry inspection certificate; commissioner to be notified; interstate movement of bees.


This article may be cited as “The West Virginia Apiary Act”.


For the purpose of this article, the term:

(1) “Abandoned apiary” means any apiary in which twenty-five percent or more of the colonies are dead or diseased, or the death or disarray of the colonies exposes them to robbing, or diseased or potentially diseased abandoned bee equipment which may jeopardize the welfare of neighboring colonies.

(2) “Apiary” means any place where one or more colonies or nuclei of bees are kept or where bee equipment is stored.
(3) “Appliances” means any apparatus, tool, machine or other device, used in the handling and manipulating of bees, honey, wax and hives. It also means any container of honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies.

(4) “Bees” means any stage of the common hive or honey bee (Apis mellifera), or other species of the genus Apis.

(5) “Bee equipment” means hives, supers, frames, veils, gloves or any other appliances.

(6) “Bee products” means honey, bees wax, pollen, propolis and royal jelly.

(7) “Colony” means the hive and includes bees, comb, honey and bee equipment.

(8) “Commissioner” means the commissioner of the department of agriculture of the state of West Virginia or a duly authorized employee.

(9) “Control agents or control mechanisms” means any method of chemical or mechanical control to suppress or eradicate an apiary disease, pest, or parasitic infestation in an apiary or the colonies contained therein.

(10) “Department” means the department of agriculture of the state of West Virginia.

(11) “Hive” means a frame hive, box hive, box, barrel, log, gum, skep or any other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

(12) “Honey bee pest” means American foulbrood (Bacillus larvae), European foulbrood (Melissococcus pluton), Varroa
mite (Varroa destructor), honey bee tracheal mite (Acarapis woodi), or any other virus or infectious or parasitic organism determined by the commissioner to be transmissible to other bee colonies and that represents a threat to beekeeping in West Virginia.

(13) "Nuclei" means the removal of a split portion or division of any colony of honey bees for the express purpose of creating a numerical increase in colonies for honey production, pollination service or monetary gain through sale of honey bees.

(14) "Packaged bees" means bees shipped in combless packages accompanied by a valid certificate of health from an authorized state or federal agency verifying the absence or presence of any infectious or communicable diseases or parasitic infestations, and further providing that no honey has been used for food while in transit or that any honey used as food in transit was properly sterilized.

(15) "Person" means corporations, partnerships, associations, societies, individuals or group of individuals or any employee, servant or agent acting for or employed by any person.

(16) "Premises" means any parcel of real estate and structures in which bee equipment, bees, bee products and bee appliances are or may be utilized for storage purposes.

(17) "Quarantine" means a declaration by the commissioner which specifies a period of enforced isolation to contain and prevent the spread of honey bee pests.

(18) "Sterilized or sterilization" means to treat and neutralize honey bee pests by means of steam autoclave, pit incineration, or by any other acceptable method which the commissioner determines effective for control of honey bee pests.
§19-13-3. Commissioner’s powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.

(a) 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 effectively eradicate, suppress or control honey bee pests as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments, retreatments, and fees for the services; and (4) any other rules necessary to effectuate the enforcement of this article.

(b) The commissioner is authorized to conduct apiary education in a manner which advances and promotes bee culture in West Virginia.

(c) The commissioner is authorized to cooperate with the federal government and its agencies, departments and instrumentalities; other West Virginia agencies, departments, divisions, or political subdivisions; and any other state or commonwealth and its agencies, departments or political subdivisions, in order to carry out the effective administration of this article.

(d) The commissioner is authorized to stop the delivery of, to seize, to destroy, to treat or to order returned to point of origin, at the owner’s expense, all appliances, bees, bee equipment, bee products or hives transported into or within this state, found to be infected with honey bee pests regardless of whether a valid certificate of inspection is attached.

§19-13-4. Registration of bees; identification of apiaries.
(a) All persons keeping bees in this state shall apply for a certificate of registration for bee keeping from the commissioner, within ten days of the date that bees are acquired, by notifying the commissioner, in writing, of the number and location of colonies they own or rent, or which they keep for someone else, whether the bees are located on their own property or someone else's property. All apiary certificates of registration expire on the thirty-first day of December of each year and must be renewed annually.

(b) All persons owning or operating an apiary which is not located on their own property must post the name and address of the owner or operator in a conspicuous place in the apiary.

§19-13-5. Right of entry; apiary inspections; quarantines.

(a) During reasonable working hours, the commissioner may enter upon any premises to access any apiary for the purpose of inspecting or sampling. No person shall obstruct or hinder the commissioner in the discharge of his or her duties.

(b) The commissioner shall inspect, as practicable, all colonies of honey bees domiciled within the state of West Virginia. If any honey bee pest is found in the apiary, the commissioner shall immediately notify, in writing, the owner or operator stating the type of honey bee pest and whether it may be successfully treated or not.

In cases where the honey bee pest is subject to treatment, the commissioner shall specify and direct the necessary treatment, which will be administered by the owner or operator, within fourteen days of the date of notice. If not treated, the colonies contained in the apiary in which the honey bee pests are found shall be depopulated without remuneration to the owner. All bee hives and related bee equipment found in any diseased apiary shall be destroyed, sterilized or treated in a
manner approved by and under the direction of the commissioner.

(c) All apiaries producing queens, packaged bees or nuclei colonies for distribution shall be inspected each year. If honey bee pests are found in the apiary, the commissioner shall immediately notify, in writing, the owner or operator, and thereafter it shall be unlawful for the owner or operator to ship, sell or give away any queen bees, appliances, packaged bees, full colonies or nuclei colonies from the apiary until the honey bee pests have been controlled to the satisfaction of the commissioner.

(d) The commissioner shall quarantine all apiaries, bees, bee equipment, bee products, appliances and premises infected by honey bee pests. The notice of quarantine shall specify the name of the honey bee pest, the premises or apiary quarantined, bee equipment, bee products and appliances regulated and all conditions governing movement. The commissioner may adopt other orders to prevent the introduction of or to contain the spread of honey bee pests that are capable of being transported by bees, appliances or bee equipment. The order shall set forth the conditions governing the movement of the regulated items.

The commissioner shall rescind, in writing, quarantines and other orders when he or she determines the need no longer exists.

§19-13-6. Abandoned apiaries and equipment; notice.

It shall be unlawful for a person to knowingly maintain an abandoned apiary or bee equipment. When the commissioner determines that an apiary or bee equipment has been abandoned, he or she shall notify, in writing, the owner or operator that the apiary or bee equipment has been declared abandoned. The owner or operator has thirty days from the date of notice to
enclose, dispose of or destroy the abandoned apiary or bee
equipment in a manner approved by the commissioner. If the
owner or operator of the abandoned apiary or bee equipment
cannot be located after reasonable inquiry, notice shall be
provided to the owner of the real property on which the apiary
or bee equipment is located. If the apiary or bee equipment
continues to be abandoned for a period of thirty days thereafter,
the commissioner may seize the apiary or bee equipment and
take such action as is necessary to dispose of or to destroy the
apiary or bee equipment as conditions warrant.

§19-13-7. Bees brought into state to carry inspection certificate;
commissioner to be notified; interstate movement of bees.

(a) It shall be unlawful for any person to transport bees,
used bee equipment or used appliances into West Virginia,
unless accompanied by a certificate of inspection signed by an
authorized state or federal inspection official verifying the
actual inspection of the bees, used bee equipment or used
appliances within thirty days preceding the date of shipment
and certifying the absence of honey bee pests.

(b) Prior to the movement of any bees, used bee equipment
or used appliances into West Virginia, and as a prerequisite to
the issuance of a permit of entry, the commissioner shall be
furnished by the owner, transporter, or operator the following:

(1) The exact location or destination of the bees, used bee
equipment or used appliances.

(2) Name and address of the owner of the property where
the bees, used bee equipment or used appliances will be located.

(3) The exact number of colonies or amount of used bee
equipment or used appliances in the shipment.
(4) A copy of the inspection certificate issued by the state or federal inspector.

The commissioner shall issue a temporary or permanent permit of entry. A temporary permit may not exceed sixty days.

If the commissioner denies the request for an entry permit, he or she shall notify the owner, operator or transporter of the denial and the reasons therefor.


(a)(1) Criminal penalties.— Any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county or regional jail not more than six months, or both. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(2) It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings, and to prosecute the person charged with such violation.

(b) Civil penalties.—

(1) Any person violating the provisions of this article or rule promulgated pursuant to this article 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 violation of any persons, the seriousness of the violation, including any hazards to agriculture in West Virginia and the demonstrated good faith of any person charged
in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than one hundred dollars for the first offense or less serious violation, as determined by the commissioner in accordance with the rules approved in accordance with the provisions of chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat or intentional violation, as determined by the commissioner in accordance with the approved rules.

(3) The commissioner may negotiate and enter into a settlement agreement for the payment of civil penalties.

(4) The civil penalty is payable to the state of West Virginia and is collectable in any manner authorized by law for the collection of debts. Any person liable to pay a civil penalty and neglecting or refusing to pay it within thirty days of written notice of demand for payment, shall be assessed interest at the rate of ten percent per year from the date the penalty was assessed to the date of payment. The penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when a lien is properly recorded in the county wherein the property is situated. There shall be no cost as a condition precedent to recording.

(5) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for the assessment and collection of civil penalties as provided in this section.

(6) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.
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 thirty-one, relating to renaming the Guthrie center.

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 thirty-one, to read as follows:

ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.

§19-31-1. Establishing the name.

1 The Guthrie center, currently owned by the department of health and human resources, shall hereinafter be known as the Gus R. Douglass agricultural center at Guthrie.
AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three-a, chapter sixty of said code by adding thereto a new section, designated section twenty-five-a; and to amend and reenact section twenty, article eight of said chapter, all relating to the sale of alcohol, wine and beer to minors; mandatory carding of purchasers of alcohol, wine and beer; and defining terms.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article three-a, chapter sixty of said code be amended by adding thereto a new section, designated section twenty-five-a; and that section twenty, article eight of said chapter be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.
§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

1. For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o’clock a.m. and seven o’clock a.m., or between the hours of two o’clock a.m. and one o’clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

2. For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

3. For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

4. For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: Provided, That a distributor may accept
an electronic transfer of funds if the transfer of funds is initiated
by an irrevocable payment order on the invoiced amount for the
nonintoxicating beer. The cost of the electronic fund transfer
shall be borne by the retailer and the distributor must initiate the
transfer no later than noon of one business day after the
delivery;

(5) For any brewer or distributor or brewpub or his, her, its
or their agents to transport or deliver nonintoxicating beer as
defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or
sell any equipment, fixtures, signs or supplies directly or
indirectly or through a subsidiary or affiliate to any licensee
engaged in selling products of the brewing industry at retail or
to offer any prize, premium, gift or other similar inducement,
except advertising matter of nominal value, to either trade or
consumer buyers: Provided, That a distributor may offer, for
sale or rent, tanks of carbonic gas. Nothing herein contained
shall prohibit a brewer from sponsoring any professional or
amateur athletic event or from providing prizes or awards for
participants and winners in any events: Provided, however, That
no event shall be sponsored which permits actual participation
by athletes or other persons who are minors, unless specifically
authorized by the commissioner;

(7) For any licensee to permit in his or her premises any
lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to
operate a private club issued under the provisions of article
seven, chapter sixty of this code or a holder of a license or a
private wine restaurant issued under the provisions of article
eight of said chapter to possess a federal license, tax receipt or
other permit entitling, authorizing or allowing the licensee to
sell liquor or alcoholic drinks other than nonintoxicating beer;
(9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection therewith: Provided, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein the business is located: Provided, That no licensee may have in connection with his or her place of business any loudspeaker
located on the outside of the licensed premises that broadcasts
or carries music of any kind;

(13) For any person whose license has been revoked, as
provided in this article, to obtain employment with any retailer
within the period of one year from the date of the revocation, or
for any retailer to knowingly employ that person within the
specified time;

(14) For any distributor to sell, possess for sale, transport or
distribute nonintoxicating beer except in the original container;

(15) For any licensee to knowingly permit any act to be
done upon the licensed premises, the commission of which
constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption of
nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their servants,
agents or employees, or for any licensee by or through any
servants, agents or employees, to allow, suffer or permit any
person less than eighteen years of age to loiter in or upon any
licensed premises; except, however, that the provisions of this
subdivision do not apply where a person under the age of
eighteen years is in or upon the premises in the immediate
company of his or her parent or parents, or where and while a
person under the age of eighteen years is in or upon the
premises for the purpose of and actually making a lawful
purchase of any items or commodities therein sold, or for the
purchase of and actually receiving any lawful service therein
rendered, including the consumption of any item of food, drink
or soft drink therein lawfully prepared and served or sold for
consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute or
deliver any nonintoxicating beer outside the territory assigned
to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: Provided, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates shall have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and
(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and “transaction scan device” means any commercial device or combination of devices used
at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver’s license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee’s lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That the person’s duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee’s license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3A. Sales by Retail Liquor Licensees.
8. Sale of Wines.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a) A licensee who:
(1) Has installed a transaction scan device in its licensed premises; and

(2) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom liquor is sold, furnished, or given away by the use of the transaction device may not be subject to: (A) Any criminal penalties whatsoever; (B) any administrative penalties from the commissioner; or (C) any civil liability whatsoever for the improper sale, furnishing or giving away of liquor to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away liquor to an individual who is less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee, who has improperly sold, furnished or given away liquor to an individual less than twenty-one years of age, is subject to termination from employment, and the employer shall have no civil liability for the termination.

(b) For purposes of this subsection, a licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom liquor is sold by providing evidence:

(1) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom liquor will be sold, furnished or given away;

(2) That it has communicated this policy to each employee, servant or agent; and

(3) That it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of liquor and that it has taken corrective action for any discovered noncompliance with this policy.
(c) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

ARTICLE 8. SALE OF WINES.

§60-8-20. Unlawful acts generally.

It shall be unlawful:

(a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of section six of this article or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in section five-a, article one of this chapter;

(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age, or to a mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: Provided, That the provisions of section twenty-five-a, article three-a of this chapter shall apply to sales of wine;

(d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;
(e) For a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: Provided, That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor licensed in this state: Provided, however, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor may be temporarily out of stock. The commissioner shall promulgate rules necessary to carry out the provision of this subsection;

(f) For a person to violate any reasonable rule or regulation promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That the person's duties
may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however,* That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.

**CHAPTER 11**

*(S. B. 112 — By Senators Sharpe, Edgell, Prezioso, Ross, Minard and White)*

[Passed March 6, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six of said chapter; and to amend and reenact section two, article eight of said chapter, all relating generally to beverages containing alcohol; allowing farm wineries to produce wine from other agricultural products containing sugar; allowing farm wineries to manufacture, serve and sell dessert, port, sherry and Madeira wines; and excluding dessert wine produced by farm wineries from the definition of fortified wine.

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

That section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section two, article eight of said chapter be amended and reenacted, all to read as follows:
Article
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter: “Farm winery” means an establishment where in any year fifty thousand gallons or less of wine is manufactured exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar, with twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent of such produce originating from any source outside this state.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia agriculture commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the agriculture commissioner.

(c) For purposes of this definition and when used in this chapter to refer to the product of a farm winery or the product of the holder of a farm winery license, “wine” includes dessert wines manufactured exclusively by natural fermentation and
port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter shall not prevent:

1. (1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by section one of this article;

2. (2) A person from manufacturing and selling unfermented cider;

3. (3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding distillery licenses, but the manufacture and sale shall be under the supervision and regulation of the commissioner;

4. (4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, but the manufacture and sale shall be under the supervision and regulation of the commissioner; and

5. (5) The holder of a farm winery license from selling wine produced by it directly to consumers at the winery and at one off-farm winery location or to any other person who is licensed under this chapter to sell wine either at wholesale or at retail: Provided, That the winery may ship wines from the farm winery without the bonding requirements of a transporter: Provided, however, That notwithstanding any other provisions of law to the contrary, an individual or licensee in a state which affords the wineries of this state equal reciprocal shipping privileges may ship for personal use and not for resale not more
than two cases of wine per month to any adult resident in this state. For purposes of this subdivision, “wine” includes dessert wines manufactured exclusively by natural fermentation and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

2 “Commissioner” or “commission” means the West Virginia alcohol beverage control commissioner.

3 “Distributor” means any person whose principal place of business is within the state of West Virginia and who is engaged in selling or distributing wine to retailers or private wine restaurants and selling or distributing port, sherry and Madeira wines to wine specialty shops under authority of this article and actually maintains a warehouse in this state for the distribution of wine.

4 “Fortified wine” shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified: Provided, That a dessert wine manufactured exclusively by natural fermentation and having an alcoholic content of not more than twenty-two percent alcohol by volume and which has been matured in wooden barrels or casks and manufactured, served or sold by a farm winery is not a fortified wine.

5 “Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer or party supply store, where food, food products and supplies for
the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than five hundred dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term "grocery store" shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars.

"Licensee" means the holder of a license granted under the provisions of this article.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, distributor or supplier of wine who sells or offers to sell or
solicits or negotiates the sale of wine to any licensed West Virginia distributor.

“Tax” includes within its meaning interest, additions to tax and penalties.

“Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article and any person claiming a refund of tax.

“Vintneral wine” means any wine labeled according to the grape variety from which such wine is made.

“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce such wine are harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code: Provided, That “wine” shall include dessert wines manufactured exclusively by natural fermentation, and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks if produced by a farm winery as defined in section five-a, article one of this chapter.

“Wine specialty shop” means a retailer who shall deal principally in the sale of table wine, certain fortified wines, wine accessories and food or foodstuffs normally associated with wine and: (1) Who shall maintain a representative number
of such wines for sale in his or her inventory which are design-
nated by label as varietal wine, vintage, generic and/or accord-
ing to region of production and the inventory shall contain not
less than fifteen percent vintage or vintage-dated wine by actual
bottle count; and (2) who, any other provisions of this code to
the contrary notwithstanding, may maintain an inventory of
port, sherry and Madeira wines having an alcoholic content of
not more than twenty-two percent alcohol by volume and which
have been matured in wooden barrels or casks.

CHAPTER 12

(Com. Sub. for S. B. 383 — By Senators Bailey and Bowman)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter
sixty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating generally to the powers and
duties of the alcohol beverage control commissioner; and
allowing the commissioner, upon approval of the governor and
the board of public works, to sell a warehouse located in Nitro,
Putnam County, and purchase a replacement warehouse.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

The alcohol beverage control commissioner shall have the following powers and duties and any and all other powers and duties reasonably necessary and convenient for the purpose of this chapter:

(1) Exercise general supervision of, and make rules and regulations for, the management of his or her department;

(2) Sign and execute in the name of the commissioner any contract or agreement authorized by this chapter;

(3) Supervise the fiscal affairs and responsibilities of the department;

(4) With the approval of the governor, acquire title to and purchase real estate containing 12.168 acres situate on River Road in the Hub Industrial Park, Nitro, Putnam County, which real estate is improved by block and steel building containing approximately one hundred fifty thousand (150,000) square feet, formerly known as the Heck's warehouse, for a sale price not to exceed two million, two hundred fifty thousand dollars ($2,250,000.00);

(5) With the approval of the governor and the board of public works, sell, in part or in whole, the real estate containing 12.168 acres and a warehouse situate on River Road in the Hub Industrial Park, Nitro, Putnam County, for a sale price of at least the appraised fair market value and upon terms the commissioner determines to be in the best interest of the state of West Virginia: Provided, That the commissioner may only sell the property if it is determined that the soil beneath the warehouse is contaminated with toxic chemicals;

(6) With the approval of the governor and the board of public works, and upon the sale of real estate containing 12.168 acres and a warehouse situate on River Road in the Hub Industrial Park, Nitro, in Putnam County, acquire title to and purchase, upon terms the commissioner determines to be in the
best interest of the state of West Virginia, real estate containing
a replacement warehouse of a size and in a location that the
commissioner determines meets the storage needs of the
commission;

(7) Keep a complete and accurate record of all proceedings,
record and file all bonds and contracts taken or entered into and
assume responsibility for the custody and preservation of all
papers and documents pertaining to the commissioner;

(8) Purchase or lease as provided by law all equipment
necessary for the conduct of the department;

(9) Report to the governor each year all information relative
to the operation and functions of the department. The commis-
sioner shall make such other reports and recommendations as
may be required by the governor;

(10) Exercise any other power that may be necessary or
proper for the orderly conduct of the business and the effective
discharge of the duties of the commissioner; and

(11) Invoke any legal or equitable remedies for the enforce-
ment of the orders of the commissioner or the provisions of this
chapter.

CHAPTER 13

(Com. Sub. for H. B. 2868 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend article two, chapter sixty 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 generally to powers of alcohol beverage control commissioner; authorizing scanner technology for verification of purchasers ages; providing limitations on uses of collected information; allowing commissioner to enter into contracts for sale and promotion of certain proprietary scanner technology; defining the term “scanner technology”; creating a new special revenue account; and providing for expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty 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 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-22. Authority to utilize scanner technology in sales; authority to execute contracts relating thereto.

(a) The commissioner may, pursuant to section eleven of this article, authorize and establish standards for the use of scanner technology for the verification of age of purchasers of alcoholic beverages and wine as provided in article eight of this chapter, and nonintoxicating beer as provided for in article sixteen, chapter eleven of this code. Any scanner technology may not be used for the collection of personal identifiable information of any purchaser, which includes, but is limited to, drivers license number, social security number or other descriptive information contained on the license, other than the age of the purchaser.

(b) In addition to the commissioner’s powers set forth in section eleven of this article, the commissioner may sign and
execute in the name of the office of alcohol beverage control
commissioner one or more contracts or agreements pertaining
to the sale or licensing and promotion of proprietary scanner
technology by the commissioner, or his or her designated
contractual partner, to any interested person, upon terms the
commissioner believes to be in the best interests of this state,
and to amend, extend or terminate any contract or agreement:
Provided, That all contracts are subject to the review process
contained in section thirteen, article three, chapter five-a of this
chapter.

(c) "Scanner technology" includes any device that uses
technology intended to control the access of minors to alcohol
and tobacco products and which is capable of:

(1) Capturing the information from a bar code or magnetic
strip on a driver’s license or identification card issued by the
division of motor vehicles;

(2) Producing a declaration of age in print form and storing
a record of the event in memory;

(3) Producing an audible, visual and printed result;

(4) Reporting a history of the events, including the ability
to transfer the data for archiving and database development
purposes; and

(5) Storing at least one thousand events at any time before
data is transferred.

(d) Moneys derived from the sale, licensing and promotion
of the proprietary scanner technology shall be deposited in a
special account in the state treasury to be known as the
"Scanner Technology Fund." Expenditures from the fund shall
be for the maintenance and development of the proprietary
scanner technology described in this section and are not
authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand four, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

CHAPTER 14

(Com. Sub. for H. B. 2910 — By Delegates Mahan, Stalnaker, Long, Craig and Trump)

[Passed March 6, 2003; 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 three-a, relating to the establishment of an “Amber Alert” system to be utilized to rapidly disseminate information with regard to abducted children.

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 three-a, to read as follows:

ARTICLE 3A. AMBER ALERT PLAN.

§15-3A-2. Findings and determinations relative to “Amber’s Plan”.
§15-3A-3. Establishment of “Amber’s Plan”.
§15-3A-4. Activation of Amber Alert.
§15-3A-5. Notice to participating media; broadcast of alert.


This article shall be known and may be cited as “Amber’s Plan”.

§15-3A-2. Findings and determinations relative to “Amber’s Plan”.

(a) The Legislature finds and determines that:

(1) Public alerts can be one of the most effective tools in combating child abductions;

(2) Law-enforcement officers and other professionals specializing in the field of abducted and missing children agree that the most critical moments in the search for an abducted child are the first few hours immediately following the abduction, asserting that if a child is not found within two to four hours, it is unlikely that child will be found alive;

(3) The rapid dissemination of information, including a description of the abducted child, details of the abduction, abductor and vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(4) Alerted to an abduction, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering the child; and

(5) The most effective method of immediately notifying the public of a child abduction is through the broadcast media.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover abducted children, it
is altogether fitting and proper, and within the public interest, to establish such a program for West Virginia.

§15-3A-3. Establishment of “Amber’s Plan”.

(a) The secretary of the department of military affairs and public safety shall establish “Amber’s Plan”, a program authorizing the broadcast media, upon notice from the state police, to transmit an emergency alert to inform the public of a child abduction. The program shall be a voluntary, cooperative effort between state and local law-enforcement agencies and the broadcast media.

(b) The secretary shall notify the broadcast media serving the state of West Virginia of the establishment of “Amber’s Plan” and invite their voluntary participation.

§15-3A-4. Activation of Amber Alert.

The following criteria shall be met before the state police activate the Amber Alert:

(1) The child is believed to be abducted;

(2) The child is seventeen years of age or younger;

(3) The child may be in danger of death or serious bodily injury; and

(4) There is sufficient information available to indicate that an Amber Alert would assist in locating the child.

§15-3A-5. Notice to participating media; broadcast of alert.

(a) The participating media shall voluntarily agree, upon notice from the state police, to transmit emergency alerts to inform the public of a child abduction that has occurred within their broadcast service regions.
(b) The alerts shall be read after a distinctive sound tone and a statement notifying that the broadcast is an abducted child alert. The alerts shall be broadcast as often as possible, pursuant to guidelines established by the West Virginia Broadcasters’ Association, for the first three hours. After the initial three hours, the alert shall be rebroadcast at such intervals as the investigating authority, the state police and the participating media deem appropriate.

(c) The alerts shall include a description of the child, such details of the abduction and abductor as may be known, and such other information as the state police may deem pertinent and appropriate. The state police shall in a timely manner update the broadcast media with new information when appropriate concerning the abduction.

(d) The alerts also shall provide information concerning how those members of the public who have information relating to the abduction may contact the state police or other appropriate law-enforcement agency.

(e) Concurrent with the notice provided to the broadcast media, the state police shall also notify the department of transportation, the division of highways and the West Virginia turnpike commission of the “Amber Alert” so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that an “Amber Alert” is in progress and may provide information relating to the abduction and how motorists may report any information they have to the state police or other appropriate law-enforcement agency.

(f) The alerts shall terminate upon notice from the state police.

(g) The secretary, with the assistance of the participating broadcast media, shall develop and undertake a campaign to
inform law-enforcement agencies about "Amber’s Plan" and the emergency alert program established under this article.


The secretary may adopt guidelines and procedural rules to effectuate the purposes of this article.

CHAPTER 15

(H. B. 3203 — By Delegates Hrutkay, Mahan, Smirl, Morgan, Caputo, Calvert and Brown)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, twelve-a, fourteen and seventeen, article ten, chapter twenty-one 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 nineteen, all relating to amusement ride safety; defining terms; allowing certain children to operate kiddie rides; limiting civil penalties; allowing owners and operators to refuse admission to certain patrons; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, twelve-a, fourteen and seventeen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:
ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-2. Definitions.
§21-10-12a. Minimum age for operating amusement ride.
§21-10-17. Civil penalties for violations.

§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) "Kiddie ride" means an amusement ride or amusement
attraction that is expressly designed for or offered to: (1)
Children age twelve or less; (2) persons who are forty-two
inches in height or less; or (3) persons who are ninety pounds
in weight or less;

(d) "Intoxicated" means influenced or affected by the
ingestion of alcohol, a controlled substance, any intoxicant or
any combination of alcohol, controlled substances and intoxi-
cants;

(e) "Mobile amusement ride or mobile amusement attrac-
tion" means an amusement ride or amusement attraction which
is erected in a single physical location for a period of less than
twelve consecutive months;

(f) "Operator" means the person having direct control of the
starting, stopping and speed of an amusement ride or attraction;

(g) "Owner" means any person, corporation, partnership, or
association who owns an amusement ride or attraction or, in the
event that the amusement ride or attraction is leased, the lessee;

(h) "Stationary amusement ride or stationary amusement
attraction" means an amusement ride or amusement attraction
that is erected in a single physical location for a period of more
than twelve consecutive months.

§21-10-12a. Minimum age for operating amusement ride.

No individual under the age of sixteen may be the operator
of a kiddie ride or if under the age of eighteen be an operator of
any other amusement ride or attraction: Provided, That the
4 individual is not otherwise prohibited from being an operator
5 pursuant to other state or federal law.


1 Any operator or owner who knowingly permits the opera-
2 tion of an amusement ride or amusement attraction in violation
3 of the provisions of sections six, seven, eight, nine, eleven,
4 twelve or twelve-a of this article is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than two
6 hundred fifty dollars nor more than one thousand dollars,
7 confined in the county or regional jail not more than twelve
8 months, or both fined and confined. Each day that a violation
9 continues shall be considered a separate violation.

§21-10-17. Civil penalties for violations.

1 (a) If an individual is convicted of, or enters a guilty plea or
2 a plea of nolo contendere to, a violation of subsection (a),
3 section fifteen of this article, and the individual was not the
4 owner of the ride being operated or assembled, the commis-
5 sioner may impose a civil penalty not to exceed five thousand
6 dollars on the owner of the ride being operated or assembled:
7 Provided, That the owner knew or should have known that the
8 individual was acting in violation of subsection (a), section
9 fifteen of this article.

10 (b) All civil penalties collected by the commissioner shall
11 be deposited into the amusement rides and amusement attrac-
12 tions safety fund created in section four of this article.


1 The owner or operator of an amusement ride or attraction
2 may refuse any member of the public admission to a ride if his
3 or her bearing or conduct could endanger himself or herself or
4 others. These reasons include, but are not limited to: (1)
Intoxication; (2) refusal to obey posted rules; (3) unacceptable or unsafe behavior as determined by the operator of the ride; and (4) violation of any age, height or weight restrictions as posted.

CHAPTER 16

(Com. Sub. for H. B. 2301 — By Delegates Amores, Palumbo, Hatfield, Armstead and Foster)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to animals seized pursuant to allegations of neglect or cruel treatment; providing funding for necessary care of animals seized pursuant to allegations of neglect or cruel treatment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated: hearing; bonds; liability for costs; liens; exclusions.

(a) Subject to the provisions of subsection (h) of this section, a humane officer shall take possession of any animal,
including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion, or cruelly treated or used, as defined in sections nineteen and nineteen-a, article eight, chapter sixty-one of this code.

(b) The owner or persons in possession, if his or her identity and residence is known, of any animal seized pursuant to subsection (a) of this section shall be provided written notice of the seizure, his or her liability for the cost and care of the animal seized as provided in this section and the right to request a hearing before a magistrate in the county where the animal was seized. The magistrate court shall schedule any hearing requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure is prima facie evidence of the abandonment of the animal. At the hearing, if requested, the magistrate shall determine if probable cause exists to believe that the animal was abandoned, neglected or deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion, or otherwise treated or used cruelly as set forth in this section.

(c)(1) Upon finding of probable cause, or if no hearing is requested and the magistrate finds probable cause based upon the affidavit of the humane officer, the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. The owner of the animal shall post a bond with the court in an amount sufficient to provide for the reasonable costs of care, medical treatment and provisions for the animal for at least thirty days. The bond shall be filed with the court within five days following the court’s finding of probable cause. At the end of the time for which expenses are covered by the original bond if the animal remains in the care
of the humane officer and the owner desires to prevent disposi-
tion of the animal by the humane officer, the owner shall post
an additional bond with the court within five days of the
expiration of the original bond. During this period the humane
officer is authorized to place the animal in a safe private home
or other safe private setting in lieu of retaining the animal in an
animal shelter. The person whose animal is seized is liable for
costs of the care of the seized animal.

(2) If a bond has been posted in accordance with subdivi-
sion (1) of this subsection, the custodial animal care agency
may draw from the bond the actual reasonable costs incurred by
the agency in providing care, medical treatment and provisions
to the impounded animal from the date of the initial impound-
ment to the date of the final disposition of the animal.

(d) Any person whose animal is seized and against whom
a finding of probable cause is rendered pursuant to this section
is liable during any period it remains in the possession of the
humane officer for the reasonable costs of care, medical
treatment and provisions for the animal not covered by the
posting of the bond as provided in subdivision (1), subsection
(c) of this section. The magistrate shall require the person liable
for these costs to post bond to provide for the maintenance of
the seized animal. This expense, if any, becomes a lien on the
animal and must be discharged before the animal is released to
the owner following the acquittal of the owner or withdrawal of
the complaint. Upon acquittal, or withdrawal of the complaint,
any unused portion of posted bonds shall be returned to the
owner. Upon a criminal conviction, all interest in the im-
pounded animal shall transfer to the humane officer for the
further disposition in accordance with reasonable practices for
the humane treatment of animals. Any additional expense above
the value of the animal may be recovered by the humane officer
or custodial agency.
(e) If, after the humane officer takes possession of the animal pursuant to the finding of probable cause a licensed veterinarian determines that the animal should be humanely destroyed to end its suffering, the veterinarian may order the animal to be humanely destroyed and neither the humane officer, animal euthanasia technician, nor the veterinarian is subject to any civil or criminal liability as a result of such action.

(f) The term “humanely destroyed” as used in this section means:

(1) Humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with the provisions of article ten-a, chapter thirty of this code; or

(2) Any other humane euthanasia procedure approved by the American veterinary medical association, the humane society of the United States or the American humane association.

(g) In case of an emergency in which an animal cannot be humanely destroyed in an expeditious manner, an animal may be destroyed by shooting if:

(1) The shooting is performed by someone trained in the use of firearms with a weapon and ammunition of suitable caliber and other characteristics designed to produce instantaneous death by a single shot; and

(2) Maximum precaution is taken to minimize the animal’s suffering and to protect other persons and animals.

(h) The provisions of this section do not apply to farm livestock, as defined in subsection (d), section two, article ten-b, chapter nineteen of this code, poultry, gaming fowl or
wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl, wildlife or game farm production and management, nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131 et seq. and the regulations promulgated thereunder.

CHAPTER 17

(S. B. 205 — By Senators Kessler, McKenzie, Edgell, Bowman, Rowe, Prezioso, Hunter, Unger, Plymale, Sprouse, Minear and White)

[Passed February 27, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nineteen, article eight, chapter sixty-one of said code, all relating to modifying the criminal intent requirement for animal cruelty crimes; increasing the fine applicable to convicted persons; eliminating the civil recovery limitation of the assessed value of a dog; creating a felony offense for intentionally torturing or maliciously killing animals; and mandating that persons convicted of animal cruelty be prohibited from possessing, owning or residing with animals for varying periods depending on whether the person is convicted of a misdemeanor or felony.

Be it enacted by the Legislature of West Virginia:

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

Chapter
   19. Agriculture.
   61. Crimes and Their Punishment.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner’s remedy; penalties; penalties for unlawful stealing of companion animals.

1 (a) Any dog which is registered, kept and controlled as provided in this article or any dog, cat or other animal or any reptile which is owned, kept and maintained as a companion animal by any person, irrespective of age, is protected by law; and, except as otherwise authorized by law, any person who shall intentionally, knowingly or recklessly kill, injure, poison or in any other manner, cause the death or injury of any dog, cat, other animal or any reptile is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred dollars nor more than five hundred dollars, or both. However, this section does not apply to a dog who is killed while attacking a person, a companion animal or livestock. Any person whose dog, cat, other animal or reptile as specified herein is killed or injured wrongfully or unlawfully by any other person shall have a right of action against the person who shall so kill or injure any dog, cat, animal or reptile.

(b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a)
of this section is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than five hundred dollars, or both. Any person violating the provisions of this subsection shall, for second or subsequent offense, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than ninety days nor more than six months, or shall be ordered to provide public service for not more than one year, and fined not less than one thousand dollars. In no case can any action or prosecution relating to a dog under the provisions of this section be maintained if the dog concerned shall not have been duly registered pursuant to the provisions of this article or owned and kept pursuant to the provisions of this section at the time the cause of action shall have arisen.

(c) The commissioner of agriculture is hereby authorized to designate a reasonable number of his present employees as may be necessary to investigate alleged incidents of the unlawful stealing of dogs, other domestic animals or reptiles, alleged incidents of cruelty to animals or reptiles and the alleged incidents of the unlawful stealing of animals or reptiles for the purpose of sale to medical or other research companies. The deputies shall make the results of their investigations known to any law-enforcement officers who have authority to enforce the provisions of this article.

(d) It shall be the duty of all members of the West Virginia state police, sheriffs and police officers to aid in the enforcement of the provisions of this article and, for services rendered in the enforcement thereof, such persons shall be entitled to fees in the amounts set forth in section eight of this article. The fees shall be paid by the county commission from the dog and kennel fund.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

(a) If any person cruelly mistreats, abandons or withholds proper sustenance, including food, water, shelter or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than one thousand dollars or confined in the county or regional jail not more than six months, or both so fined and confined.

(b) If any person intentionally tortures or maliciously kills an animal, or causes, procures or authorizes any other person to torture or maliciously kill an animal, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than three years and be fined not less than one thousand dollars nor more than five thousand dollars. For the purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting pain.

(c) Any person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars.
(d) Any person convicted of a violation of this section shall forfeit his or her interest in any animal and all interest in the animal shall vest in the humane society or county pound of the county in which said conviction was rendered and the person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(e) For the purpose of this section, the term “controlled substance” shall have the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S. C. §2131 et seq. and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of said subsection is guilty of a misdemeanor and shall be confined in the county or regional jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than two thousand dollars, or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (h) are complied with.

(h) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be
granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.

CHAPTER 18

(Com. Sub. for H. B. 2753 — By Delegates Overington, Amores, Brown, Foster, Schadler, Craig and Calvert)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen-a, article eight, chapter sixty-one 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 nineteen-b, all relating to animal fighting; making it a felony to be involved in specifically defined animal fighting ventures; providing a penalty for violations; making it a misdemeanor to attend an animal fight and providing a penalty therefor.

Be it enacted by the Legislature of West Virginia:
That section nineteen-a, article eight, chapter sixty-one 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 nineteen-b, all to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.


(a) It is unlawful for any person to engage in, be employed at, or sell an admission to any animal fighting venture.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars and not more than one thousand dollars, or confined in the county jail not exceeding one year, or both so fined and confined, and may be divested of ownership and control of such animals, and be liable for all costs for their care and maintenance: Provided, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars and not more than five thousand dollars, and imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.
(a) It is unlawful for any person to knowingly attend an animal fighting venture involving animals as provided in subsections (a) and (b), section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars and not more than one thousand dollars, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

CHAPTER 19

(Com. Sub. for H. B. 2965 — By Delegates Stemple, Mezzatesta, Craig, Amores and Pethel)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]  

AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to authorizing the transfer of ownership of state owned dogs or horses by governmental agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.
§19-20-25. Retirement, transfer or disposal of state owned dogs and horses.

(a) Whenever any dog or horse, which is the property of the state, is unable to perform its duties as a service animal, the responsible governmental agency may:

(1) Transfer ownership of the dog or horse to another governmental agency within West Virginia;

(2) Transfer ownership of the dog or horse to the animal's handler;

(3) Transfer ownership of the dog or horse to a person who wishes to maintain the animal; or

(4) Transfer the dog or horse to the care and custody of any animal shelter, humane society or society for the prevention of cruelty to animals, organized and operating under the laws of this state, so that the dog or horse may be adopted. If the animal shelter, humane society or society for the prevention of cruelty to animals determines that the dog or horse is not suitable for adoption, then the animal may be humanely euthanized by a person licensed under the provisions of article ten or ten-a, chapter thirty of this code.

(b) In the event ownership of a dog or horse is transferred pursuant to subdivision (2), (3) or (4), subsection (a) of this section, the transfer documents must include provisions, signed by the person accepting ownership of the dog or horse, which hold the state harmless from any liability after the date of transfer.
AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article VI 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.

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

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 four” shall mean the period from the first day of July, two thousand three, through the thirtieth day of June, two thousand four.

“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.

Section 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 or other appropriate 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.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable
policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premiums” be insufficient to cover such cost, the remainder of such costs shall be transferred by each spending unit from its “personal services” line item, its “employee benefit” line item, its “unclassified” line item or any other appropriate line item to “BRIM Premiums” for payment to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments.

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 and the commissioner of the bureau of commerce shall have the authority to transfer within the department or bureau those general revenue funds appropriated to the various agencies of the department or bureau: 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 or bureau: 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 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 general revenue funds appropriated to "annual increment" to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with article five, chapter five of the code: 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.

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

§16. Total appropriations.

§17. General school fund.

1 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 four.

LEGISLATIVE

1—Senate

Fund 0165 FY 2004 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R) 003 $ 1,010,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R) 005 3,003,210</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits (R) 010 597,712</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses and</td>
</tr>
<tr>
<td>6</td>
<td>Contingent Fund (R) 021 700,000</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 2003 are to remain in full force and effect and are hereby reappropriated to June 30, 2004. Any balances so reappropriated may be transferred and credited to the fiscal year 2004 accounts.

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

The clerk of the senate, with the approval of the president, is authorized to draw his 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 2004 Org 2200

1 Compensation of Members (R) ........ 003 $ 2,200,000
2 Compensation and Per Diem of Officers
3 and Employees (R) ................. 005 600,000
4 Current Expenses and
5 Contingent Fund (R) ............... 021 4,221,162
6 Expenses of Members (R) .......... 399 1,120,000
7 BRIM Premium (R) ................. 913 20,515
8 Total .............................. $ 8,161,677
The appropriations for the house of delegates for the fiscal year 2003 are to remain in full force and effect and are hereby reappropriated to June 30, 2004. Any balances so reappropriated may be transferred and credited to the fiscal year 2004 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 2004 Org 2300

1 Joint Committee on Government and Finance (R) ............... 104 $ 6,317,298
2 Legislative Printing (R) .................................. 105 940,000
3 Legislative Rule-Making Review Committee (R) ............... 106 226,050
4 Legislative Computer System (R) ......................... 107 1,138,121
5 Joint Standing Committee on Education (R) ............... 108 74,500
6 Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (R) .................. 642 3,000,000
7 BRIM Premium (R) .......................................... 913 14,220
8 Total ......................................................... $11,710,189

The appropriations for the joint expenses for the fiscal year 2003 are to remain in full force and effect and are hereby reappropriated to June 30, 2004. Any balances so reappropriated may be transferred and credited to the fiscal year 2004 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 2004 Org 2400

<table>
<thead>
<tr>
<th>Item Description</th>
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<td>Personal Services (R)</td>
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<td>$45,723,244</td>
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<td>630,000</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>14,325,916</td>
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<td>7,422,951</td>
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<tr>
<td>Judges' Retirement System (R)</td>
<td>110</td>
<td>5,329,500</td>
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<tr>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>0</td>
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<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>469,006</td>
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<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>0</td>
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<tr>
<td>Guardian Ad Litem (R)</td>
<td>265</td>
<td>0</td>
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<tr>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>175,000</td>
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<td>BRIM Premium (R)</td>
<td>913</td>
<td>50,386</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$74,126,003</strong></td>
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</table>
The appropriations to the supreme court of appeals for the fiscal years 2000, 2001, 2002 and 2003 are to remain in full force and effect and are hereby reappropriated to June 30, 2004. Any balances so reappropriated may be transferred and credited to the fiscal year 2004 accounts.

This appropriation shall be administered by the administrative director of the supreme court of appeals, who shall draw 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 2004 Org 0100

<table>
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<th>Item</th>
<th>Account</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$2,371,414</td>
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<td>2</td>
<td>002</td>
<td>Salary of Governor</td>
<td>$90,000</td>
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<td>3</td>
<td>004</td>
<td>Annual Increment</td>
<td>$19,500</td>
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<td>4</td>
<td>010</td>
<td>Employee Benefits</td>
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<td>6</td>
<td>123</td>
<td>National Governors' Association</td>
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<td>7</td>
<td>314</td>
<td>Southern Governors' Association</td>
<td>$5,740</td>
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<td>8</td>
<td>913</td>
<td>BRIM Premium</td>
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<td>Total</td>
<td>$4,607,031</td>
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</table>

Any unexpended balances remaining in the appropriations for Publication of Papers and Transition Expenses (fund 0101,
activity 465) and Publication of Papers and Transition Expenses—Surplus (fund 0101, activity 359) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

6—Governor's Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2004 Org 0100

1 Unclassified—Total ....................... 096  $ 466,389

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

7—Governor's Office—

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2004 Org 0100

1 Unclassified .............................. 099  $ 308,638
2 Family Resource Networks (R) ......... 274  1,325,203
3 Starting Points Centers and Parent Education Services (R) .... 316  1,048,826
4 Total ........................................ $ 2,682,667

Any unexpended balances remaining in the appropriations for Family Resource Networks (fund 0104, activity 274), Starting Points Centers and Parent Education Services (fund 0104, activity 316), and Educare (fund 0104, activity 895) at the
close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0104, fiscal year 2003, activity 274 ($50,794) and fund 0104, fiscal year 2003, activity 316 ($50,794) which shall expire on June 30, 2003.

8—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2004 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
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<th>Amount</th>
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<tr>
<td>Civil Contingent Fund (R)</td>
<td>614</td>
<td>$3,000,000</td>
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<tr>
<td>Business &amp; Economic Development</td>
<td></td>
<td></td>
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<tr>
<td>Stimulus (R)</td>
<td>586</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Total—Surplus (fund 0105, activity 238), Civil Contingent Fund (fund 0105, activity 614), and Business and Economic Development Stimulus (fund 0105, activity 586) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

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)

**Fund 0116 FY 2004 Org 1200**

<table>
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<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,087,640</td>
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<tr>
<td>2</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>70,000</td>
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<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>54,705</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>657,507</td>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>711,436</td>
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<td>6</td>
<td>Office Automation (R)</td>
<td>117</td>
<td>328,310</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>2,064</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$3,911,662</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriation for Office Automation (fund 0116, activity 117) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004. *with the exception of fund 0116, fiscal year 2003, activity 099 ($126,580) which shall expire on June 30, 2003.*

## 10—Treasurer's Office

(WV Code Chapter 12)

**Fund 0126 FY 2004 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>$1,767,893</td>
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<tr>
<td>2</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>70,000</td>
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<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,450</td>
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<td>Employee Benefits</td>
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<td>Unclassified (R)</td>
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<td>1,266,522</td>
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<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>282,558</td>
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</tbody>
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* **CLERK'S NOTE:** Language deleted by the Governor.
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
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<tbody>
<tr>
<td>692</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>148,289</td>
</tr>
<tr>
<td>770</td>
<td>School Building Sinking Fund</td>
<td>770</td>
<td>2,124,000</td>
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<tr>
<td>913</td>
<td>BRIM Premium</td>
<td>913</td>
<td>19,434</td>
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<td>Total</td>
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<td>6,247,392</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), Tuition Trust Fund (fund 0126, activity 692), and School Building Sinking Fund Debt Service (fund 0126, activity 770) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

### Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2004 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td></td>
<td>3,596,423</td>
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<tr>
<td>002</td>
<td>Salary of Commissioner</td>
<td></td>
<td>70,000</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td></td>
<td>77,138</td>
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<td>010</td>
<td>Employee Benefits</td>
<td></td>
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<td>055</td>
<td>State Farm Museum</td>
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<td>099</td>
<td>Unclassified</td>
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<td>119</td>
<td>Gypsy Moth Program (R)</td>
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<td>128</td>
<td>Huntington Farmers Market</td>
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<td>137</td>
<td>Black Fly Control (R)</td>
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<td>428,456</td>
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<td>343</td>
<td>Tri-County Fair Association</td>
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<td>363</td>
<td>Donated Foods Program</td>
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<tr>
<td>470</td>
<td>Predator Control</td>
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<td>140,000</td>
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<td>691</td>
<td>Bee Research</td>
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<tr>
<td>785</td>
<td>Microbiology Program (R)</td>
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<td>786</td>
<td>Moorefield Agriculture Center (R)</td>
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<td>789</td>
<td>WV Food Banks</td>
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<tr>
<td>936</td>
<td>Sensers' Farmers' Market Nutrition</td>
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<td>60,000</td>
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</table>
21 Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Mingo County Surface Mine Project (fund 0131, activity 296), Charleston Farmers Market (fund 0131, activity 476), Capital Improvements—Total—Surplus (fund 0131, activity 672), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of *fund 0131, fiscal year 2003, activity 099 ($79,333),* fund 0131, fiscal year 2003, activity 119 ($12,930), fund 0131, fiscal year 2003, activity 137 ($65,000), fund 0131, fiscal year 2003, activity 296 ($62,000), and fund 0131, fiscal year 2003, activity 785 ($2,308) which shall expire on June 30, 2003.

36 A portion of the Unclassified appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

12—Department of Agriculture—

State *Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 2004 Org 1400

1 Personal Services ...................... 001 $ 464,113
2 Annual Increment ........................ 004 7,900
3 Employee Benefits .................... 010 173,425
4 Unclassified ............................ 099 331,252

* CLERK'S NOTE: Language deleted by the Governor.
Ch. 20] APPROPRIATIONS

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td></td>
<td>2,688,089</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td>3,444</td>
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<tr>
<td>7</td>
<td>Maintenance of Flood Control Projects (R)</td>
<td>522</td>
<td></td>
<td>1,778,787</td>
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<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td></td>
<td>$ 5,447,010</td>
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</table>

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, activity 120), Conservation Reserve Enhancement Program (fund 0132, activity 141), Soil Conservation Projects—Surplus (fund 0132, activity 269), and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0132, fiscal year 2003, activity 120 ($208,335), which shall expire on June 30, 2003.

13—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2004 Org 1400

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Org</th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 388,195</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,241</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>146,140</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>73,171</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 615,747</td>
</tr>
</tbody>
</table>

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

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2004 Org 1400

1 Fairs and Festivals ..................... 122 $ 0
2 Commissioner’s Awards
3 and Programs ......................... 737 0
4 Commissioner’s Awards
5 and Programs-Total ................... 971 $43,650
6 Total .................................. $43,650

15—Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2004 Org 1500

1 Personal Services (R) ................. 001 $2,331,889
2 Salary of Attorney General .......... 002 75,000
3 Annual Increment (R) ............... 004 41,159
4 Employee Benefits (R) .............. 010 761,235
5 Unclassified .......................... 099 203,715
6 Better Government Bureau .......... 740 294,600
7 BRIM Premium .......................... 913 $82,794
8 Total .................................. $3,790,392

9 Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Annual Increment (fund 0150, activity 004), and Employee Benefits (fund 0150, activity 010) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0150, fiscal year 2003, activity 001 ($83,443), fund 0150, fiscal year 2003, activity 010
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 units 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.

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2004 Org 1600

| 1 | Personal Services .................. 001 | $ 607,425 |
| 2 | Salary of Secretary of State ....... 002 | 65,000 |
| 3 | Annual Increment .................... 004 | 9,800 |
| 4 | Employee Benefits ................... 010 | 191,601 |
| 5 | Unclassified (R) ..................... 099 | 268,041 |
| 6 | BRIM Premium ........................ 913 | 24,031 |
| 7 | Total .................................. | $ 1,165,898 |

Any unexpended balances remaining in the appropriations for Unclassified–Surplus (fund 0155, activity 097), Unclassified (fund 0155, activity 099), Technology Improvements (fund

*CLERK'S NOTE: Language deleted by the Governor.
11 Appropriations [Ch. 20

11 0155, activity 599), and Administrative Law Division Improvements (fund 0155, activity 880) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2004 Org 1601

1 Unclassified—Total ................. 096 $ 11,291

DEPARTMENT OF ADMINISTRATION

18—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2004 Org 0201

1 Unclassified .................. 099 $ 301,877
2 Pay Equity Reserve .............. 364 250,000
3 Reorganization Initiative ......... 638 0
4 Lease Rental Payments .......... 516 11,480,409
5 BRIM Premium .................. 913 7,186
6 Total .......................... $ 12,039,472

The appropriation for Lease Rental Payments shall be disbursed as provided by chapter thirty-one, article fifteen, section six-b of the code.

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2004 Org 0205
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.

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2004 Org 0209

1 Personal Services .................. 001 $ 539,306
2 Annual Increment ................... 004 11,090
3 Employee Benefits .................. 010 134,711
4 Unclassified ........................ 099 362,928
5 GAAP Project (R) ................... 125 743,511
6 BRIM Premium ...................... 913 58,889
7 Total ............................... $ 1,850,435

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004 with the exception of fund 0203, fiscal year 2003, activity 125 ($69,897), which shall expire on June 30, 2003.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2004 Org 0211

1 Personal Services .................. 001 $ 576,602
2 Annual Increment .................. 004 20,300
3 Employee Benefits .................. 010 235,026
4 Unclassified ....................... 099 600,000
5 Fire Service Fee .................... 126 14,000
6 Total ............................ $ 1,445,928

Any unexpended balances remaining in the appropriations for Capitol Complex-Capital Outlay (fund 0230, activity 417), Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation-Surplus (fund 0230, activity 675), Capital Improvements-Capitol Complex-Surplus (fund 0230, activity 676), and Capitol Building Roof-Total-Surplus (fund 0230, activity 820) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2004 Org 0213

1 Personal Services ................. 001 $ 620,344
2 Annual Increment ................. 004 9,273
3 Employee Benefits ................. 010 176,242
4 Unclassified ....................... 099 111,766
5 BRIM Premium ...................... 913 2,633
6 Total ............................ $ 920,258

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.
23-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2004 Org 0217

1 Unclassified-Total ....................... 096 $ 26,408

2 To pay expenses for members of the commission on
3 uniform state laws.

24-Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2004 Org 0218

1 Retro Payments-Total ..................... 652 $ 2,000,000

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

25-Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2004 Org 0219

1 Personal Services ....................... 001 $ 574,084
2 Annual Increment ....................... 004 8,200
3 Employee Benefits ..................... 010 166,359
4 Unclassified .............................. 099 137,334
5 BRIM Premium .......................... 913 2,116
6 Total ................................... $ 888,093
## 26-Ethics Commission
(WV Code Chapter 6B)

Fund 0223 FY 2004 Org 0220

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</tr>
</thead>
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<td>001</td>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
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<td>$60,912</td>
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<td>4 Unclassified</td>
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<td>$42,391</td>
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<td>5 BRIM Premium</td>
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<td>$2,425</td>
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</table>

## 27-Public Defender Services
(WV Code Chapter 29)

Fund 0226 FY 2004 Org 0221

<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>$548,011</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>$4,000</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$189,671</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$315,074</td>
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<tr>
<td>5 Appointed Counsel Fees and</td>
<td>127</td>
<td>0</td>
</tr>
<tr>
<td>Public Defender Corporations (R)</td>
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<tr>
<td>8 Appointed Counsel Fees</td>
<td>788</td>
<td>$13,061,008</td>
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<tr>
<td>9 BRIM Premium</td>
<td>913</td>
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<td><strong>Total</strong></td>
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<td><strong>$26,927,985</strong></td>
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</table>

Any unexpended balances remaining in the above appropriation for Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.
The director of public defender services may transfer funds from Public Defender Corporations (fund 0226, activity 352) to Appointed Counsel Fees (fund 0226, activity 788) in the appropriation above.

28-Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2004 Org 0224

1 Unclassified-Total .......................... 096 $ 3,896

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2004 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.

30-West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2004 Org 0228

1 Forensic Medical Examinations (R) ... 683 $ 162,033
2 Federal Funds/Grant Match (R) ....... 749 120,505
3 Total ........................................... $ 282,538

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683)
and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0557, fiscal year 2003, activity 683 ($8,000), and fund 0557, fiscal year 2003, activity 749 ($2,794) which shall expire on June 30, 2003.

31-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2004 Org 0230

1 Unclassified-Total (R) ................. 096 $ 7,122,654

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0588, activity 096) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

DEPARTMENT OF EDUCATION

32-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2004 Org 0402

1 Personal Services .................. 001 $ 213,210
2 Annual Increment .................... 004 3,302
3 Employee Benefits .................. 010 77,578
4 Unclassified ....................... 099 1,640,000
5 Total ............................. $ 1,934,090
### 33-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2004 Org 0402

<table>
<thead>
<tr>
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<th>Code</th>
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<tbody>
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<td>Unclassified</td>
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<td>$203,561</td>
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<td>$25,949</td>
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<td><strong>$1,068,293</strong></td>
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</table>

### 34-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2004 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,809,896</td>
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<tr>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>$883,273</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$2,726,918</td>
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<tr>
<td>WV Education Information System (WVEIS)</td>
<td>138</td>
<td>$3,046,762</td>
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<tr>
<td>34/1000 Waiver</td>
<td>139</td>
<td>$400,000</td>
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<tr>
<td>Increased Enrollment</td>
<td>140</td>
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<tr>
<td>Teacher Mentor (R)</td>
<td>158</td>
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<tr>
<td>National Teacher Certification (R)</td>
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<td>$315,192</td>
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<td>Early Retirement</td>
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<td>Notification Incentive</td>
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<tr>
<td>FBI Checks</td>
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<tr>
<td>Principals Leadership Training</td>
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<td>$24,779</td>
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<tr>
<td>Bridges Program</td>
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<tr>
<td>Governor’s Honors Academy</td>
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### Appropriations

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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Foreign Student Education (R)</td>
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<td>82,786</td>
</tr>
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<td>State Teacher of the Year</td>
<td>640</td>
<td>38,009</td>
</tr>
<tr>
<td>Principals Mentorship</td>
<td>649</td>
<td>65,000</td>
</tr>
<tr>
<td>Allowance for Work Based Learning</td>
<td>744</td>
<td>120,000</td>
</tr>
<tr>
<td>Regional Education Service Agencies</td>
<td>972</td>
<td>4,737,706</td>
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<tr>
<td>Sparse Population Allocation</td>
<td>973</td>
<td>625,000</td>
</tr>
<tr>
<td>Enrollment Error Correction</td>
<td>974</td>
<td>296,205</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>160,292</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$17,068,154</strong></td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, activity 099), Increased Enrollment (fund 0313, activity 140), Teacher Mentor (fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), and Foreign Student Education (fund 0313, activity 636) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

### 35-State Department of Education-

**Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

**Fund 0314 FY 2004 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Education-Counties</td>
<td>159</td>
<td>$7,271,757</td>
</tr>
<tr>
<td>Special Education-Institutions</td>
<td>160</td>
<td>3,249,099</td>
</tr>
<tr>
<td>Educational Programs at Beckley</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Center <em>(R)</em></td>
<td>192</td>
<td>0</td>
</tr>
<tr>
<td>Educational Programs at Beckley and Burlington Centers <em>(R)</em></td>
<td>975</td>
<td>467,048</td>
</tr>
<tr>
<td>Education of Juveniles Held in</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*CLERK'S NOTE: Language deleted by the Governor.*
8 Predispositional Juvenile ........................ 302 572,900
9 Detention Centers .......................... 472 8,785,481
10 Education of Institutionalized .......................... 810 808,275
11 Juveniles and Adults .......................... 810 808,275
12 Potomac Center .............................. 810 808,275
13 Total .................................. $ 21,154,560

Any unexpended balance remaining in the appropriation for
Unclassified–Surplus (fund 0314, activity 097) at the close of
the fiscal year 2003 is hereby reappropriated for expenditure
during the fiscal year 2004.

From the above appropriations, the superintendent shall
have authority to expend funds for the costs of special educa-
tion for those children residing in out-of-state placements.

36-State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund-0317 FY 2004 Org 0402

1 Other Current Expenses .................. 022 $ 128,797,160
2 Professional Educators .................. 151 733,209,258
3 Service Personnel .......................... 152 243,289,005
4 Fixed Charges .............................. 153 87,201,295
5 Transportation .............................. 154 36,629,741
6 Administration ............................. 155 2,907,884
7 Improve Instructional Programs .......... 156 33,000,000
8 Basic Foundation Allowances ............ 1,265,034,343
9 Less Local Share ........................... (300,957,610)
10 Total Basic State Aid ..................... 964,076,733
11 Early Childhood Collaborative ........ 018 34,760,421
12 Public Employees’
13 Insurance Matching ....................... 012 171,889,586
14 Teachers’ Retirement System ........... 019 302,110,205
15 School Building Authority .......... 453 $22,642,530
16 Total ................................ $1,495,479,475

37-State Board of Education -
Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2004 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>$916,403</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,732</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>294,435</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,110,000</td>
</tr>
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<td>5</td>
<td>Wood Products-Forestry</td>
<td>146</td>
<td>56,220</td>
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<td>6</td>
<td>Vocational Program</td>
<td>147</td>
<td>124,263</td>
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<td>7</td>
<td>Albert Yanni Vocation Program</td>
<td>148</td>
<td>14,007,210</td>
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<td>8</td>
<td>Vocational Aid</td>
<td>149</td>
<td>2,987,191</td>
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<tr>
<td>9</td>
<td>Adult Basic Education</td>
<td>171</td>
<td>259,810</td>
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<tr>
<td>10</td>
<td>Partnership Development/Staff</td>
<td>621</td>
<td>289,025</td>
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<td>11</td>
<td>Adult Advisory Council</td>
<td>769</td>
<td>100,000</td>
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<td>12</td>
<td>Aquaculture Support</td>
<td></td>
<td></td>
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<tr>
<td>13</td>
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<td>$20,159,289</td>
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</table>

38-State Board of Education -
Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2004 Org 0402

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified - Total</td>
<td>096</td>
<td>500,000</td>
</tr>
<tr>
<td>5</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$500,000</td>
</tr>
</tbody>
</table>
### 39-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 0320 FY 2004 Org 0403**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$6,691,692</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>5,350</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>2,434,699</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,613,470</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>47,094</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,792,305</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment-Surplus (fund 0320, activity 677) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

### DEPARTMENT OF EDUCATION AND THE ARTS

40-Department of Education and the Arts-

**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0294 FY 2004 Org 0431**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$777,135</td>
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<tr>
<td>Center for Professional Development (R)</td>
<td>115</td>
<td>1,607,423</td>
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<tr>
<td>Center for Professional Development-Principals’ Academy (R)</td>
<td>415</td>
<td>438,180</td>
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<tr>
<td>Energy Express</td>
<td>861</td>
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<td>BRIM Premium</td>
<td>913</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,324,938</strong></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for the Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), and Center for Professional Development-Principals’ Academy (fund 0294, activity 415) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0294, fiscal year 2003, activity 415 ($74,644), and fund 0294, fiscal year 2003, activity 099 ($27,056) which shall expire on June 30, 2003.

41-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2004 Org 0432

1 Personal Services .................. 001 $ 2,144,527
2 Annual Increment .................. 004 39,855
3 Employee Benefits ................. 010 790,108
4 Unclassified ...................... 099 470,000
5 Culture and History Programming ..... 732 275,000
6 BRIM Premium ................... 913 34,436
7 Total .................................. $ 3,753,926

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.
### 42-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2004 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,046,426</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>28,100</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>371,503</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>220,331</td>
</tr>
<tr>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>38,456</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>22,330</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,727,146</strong></td>
</tr>
</tbody>
</table>

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

### 43-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2004 Org 0439

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,030,517</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>61,492</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,039,610</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>592,586</td>
</tr>
<tr>
<td>Lease Revenue Bonds</td>
<td>646</td>
<td>0</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>38,110</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,762,315</strong></td>
</tr>
</tbody>
</table>

### 44-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2004 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,030,517</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>61,492</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,039,610</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>592,586</td>
</tr>
<tr>
<td>Lease Revenue Bonds</td>
<td>646</td>
<td>0</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>38,110</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,762,315</strong></td>
</tr>
<tr>
<td>Item</td>
<td>Code</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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</tr>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$6,488,519</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>134,049</td>
</tr>
<tr>
<td>3 Independent Living Services</td>
<td>009</td>
<td>24,000</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>010</td>
<td>2,623,325</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>099</td>
<td>130,000</td>
</tr>
<tr>
<td>6 Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
</tr>
<tr>
<td>7 Supported Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Extended Services</td>
<td>206</td>
<td>119,032</td>
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<tr>
<td>9 Ron Yost Personal Assistance Fund</td>
<td>407</td>
<td>340,000</td>
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<tr>
<td>10 BRIM Premium</td>
<td>913</td>
<td>50,010</td>
</tr>
<tr>
<td>11 Total</td>
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<td>$11,725,084</td>
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</tbody>
</table>

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 2003 is hereby reappropriated for expenditure during the fiscal year 2004 and may be transferred to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

45-Department of Health and Human Resources-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2004 Org 0501

1 Unclassified-Total                                             | 096  | $137,779 |

46-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2004 Org 0506
<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$8,279,060</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>177,256</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,469,346</td>
</tr>
<tr>
<td>Level 1, 2 and 3 Trauma Centers</td>
<td>013</td>
<td>900,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>5,604,254</td>
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<tr>
<td>Safe Drinking Water Program</td>
<td>017</td>
<td>506,098</td>
</tr>
<tr>
<td>Pet Scan Support</td>
<td>020</td>
<td>100,000</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>021</td>
<td>45,000</td>
</tr>
<tr>
<td>Basic Public Health Services Support</td>
<td>022</td>
<td>4,323,708</td>
</tr>
<tr>
<td>Early Intervention</td>
<td>023</td>
<td>3,307,043</td>
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<tr>
<td>Cancer Registry</td>
<td>024</td>
<td>272,501</td>
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<tr>
<td>CARDIAC Project</td>
<td>025</td>
<td>220,000</td>
</tr>
<tr>
<td>State EMS Technical Assistance</td>
<td>026</td>
<td>1,403,674</td>
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<tr>
<td>EMS Program for Children</td>
<td>027</td>
<td>49,710</td>
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<tr>
<td>Statewide EMS Program Support</td>
<td>028</td>
<td>552,970</td>
</tr>
<tr>
<td>Primary Care Centers-Mortgage Finance</td>
<td>029</td>
<td>550,000</td>
</tr>
<tr>
<td>Black Lung Clinics</td>
<td>030</td>
<td>198,646</td>
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<tr>
<td>Center for End of Life</td>
<td>031</td>
<td>200,000</td>
</tr>
<tr>
<td>Pediatric Dental Services</td>
<td>032</td>
<td>150,000</td>
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<tr>
<td>Vaccine for Children</td>
<td>033</td>
<td>432,257</td>
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<tr>
<td>Adult Influenza Vaccine</td>
<td>034</td>
<td>65,000</td>
</tr>
<tr>
<td>Tuberculosis Control</td>
<td>035</td>
<td>253,908</td>
</tr>
<tr>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R)</td>
<td>036</td>
<td>4,614,188</td>
</tr>
<tr>
<td>Epidemiology Support</td>
<td>037</td>
<td>379,516</td>
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<td>Primary Care Support</td>
<td>038</td>
<td>7,254,178</td>
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<tr>
<td>Level 1 and 2 Trauma Centers</td>
<td>039</td>
<td>0</td>
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<td>Neurological Research</td>
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<td>State Aid to Local Health Departments</td>
<td>040</td>
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<td>Health Right Free Clinics</td>
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<td>Osteoporosis Prevention Fund</td>
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<tr>
<td>Special Projects</td>
<td>044</td>
<td>500,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0407, activity 099, fiscal year 1997), and Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0506, fiscal year 2003, activity 575 ($45,000), which shall expire on June 30, 2003.

From the Maternal and Child Health Clinics, Clinicians, and Medical Contracts and Fees line item, $400,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund.

47-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2004 Org 0506

<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>$ 616,833</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>11,991</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>250,602</td>
</tr>
<tr>
<td>4</td>
<td>Special Olympics</td>
<td>208</td>
<td>26,074</td>
</tr>
<tr>
<td>5</td>
<td>Behavioral Health Program- Unclassified (R)</td>
<td>219</td>
<td>42,690,722</td>
</tr>
<tr>
<td>6</td>
<td>Family Support Act</td>
<td>221</td>
<td>1,092,753</td>
</tr>
<tr>
<td>7</td>
<td>Institutional Facilities Operations</td>
<td>335</td>
<td>44,096,851</td>
</tr>
<tr>
<td>8</td>
<td>Colin Anderson Community Placement (R)</td>
<td>803</td>
<td>3,264,325</td>
</tr>
<tr>
<td>9</td>
<td>Renaissance Program</td>
<td>804</td>
<td>194,000</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>913</td>
<td>875,704</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$ 93,119,855</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations 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 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0525, fiscal year 2003, activity 219 ($1,611,765), and fund 0525, fiscal year 2003, activity 803 ($1,000,000) which shall expire on June 30, 2003.

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.

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.

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) and tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2003, 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.
Additional funds have been appropriated in fund 5124, fiscal year 2004, organization 0506 and fund 5156, fiscal year 2004, 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.

**48-Division of Health**

*West Virginia Drinking Water Treatment*

*(WV Code Chapter 16)*

**Fund 0561 FY 2004 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 appropriate bank depository and the Drinking Water Treatment Revolving-Administrative Expense Fund as provided by chapter sixteen of the code.

**49-Human Rights Commission**

*(WV Code Chapter 5)*

**Fund 0416 FY 2004 Org 0510**

1 Personal Services .................. 001 $ 678,511
2 Annual Increment .................. 004 14,900
3 Employee Benefits .................. 010 231,960
4 Unclassified ......................... 099 234,013
5 BRIM Premium ....................... 913 17,970
6 Total ............................... $ 1,177,354
### Appropriations

#### Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Fund 0403 FY 2004 Org 0511**

<table>
<thead>
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<th>Item</th>
</tr>
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<tr>
<td>2 Annual Increment</td>
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<tr>
<td>3 Employee Benefits</td>
</tr>
<tr>
<td>4 Unclassified</td>
</tr>
<tr>
<td>5 Child Care Development</td>
</tr>
<tr>
<td>6 Medical Services Contracts and Office of Managed Care</td>
</tr>
<tr>
<td>7 Medical Services</td>
</tr>
<tr>
<td>8 Women’s Commission</td>
</tr>
<tr>
<td>9 Social Services</td>
</tr>
<tr>
<td>10 Domestic Violence Legal Services Fund</td>
</tr>
<tr>
<td>11 James “Tiger” Morton Catastrophic Illness Fund</td>
</tr>
<tr>
<td>12 WV Teaching Hospitals</td>
</tr>
<tr>
<td>13 Tertiary/Safety Net</td>
</tr>
<tr>
<td>14 OSCAR and RAPIDS</td>
</tr>
<tr>
<td>15 Child Welfare System</td>
</tr>
<tr>
<td>16 Commission for the Deaf and Hard of Hearing</td>
</tr>
<tr>
<td>17 Child Support Enforcement</td>
</tr>
<tr>
<td>18 Medicaid Auditing</td>
</tr>
<tr>
<td>19 Temporary Assistance for Needy Families/Maintenance of Effort</td>
</tr>
<tr>
<td>20 Child Care-Maintenance of Effort and Match</td>
</tr>
<tr>
<td>21 Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
</tr>
<tr>
<td>Line Item</td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td>31 Indigent Burials (R)</td>
</tr>
<tr>
<td>32 BRIM Premium</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Indigent Burials (fund 0403, activity 851) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by article five-q, chapter sixteen of the code.

The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

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 five 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.
Ch. 20] APPROPRIATIONS

(WV Code Chapter 5F)

Fund 0430 FY 2004 Org 0601

1 Unclassified (R) ......................... 099 $ 632,054
2 BRIM Premium ......................... 913 4,816
3 Total ................................ $ 636,870

4 Any unexpended balance remaining in the appropriation for
5 Unclassified (fund 0430, activity 099) at the close of the fiscal
6 year 2003 is hereby reappropriated for expenditure during the
7 fiscal year 2004.

52-Adjutant General-

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2004 Org 0603

1 Personal Services ....................... 001 $ 387,196
2 Annual Increment ...................... 004 9,500
3 Employee Benefits ..................... 010 120,822
4 Unclassified (R) ....................... 099 14,564,338
5 BRIM Premium ......................... 913 20,344
6 Total ................................ $ 15,102,200

7 Any unexpended balance remaining in the appropriation for
8 Unclassified (fund 0433, activity 099) at the close of the fiscal
9 year 2003 is hereby reappropriated for expenditure during the
10 fiscal year 2004.

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

53-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2004 Org 0605

<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>$122,751</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,744</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>115,929</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>119,325</td>
</tr>
<tr>
<td>5</td>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227</td>
<td>225,000</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>22,208</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$606,957</td>
</tr>
</tbody>
</table>

54-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2004 Org 0606

<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>$222,636</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>83,587</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>110,233</td>
</tr>
<tr>
<td>5</td>
<td>Federal Emergency Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Agency Match (R)</td>
<td>188</td>
<td>210,937</td>
</tr>
<tr>
<td>7</td>
<td>Early Warning Flood System</td>
<td>877</td>
<td>324,000</td>
</tr>
<tr>
<td>8</td>
<td>Radiological Emergency Preparedness</td>
<td>554</td>
<td>25,600</td>
</tr>
<tr>
<td>9</td>
<td>BRIM Premium</td>
<td>913</td>
<td>6,680</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$988,973</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Federal Emergency Management Agency Match (fund 0443, activity 188) and Flood Reparations (fund 0443, activity 400) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.
55-Division of Corrections -

Central Office

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

Fund 0446 FY 2004 Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$384,881</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$5,775</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$117,178</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$97,594</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$605,428</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

56-Division of Corrections -

Correctional Units

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

Fund 0450 FY 2004 Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$347,367</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$729,093</td>
</tr>
<tr>
<td>Charleston Work Release</td>
<td>456</td>
<td>$842,328</td>
</tr>
<tr>
<td>Beckley Correctional Center</td>
<td>490</td>
<td>$917,400</td>
</tr>
<tr>
<td>Huntington Work Release</td>
<td>495</td>
<td>$721,135</td>
</tr>
<tr>
<td>Anthony Center</td>
<td>504</td>
<td>$4,060,261</td>
</tr>
<tr>
<td>Huttonsville Correctional Center</td>
<td>514</td>
<td>$13,427,651</td>
</tr>
<tr>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>$5,956,185</td>
</tr>
<tr>
<td>Inmate Medical Expenses</td>
<td>535</td>
<td>$11,110,767</td>
</tr>
<tr>
<td>Pruntytown Correctional Center</td>
<td>543</td>
<td>$5,651,370</td>
</tr>
<tr>
<td>Payments to Federal, County and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appropriation</td>
<td>Fund</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>12</td>
<td>Regional Jails</td>
<td>555</td>
</tr>
<tr>
<td>13</td>
<td>Corrections Academy</td>
<td>569</td>
</tr>
<tr>
<td>14</td>
<td>Martinsburg Correctional Center</td>
<td>663</td>
</tr>
<tr>
<td>15</td>
<td>Parole Services</td>
<td>686</td>
</tr>
<tr>
<td>16</td>
<td>Special Services</td>
<td>687</td>
</tr>
<tr>
<td>17</td>
<td>St. Mary's Correctional Facility</td>
<td>881</td>
</tr>
<tr>
<td>18</td>
<td>Denmar Correctional Facility</td>
<td>882</td>
</tr>
<tr>
<td>19</td>
<td>Ohio County Correctional Facility</td>
<td>883</td>
</tr>
<tr>
<td>20</td>
<td>Mt. Olive Correctional Facility</td>
<td>888</td>
</tr>
<tr>
<td>21</td>
<td>Lakin Correctional Facility</td>
<td>896</td>
</tr>
<tr>
<td>22</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>23</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 0450, activity 511) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

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 and may transfer funds from the individuals units to Payments to Federal, County and/or Regional Jails (fund 0450, organization 555) or the Inmate Medical Expenses (fund 0450, organization 535).

From the above appropriation to Unclassified, on July 1, 2003, the sum of three 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.

57-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2004 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$27,917,001</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>191,550</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,594,693</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>6,708,423</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Barracks Maintenance and Construction (R)</td>
<td>494</td>
<td>1,719,388</td>
</tr>
<tr>
<td>Trooper Class</td>
<td>521</td>
<td>3,755,986</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
<td>318,768</td>
</tr>
<tr>
<td>Other Equipment and</td>
<td>558</td>
<td>613,285</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>24,875,529</td>
</tr>
<tr>
<td>Handgun Administration Expense</td>
<td>747</td>
<td>70,375</td>
</tr>
<tr>
<td>Automated Fingerprint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification System</td>
<td>898</td>
<td>495,293</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>3,351,098</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$76,611,389</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), and Communications and Other Equipment (fund 0453, activity 558) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.
### 58-Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2004 Org 0613

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>872,723</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>25,480</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>380,309</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>50,000</td>
</tr>
<tr>
<td>5 Veterans’ Field Offices</td>
<td>228</td>
<td>136,371</td>
</tr>
<tr>
<td>6 Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,000</td>
</tr>
<tr>
<td>7 Veterans’ Reeducation Assistance (R)</td>
<td>329</td>
<td>211,604</td>
</tr>
<tr>
<td>8 Veterans’ Grant Program (R)</td>
<td>342</td>
<td>150,000</td>
</tr>
<tr>
<td>9 Women’s Veterans’ Monument (R)</td>
<td>385</td>
<td>0</td>
</tr>
<tr>
<td>10 Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
</tr>
<tr>
<td>11 BRIM Premium</td>
<td>913</td>
<td>23,741</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$1,875,228</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Field Office Improvements (fund 0456, activity 331), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), and Veterans’ Monuments (fund 0456, activity 817) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

### 59-Division of Veterans’ Affairs

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2004 Org 0618

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>668,646</td>
</tr>
</tbody>
</table>


### 60-Fire Commission

(WV Code Chapter 29)

**Fund 0436 FY 2004 Org 0619**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$613,761</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$11,478</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$222,360</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$146,248</td>
</tr>
<tr>
<td>Safe Schools Hotline</td>
<td>560</td>
<td>$250,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$20,940</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,264,787</strong></td>
</tr>
</tbody>
</table>

### 61-Division of Criminal Justice Services

(WV Code Chapter 15)

**Fund 0546 FY 2004 Org 0620**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$248,802</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,645</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$83,776</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$155,775</td>
</tr>
<tr>
<td>Statistical Analysis Program</td>
<td>597</td>
<td>$52,837</td>
</tr>
<tr>
<td>Sentencing Commission</td>
<td>976</td>
<td>$123,000</td>
</tr>
<tr>
<td>Community Corrections in Mercer, Harrison, and Ohio Counties</td>
<td>977</td>
<td>$300,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$968,835</strong></td>
</tr>
</tbody>
</table>
62-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2004 Org 0621

| 1 | Personal Services | 001 | $ | 0 |
| 2 | Annual Increment  | 004 | | 0 |
| 3 | Employee Benefits | 010 | | 0 |
| 4 | Unclassified (R)  | 099 | | 0 |
| 5 | Central Office    | 701 | 1,822,092 | |
| 6 | WV Industrial Home for Youth | 979 | 10,669,115 | |
| 7 | Davis Center      | 980 | 2,113,692 | |
| 8 | Eastern Regional Juvenile Center | 981 | 1,024,150 | |
| 9 | Northern Regional Juvenile Center | 982 | 912,807 | |
| 10 | North Central Regional Juvenile Center | 983 | 1,599,320 | |
| 11 | Southern Regional Juvenile Center | 984 | 1,701,438 | |
| 12 | Tiger Morton Center | 985 | 1,810,884 | |
| 13 | Donald R. Kuhn Juvenile Center | 986 | 3,530,534 | |
| 14 | J.M. “Chick” Buckbee Juvenile Center | 987 | 1,831,385 | |
| 15 | Salem Canine      | 988 | 87,501 | |
| 16 | Davis Canine      | 989 | 83,536 | |
| 17 | The Academy       | 990 | 128,668 | |
| 18 | Mt. Hope Juvenile Center | 991 | 417,000 | |
| 19 | BRIM Premium      | 913 | 20,930 | |
| 20 | Total            |     | $ 27,753,052 | |

Any unexpended balance remaining in the appropriation for Unclassified (fund 0570, activity 099) at the close of the fiscal year 2003 is hereby reapportioned for expenditure during the fiscal year 2004.

From the above appropriation to Unclassified, on July 1, 2003, the sum of fifty thousand dollars shall be transferred to the department of agriculture-land division as advance payment.

*CLERK'S NOTE: Language deleted by the Governor.*
for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

The director of juvenile services shall also have the authority to transfer between line items appropriated to the individual juvenile centers above.

63- Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2004 Org 0622

<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>$ 826,051</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>330,260</td>
</tr>
<tr>
<td>Equipment (R)</td>
<td>070</td>
<td>0</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>583,281</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>3,575</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 1,747,167</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, activity 070), Unclassified-Surplus (fund 0585, activity 097), and Unclassified (fund 0585, activity 099) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

DEPARTMENT OF TAX AND REVENUE

64- Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2004 Org 0702

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$ 10,950,709</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>259,060</td>
</tr>
</tbody>
</table>
3 Employee Benefits (R) .............. 010 3,561,722
4 Unclassified (R) ................... 099 5,475,655
5 Multi State Tax Commission ........ 653 41,238
6 GIS Development Project ........... 562 150,000
7 BRIM Premium ........................ 913 5,058
8 Total .................................. $ 20,443,442

Any unexpended balances remaining in the appropriations for Unclassified-Surplus (fund 0470, activity 097), Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), and Unclassified (fund 0470, activity 099) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

65-West Virginia Office of Tax Appeals

(WV Code Chapter 11)
Fund 0593 FY 2004 Org 0709

1 Unclassified-Total .................. 096 $ 642,620

66-Division of Professional and Occupational Licenses-
State Athletic Commission

(WV Code Chapter 29)
Fund 0523 FY 2004 Org 0933

1 Unclassified .......................... 099 $ 5,812
2 BRIM Premium .......................... 913 1,388
3 Total .................................. $ 7,200

DEPARTMENT OF TRANSPORTATION

67-State Rail Authority
### 68-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2004 Org 0805

<table>
<thead>
<tr>
<th>Item</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>$1,294,162</td>
</tr>
<tr>
<td>2</td>
<td>Federal Funds/Grant Match</td>
<td>749</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$2,294,162</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), and Grant Match (fund 0510, activity 388) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0510, fiscal year 2003, activity 099 ($44,002), fund 0510, fiscal year 2003, activity 388 ($34,000) which shall expire on June 30, 2003.

### 69-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2004 Org 0806

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$725,533</td>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0581, activity 096) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0581, fiscal
6 year 2003, activity 096 ($27,659) which shall expire on June 7 30, 2003.

70-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2004 Org 0807

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Unclassified (R)</td>
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<td>$1,227,801</td>
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<td>2</td>
<td>Civil Air Patrol</td>
<td>234</td>
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<td>3</td>
<td>Total</td>
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<td>$1,333,058</td>
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</table>

4 Any unexpended balances remaining in the appropriations 5 for Unclassified (fund 0582, activity 099) at the close of the 6 fiscal year 2003 are hereby reappropriated for expenditure 7 during the fiscal year 2004, with the exception of fund 0582, 8 fiscal year 2003, activity 099 ($54,899) which shall expire on 9 June 30, 2003.

BUREAU OF COMMERCE

71-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2004 Org 0305

<table>
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<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,657,488</td>
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<td>004</td>
<td>45,100</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>626,439</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>89,630</td>
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<td>5</td>
<td>Aerial Tanker Airplanes</td>
<td>752</td>
<td>200,000</td>
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<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>156,271</td>
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<td>7</td>
<td>Total</td>
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<td>$2,774,928</td>
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Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

72-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2004 Org 0306

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<td>Employee Benefits</td>
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<td>Mineral Mapping System (R)</td>
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<tr>
<td>Geographic Information System (R)</td>
<td>214</td>
<td></td>
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<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207), Geographic Information System (fund 0253, activity 214), and Computer Upgrade-Surplus (fund 0253, activity 874), at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0253, fiscal year 2003, activity 214 ($16,576), and fund 0253, fiscal year 2003, activity 207 ($77,122) which shall expire on June 30, 2003.

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.

73-West Virginia Development Office

(WV Code Chapter 5B)
<table>
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<th>Code</th>
<th>Amount</th>
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<td>Partnership Grants (R)</td>
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<td>6</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td>169,362</td>
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<td>7</td>
<td>Local Economic Development</td>
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<td>8</td>
<td>Partnership (R)</td>
<td>133</td>
<td>1,600,500</td>
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<td>9</td>
<td>ARC Assessment</td>
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<td>167,308</td>
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<td>10</td>
<td>Institute for Software Research</td>
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<td>84,681</td>
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<td>11</td>
<td>West Virginia Steel Advisory</td>
<td>230</td>
<td>67,745</td>
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<tr>
<td>12</td>
<td>Mid-Atlantic Aerospace Complex (R)</td>
<td>231</td>
<td>196,425</td>
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<td>13</td>
<td>Guaranteed Work Force Grant (R)</td>
<td>242</td>
<td>2,702,576</td>
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<td>14</td>
<td>Mingo County Surface Mine Project</td>
<td>296</td>
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<td>15</td>
<td>Small Business</td>
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<td>16</td>
<td>Financial Assistance (R)</td>
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<tr>
<td>17</td>
<td>Robert C. Byrd Institute for Advanced/</td>
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<td></td>
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<td>18</td>
<td>Flexible Manufacturing-Technology</td>
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<td></td>
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<tr>
<td>19</td>
<td>Outreach and Programs for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Environmental and</td>
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<td>21</td>
<td>Advanced Technologies</td>
<td>367</td>
<td>611,100</td>
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<td>22</td>
<td>Advantage Valley</td>
<td>389</td>
<td>87,300</td>
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<td>23</td>
<td>Chemical Alliance Zone</td>
<td>390</td>
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<td>24</td>
<td>WV High Tech Consortium</td>
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<td>25</td>
<td>Charleston Farmers Market (R)</td>
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<td>26</td>
<td>Industrial Park Assistance (R)</td>
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<td>500,000</td>
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<td>27</td>
<td>Leverage Technology and Small</td>
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<td>28</td>
<td>Business Development Program (R)</td>
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<td>718,438</td>
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<td>29</td>
<td>International Offices (R)</td>
<td>593</td>
<td>776,004</td>
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<td>30</td>
<td>Blanchette Rockefeller</td>
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<td>31</td>
<td>Neurological Institute</td>
<td>635</td>
<td>0</td>
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<tr>
<td>32</td>
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<td>33</td>
<td>WV Manufacturing</td>
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<tr>
<td>34</td>
<td>Extension Partnership</td>
<td>731</td>
<td>169,362</td>
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</table>
35  Small Business Work Force (R) ....... 735  529,106
36  Polymer Alliance ..................... 754  84,681
37  National Institute
38  of Chemical Studies .................... 805  84,681
39  Local Economic
40  Development Assistance (R) ........... 819  4,500,000
41  Community College
42  Workforce Development (R) ............. 878  722,408
43  Hardwood Alliance Zone ................. 992  50,000
44  BRIM Premium .......................... 913  1,464
45  Total .................................. $ 23,813,834

Any unexpended balances remaining in the appropriations for Partnership Grants (fund 0256, activity 131), Local Economic Development Partnerships (fund 0256, activity 133), Mid-Atlantic Aerospace Complex (fund 0256, activity 231), Guaranteed Work Force Grant (fund 0256, activity 242), Small Business Financial Assistance (fund 0256, activity 360), Charleston Farmers Market (fund 0256, activity 476), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), International Offices (fund 0256, activity 593), Small Business Work Force (fund 0256, activity 735), Local Economic Development Assistance (fund 0256, activity 819), Community College Workforce Development (fund 0256, activity 878), Economic Development Assistance (fund 0256, activity 900), and Technology Initiatives (fund 0256, activity 901) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0256, fiscal year 2003, activity 131 ($136,000), fund 0256, fiscal year 2003, activity 231 ($7,421), fund 0256, fiscal year 2003, activity 242 ($423,891), fund 0256, fiscal year 2003, activity 360 ($13,843), fund 0256, fiscal year 2003, activity 480 ($18,872), fund 0256, fiscal year 2003, activity 525 ($27,141), fund 0256, fiscal year 2003, activity 735 ($24,826), fund 0256, fiscal year 2003, activity 819 ($238,000),
and fund 0256, fiscal year 2003, activity 878 ($27,291) which shall expire on June 30, 2003.

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.

74-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2004 Org 0308

<table>
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<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$480,538</td>
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<td>BRIM Premium</td>
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<td>$40,058</td>
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<td>$2,898,684</td>
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75-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2004 Org 0310

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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<td>$6,970,016</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$226,437</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$3,744,817</td>
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</table>
4 Gypsy Moth Suppression Program -
5 Wildlife Management Areas ........ 014 50,000
6 Unclassified .......................... 099 9,633
7 Litter Control Conservation Officers ... 564 192,823
8 Law Enforcement-Federal Audit ...... 563 350,000
9 Upper Mud River Flood Control ...... 654 171,217
10 Law Enforcement ................... 806 844,625
11 BRIM Premium ...................... 913 251,260
12 Total ................................ $12,810,828

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.

The above appropriation for Law Enforcement-Federal Audit (fund 0265, activity 563) shall only be expended after the division of natural resources has executed the Memorandum of Agreement resolving pending claims of the U.S. Fish and Wildlife Service and upon written approval of the Commissioner of the Bureau of Commerce.

76-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2004 Org 0314

1 Personal Services .................. 001 $3,648,406
2 Annual Increment .................... 004 70,950
3 Employee Benefits ................. 010 1,339,000
4 Unclassified .......................... 099 769,336
5 BRIM Premium ...................... 913 35,421
6 WV Diesel Equipment Commission ... 712 38,034
7 Total ................................ $5,901,147
### 77-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2004 Org 0319

<table>
<thead>
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<th>Item</th>
<th>Code</th>
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<td>Annual Increment</td>
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<td>$750</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>$30,345</td>
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<td><strong>Total</strong></td>
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<td><strong>$169,315</strong></td>
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</table>

### 78-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2004 Org 0320

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<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$0</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$63,352</td>
</tr>
<tr>
<td>Coal Forum (Coal Miner Statue)</td>
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<td>$25,000</td>
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<td><strong>Total</strong></td>
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<td><strong>$88,352</strong></td>
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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 79-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2004 Org 0311

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<tr>
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<td>$98,917</td>
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<td>Annual Increment</td>
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<td>$795</td>
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<td>Employee Benefits</td>
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<td>$23,256</td>
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<td>Unclassified</td>
<td>099</td>
<td>$16,121</td>
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<tr>
<td>BRIM Premium</td>
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<td>$2,228</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$141,317</strong></td>
</tr>
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80-Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2004 Org 0313

1 West Virginia’s Contribution to the Interstate Commission on Potomac River Basin-Total 134 $42,300

81-Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2004 Org 0313

1 West Virginia’s Contribution to the Ohio River Valley Water Sanitation Commission-Total 135 $120,870

82-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2004 Org 0313

1 Personal Services ................. 001 $4,402,434
2 Annual Increment ................. 004 73,538
3 Employee Benefits ................. 010 1,435,444
4 Unclassified ....................... 099 876,955
5 Dam Safety ......................... 607 213,639
6 Office of Water Resources
7 Non-Enforcement Activity ....... 855 1,154,877
8 Welch DEP Office
9 Continuing Operation ............. 993 92,000
10 BRIM Premium ..................... 913 12,462
11 Total ............................. $8,261,349
## 83-Air Quality Board

(WV Code Chapter 16)

Fund **0550 FY 2004 Org 0325**

<table>
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<tr>
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## BUREAU OF SENIOR SERVICES

84-Bureau of Senior Services

(WV Code Chapter 29)

Fund **0420 FY 2004 Org 0508**

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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>506,331</td>
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<tr>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>15,000</td>
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<tr>
<td>Area Agencies Administration</td>
<td>203</td>
<td>78,685</td>
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<tr>
<td>Alzheimers Respite Care</td>
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<td>100,000</td>
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<td>BRIM Premium</td>
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<td>2,075</td>
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## HIGHER EDUCATION POLICY COMMISSION

85-Higher Education Policy Commission-

Administration-

Control Account

(WV Code Chapter 18B)
<table>
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<td>$2,096,505</td>
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<td>EPSCOR</td>
<td>571</td>
<td>$</td>
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<tr>
<td>Vice Chancellor for Health Sciences-Rural Health Initiative Program and Site Support</td>
<td>595</td>
<td>$4,065,467</td>
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<tr>
<td>Vice Chancellor for Health Sciences-Rural Health Residency Program</td>
<td>601</td>
<td>$300,000</td>
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<td>West Virginia Council for Community and Technical Education</td>
<td>392</td>
<td>$449,141</td>
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<td>Total</td>
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<td>$9,010,033</td>
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</table>

Any unexpended balances remaining in the appropriations for Vice Chancellor for Health Sciences-Rural Health Initiative Program and Site Support (fund 0589, activity 595), Vice Chancellor for Health Sciences-Rural Health Residency Program (fund 0589, activity 601), and West Virginia Council for Community and Technical Education (fund 0589, activity 392) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0589, fiscal year 2003, activity 392, organization 0441 ($7,739); fund 0589, fiscal year 2003, activity 595, organization 0441 ($70,437); fund 0343, fiscal year 2003, activity 595, organization 0463 ($55,205); fund 0347, fiscal year 2003, activity 595, organization 0471 ($230,045); and fund 0347, fiscal year 2003, activity 601, organization 0471 ($75,000) which shall expire on June 30, 2003.

86-Higher Education Policy Commission-

System-

Control Account
### Appropriations

(WV Code Chapter 18B)

**Fund 0586 FY 2004 Org 0442**

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<td>3</td>
<td>Concord College</td>
<td>410</td>
<td>8,567,177</td>
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<td>Eastern West Virginia Community and Technical College</td>
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<td>2,004,733</td>
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<td>Fairmont State College</td>
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<td>Fairmont State Community and Technical College</td>
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<td>Glenville State College</td>
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<td>Glenville State Community and Technical College</td>
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<td>9</td>
<td>Shepherd College</td>
<td>432</td>
<td>8,823,522</td>
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<tr>
<td>10</td>
<td>Shepherd Community and Technical College</td>
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<td></td>
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<tr>
<td>11</td>
<td>West Liberty State College</td>
<td>439</td>
<td>8,956,727</td>
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<td>12</td>
<td>West Virginia State College</td>
<td>441</td>
<td>9,940,460</td>
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<tr>
<td>13</td>
<td>West Virginia State Community and Technical College</td>
<td>445</td>
<td>2,803,931</td>
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<tr>
<td>14</td>
<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>7,375,150</td>
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<td>West Virginia Northern Community and Technical College</td>
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<td>5,728,387</td>
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<td>16</td>
<td>Marshall University</td>
<td>448</td>
<td>40,761,056</td>
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<tr>
<td>17</td>
<td>Marshall Medical School</td>
<td>173</td>
<td>13,395,900</td>
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<td>18</td>
<td>Marshall University Medical School</td>
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<tr>
<td>19</td>
<td>BRIM Subsidy</td>
<td>449</td>
<td>564,721</td>
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<td>20</td>
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<td>5,357,306</td>
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<td>21</td>
<td>West Virginia University</td>
<td>459</td>
<td>105,811,878</td>
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<td>22</td>
<td>WVU - School of Health Sciences</td>
<td>174</td>
<td>43,637,011</td>
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<td>23</td>
<td>WVU School of Health Sciences</td>
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<tr>
<td>Line</td>
<td>Description</td>
<td>Code</td>
<td>Amount</td>
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<td>------</td>
<td>--------------------------------------------------</td>
<td>------</td>
<td>-----------------</td>
</tr>
<tr>
<td>33</td>
<td>Charleston Division</td>
<td></td>
<td>175</td>
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<tr>
<td>34</td>
<td>West Virginia University School of Medicine</td>
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<td>460</td>
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<tr>
<td>35</td>
<td>West Virginia University - BRIM Subsidy</td>
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<td>471</td>
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<td>36</td>
<td>West Virginia University - Parkersburg</td>
<td></td>
<td>8,177,741</td>
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<tr>
<td>37</td>
<td>Potomac State College of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>West Virginia University</td>
<td></td>
<td>475</td>
</tr>
<tr>
<td>39</td>
<td>West Virginia University - Potomac State</td>
<td></td>
<td>994</td>
</tr>
<tr>
<td>40</td>
<td>West Virginia University Institute</td>
<td></td>
<td>479</td>
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<tr>
<td>41</td>
<td>West Virginia University Institute for Technology</td>
<td></td>
<td>6,413,689</td>
</tr>
<tr>
<td>42</td>
<td>West Virginia University Institute for Technology Community and Technical College</td>
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<td>486</td>
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<tr>
<td>43</td>
<td>Primary Health Education Medical School Program Support</td>
<td></td>
<td>177</td>
</tr>
<tr>
<td>44</td>
<td>FSC and BSC CTC Distribution Reserve</td>
<td></td>
<td>995</td>
</tr>
<tr>
<td>45</td>
<td>Total</td>
<td></td>
<td>$328,334,025</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0586, activity 177), Jackson’s Mill (fund 0586, activity 461), Marshall University Forensic Lab (fund 0586, activity 572), Jackson’s Mill-Surplus (fund 0586, activity 842), and WVU College of Engineering and Mineral Resources-Diesel Training - Transfer (fund 0586, activity 852) at the close of fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0343, fiscal year 2003, activity 177, organization 0463 ($60,187) and fund 0347, fiscal year 2003, activity 177, organization 0471 ($188,220) which shall expire on June 30, 2003.

Included in the appropriation for WVU - School of Health Sciences and Marshall Medical School are $943,080 and $295,477, respectively, for Graduate Medical Education which may be transferred to the Department of Health and Human
Resources’ Medical Service Fund (fund 5084) for the purpose of matching federal or other funds to be used in support of graduate medical education, subject to the Vice-Chancellor for Health Sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, the funds may be utilized by the respective institutions for expenditure on graduate medical education.

Included in the above appropriation for WVU - School of Health Sciences is $511,105 for the WVU Charleston Division Poison Control Hotline. This amount shall be enhanced by an allocation for the director’s salary as well as in-kind assistance. These amounts shall be allocated equally among the four quarters of the fiscal year for disbursement to the WVU-Charleston Division Poison Control Hotline. Also included is $800,000 for the Blanchette Rockefeller Neurological Institute.

Included in the above appropriation for West Virginia University is $34,500 for the Marshall and WVU Faculty and Course Development International Study Project, $246,429 for the WVU Law School - Skills Program, $147,857 for the WVU Coal and Energy Research Bureau, $19,714 for the WVU College of Engineering and Mineral Resources - Diesel Training - Transfer, $153,000 for the WVU-Sheep Study, and $40,000 for a veterinarian.

Included in the above appropriation for Marshall Medical School is $417,351 for the Marshall University Forensic Lab and $175,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University-Southern WV CTC 2+2 Program and $795,597 for the Marshall University Autism Training Center.
Included in the above appropriation for Southern West Virginia Community and Technical College is $373,774 for the Marshall University - Southern WV Community and Technical College 2+2 Program, $98,912 for delivery of the associate degree nursing program to Eastern WV Community and Technical College, and $25,000 for the Appleread Program.

Included in the above appropriation for Concord College is $100,000 for the Geographic Alliance.

Included in the above appropriation for Shepherd College is $100,000 for the Gateway Program.

The institutions operating from special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

87-Higher Education Policy Commission-

Health Sciences-

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2004 Org 0477

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0590, activity 177), Correctional Telemedicine Project (fund 0590, activity 406), WVU Charleston Division-Poison Control Hot Line (fund 0590, activity 510), Capital Outlay and Equipment (fund 0590, activity 542), and Rural Health Initiative Site Support Program (fund 0590, activity 853) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.
88-Higher Education Policy Commission—

Legislative—

Funding Priorities

Control Account

(WV Code Chapter 18B)

Fund 0591 FY 2004 Org 0441

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Internal Peer Equity</td>
<td>961</td>
</tr>
<tr>
<td>2</td>
<td>Research Challenge (R)</td>
<td>502</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Total: $1,663,351

Any unexpended balances remaining in the appropriations for Independently Accredited Community and Technical College Development (fund 0591, activity 491), and Research Challenge (fund 0591, activity 502) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0591, fiscal year 2003, activity 491, organization 0441 ($1,632); fund 0351, fiscal year 2003, activity 491, organization 0464 ($7,950); fund 0355, fiscal year 2003, activity 491, organization 0482 ($7,938); fund 0361, fiscal year 2003, activity 491, organization 0484 ($62,872); fund 0364, fiscal year 2003, activity 491, organization 0485 ($56,808); fund 0377, fiscal year 2003, activity 491, organization 0491 ($15,713); fund 0380, fiscal year 2003, activity 491, organization 0487 ($7,140); fund 0383, fiscal year 2003, activity 491, organization 0489 ($4,129); fund 0387, fiscal year 2003, activity 491, organization 0492 ($5,436); and fund 0348, fiscal year 2003, activity 502, *organization 0448* ($6,344) which shall expire on June 30, 2003.

*CLERK'S NOTE:* Language deleted by the Governor.
The above appropriation shall be allocated only to the State’s post-secondary institutions with compacts approved by the Higher Education Policy Commission, as stated in §18B-1A-5.

Sec. 2. Appropriations from state road fund.-From the state road fund 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 four.

DEPARTMENT OF TRANSPORTATION

89-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2004 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$13,022,017</td>
</tr>
<tr>
<td>004 Annual Increment</td>
<td>191,750</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>5,233,458</td>
</tr>
<tr>
<td>099 Unclassified</td>
<td>20,547,069</td>
</tr>
<tr>
<td>536 International Fuel Tax Agreement</td>
<td>560,644</td>
</tr>
<tr>
<td>Total</td>
<td>$39,554,938</td>
</tr>
</tbody>
</table>

90-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2004 Org 0803
<table>
<thead>
<tr>
<th>Appropriation</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>Maintenance</td>
<td>237</td>
<td>$243,700,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secondary Road Maintenance</td>
<td>272</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>$15,000,000</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>$10,000,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>277</td>
<td>$38,768,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>278</td>
<td>$70,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>$340,700,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280</td>
<td>$150,000,000</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>$971,768,000</td>
</tr>
</tbody>
</table>

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

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

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

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

1 Total TITLE II, Section 2-
2 State Road Fund ............... $ 1,012,023,195

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 four.

**LEGISLATIVE**

91-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2004 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services ................</td>
<td>001 $ 202,800</td>
</tr>
<tr>
<td>Annual Increment ................</td>
<td>004 4,770</td>
</tr>
<tr>
<td>Employee Benefits ..............</td>
<td>010 64,134</td>
</tr>
<tr>
<td>Unclassified ...................</td>
<td>099 50,000</td>
</tr>
<tr>
<td>Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>Payment Fund (R) ................</td>
<td>334 2,441,500</td>
</tr>
<tr>
<td>Total ................................</td>
<td>$ 2,763,204</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 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

**EXECUTIVE**

*92-Chief Technology Officer Administration Fund*

(WV Code Chapter 5)

Fund 1028 FY 2004 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,872,961</td>
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<tr>
<td>EPSCOR Undergraduate Scientific Instrumentation Program</td>
<td>829</td>
<td>$150,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$2,022,961</td>
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</tbody>
</table>

*93-Auditor's Office-

*Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2004 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$209,629</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$7,500</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>$395,416</td>
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<td>Total</td>
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<td>$679,626</td>
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</tbody>
</table>

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

94-Auditor's Office-

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2004 Org 1200

<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>$723,298</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$8,700</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$199,985</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$765,873</td>
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<td>$1,697,856</td>
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</table>

95-Auditor's Office-

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2004 Org 1200

<table>
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<th>Item</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>$747,368</td>
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</tbody>
</table>

96-Auditor's Office-

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2004 Org 1200

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$600,000</td>
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</table>
### 97-Auditor's Office - Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2004 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund 001</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,769,646</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>30,000</td>
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<tr>
<td>Employee Benefits</td>
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<td>$568,489</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
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<tr>
<td>Total</td>
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</table>

### 98-Treasurer's Office - Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1329 FY 2004 Org 1300

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund 096</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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</table>

### 99-Department of Agriculture - Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2004 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund 001</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>10,550</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$317,340</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,313,366</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,578,100</td>
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</tbody>
</table>
100-Department of Agriculture-
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2004 Org 1400

1 Student and Farm Loans-Total . . . . . . . 235 $ 541,538

101-Department of Agriculture-
General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2004 Org 1400

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 80,133

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

102-Department of Agriculture-
Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2004 Org 1400

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 1,028,903

103-Department of Agriculture-
Donated Food Fund

(WV Code Chapter 19)
Fund 1446 FY 2004 Org 1400

1 Unclassified-Total .................. 096 $ 2,200,000

104-Attorney General-

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2004 Org 1500

1 Personal Services .................. 001 $ 220,551
2 Annual Increment .................. 004 935
3 Employee Benefits ................. 010 66,885
4 Unclassified ....................... 099 178,285
5 Total ............................... $ 466,656

105-Attorney General-

Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2004 Org 1500

1 Unclassified-Total .................. 096 $ 227,284

106-Attorney General-

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2004 Org 1500

1 Unclassified-Total .................. 096 $ 775,000
107-Secretary of State-

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2004 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>Personal Services</td>
<td>001</td>
<td>$968,032</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$7,450</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$234,869</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,143,662</td>
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<tr>
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<td>$2,354,013</td>
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</table>

108-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 1614 FY 2004 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>
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<td>$800,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF ADMINISTRATION

109-Office of the Secretary-

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2004 Org 0201

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tobacco Settlement Fund-Transfer</td>
<td>902</td>
<td>$28,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Tobacco Settlement Fund-Transfer shall be transferred to the Division of Health (fund 5124, org 0506) for expenditure.
110-Division of Finance-

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)

Fund 2207 FY 2004 Org 0209

1 Public Employees Insurance Reserve
2 Fund-Transfer .................. 903 $ 6,000,000

3 The above appropriation for Public Employees Insurance Reserve Fund-Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

111-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2004 Org 0210

1 Personal Services ................. 001 $ 6,511,072
2 Annual Increment .................. 004 83,915
3 Employee Benefits ................. 010 1,846,596
4 Unclassified ....................... 099 1,754,727
5 Total .............................. $ 10,196,310

6 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.

9 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 information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.
16 Each spending unit operating from the general revenue
17 fund, from special revenue funds or receiving reimbursement
18 for postage from the federal government shall be charged
19 monthly for all postage meter service and shall reimburse the
20 revolving fund monthly for all such amounts.

112-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2004 Org 0222

1 Personal Services .................. 001 $ 2,586,137
2 Annual Increment .................. 004 54,850
3 Employee Benefits ................. 010 822,814
4 Unclassified ........................ 099 901,244
5 Total .............................. $ 4,365,045

6 The total amount of this appropriation shall be paid from a
7 special revenue fund out of fees collected by the division of
8 personnel.

113-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2004 Org 0228

1 Unclassified-Total (R) .............. 096 $ 574,113

2 Any unexpended balances remaining in the appropriations
3 for Unclassified-Total (fund 2521, activity 096) at the close of
4 the fiscal year 2003 are hereby reappropriated for expenditure
5 during the fiscal year 2004.
DEPARTMENT OF EDUCATION

114-State Board of Education-

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2004 Org 0402

1 Unclassified-Total (R) .................. 096 $ 550,000

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 3937, activity 096) at the close of the
4 fiscal year 2003 is hereby reappropriated for expenditure during
5 the fiscal year 2004.

115-State Department of Education-

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2004 Org 0402

1 Personal Services .................... 001 $ 661,719
2 Annual Increment ...................... 004 6,900
3 Employee Benefits ................... 010 230,170
4 Unclassified .......................... 099 264,549
5 Total .................................. $ 1,163,338

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.
### 116-State Department of Education

**FFA-FHA Camp and Conference Center**

(WV Code Chapter 18)

Fund **3960 FY 2004 Org 0402**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$11,350</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$275,354</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,033,296</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$2,100,000</td>
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</tbody>
</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

**117-Office of the Secretary**

**Lottery Education Fund Interest Earnings**

(Control Account)

(WV Code Chapter 29)

Fund **3508 FY 2004 Org 0431**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPSCOR (R)</td>
<td>571</td>
<td>$300,000</td>
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<tr>
<td>Research Challenge (R)</td>
<td>502</td>
<td>$325,000</td>
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<td><strong>Total</strong></td>
<td></td>
<td>$625,000</td>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3508, activity 096), Research Challenge (fund 3508, activity 502), and EPSCOR (fund 3508, activity 571) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.
### 118-Division of Culture and History—

**Public Records and Preservation Revenue Fund**

(WV Code Chapter 5A)

Fund 3542 FY 2004 Org 0432

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2004</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$0</td>
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<td>2</td>
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<td>099</td>
<td>922,227</td>
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<td>3</td>
<td>Project ACCESS</td>
<td>865</td>
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<td>4</td>
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</table>

### 119-State Board of Rehabilitation—

**Division of Rehabilitation Services—**

**West Virginia Rehabilitation Center—**

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2004 Org 0932

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2004</th>
<th>Budget</th>
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<tr>
<td>1</td>
<td>Unclassified</td>
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<td>$2,802,182</td>
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<tr>
<td>2</td>
<td>Workshop Development</td>
<td>163</td>
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<td>3</td>
<td>Workshop-Supported Employment</td>
<td>484</td>
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</table>

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 120-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2004 Org 0505

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2004</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$235,246</td>
</tr>
</tbody>
</table>
2 Annual Increment .......................... 004 4,861
3 Employee Benefits .......................... 010 79,353
4 Unclassified ................................. 099 124,738
5 Total .................................. $ 444,198

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

121-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2004 Org 0506

1 Unclassified-Total .......................... 096 $ 1,170,080

122-Division of Health-

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2004 Org 0506

1 ABCA Tobacco Retailer Education
2 Program-Transfer ............................ 239 $ 200,000
3 Institutional Facilities
4 Operations (R) .............................. 335 22,149,408
5 Tobacco Education Program (R) .......... 906 5,650,592
6 Total .................................. $ 28,000,000

7 Any unexpended balances remaining in the above appropri-
8 tations for Institutional Facilities Operations (fund 5124, activity
9 335), and Tobacco Education Program (fund 5124, activity 906)
10 at the close of the fiscal year 2003 are hereby reappropriated for
11 expenditure during the fiscal year 2004.
From the above appropriation for ABCA Tobacco Retailer Education Program-Transfer, $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

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 0525, fiscal year 2004, organization 0506, and fund 5156, fiscal year 2004, 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) and consolidated medical services fund (fund 0525, activity 335), on July 1, 2003, 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.
123-Division of Health-

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2004 Org 0506

1. Personal Services ...................... 001  $  263,211
2. Annual Increment ...................... 004     8,203
3. Employee Benefits .................... 010  114,073
4. Unclassified ......................... 099  99,950
5. Total .................................. $  485,437

124-Division of Health-

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2004 Org 0506

1. Debt Service (R) ...................... 040  $  2,420,000
2. Institutional Facilities
3. Operations (R) ...................... 335  34,591,434
4. Medical Services Trust Fund-
5. Transfer (R) ......................... 512  23,300,000
6. Total .................................. $  60,311,434

7. Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004, except for fund 5156, activity 335 (fiscal years 1998
and 1999) and fund 5156, activity 040 (fiscal year 2002) which shall expire on June 30, 2003.

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 2004, organization 0506) and the tobacco settlement expenditure fund (fund 5124, fiscal year 2004, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) and the tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2003, 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.

125-Division of Health-

Laboratory Services
## Ch. 20] APPROPRIATIONS 173

(WV Code Chapter 16)

### Fund 5163 FY 2004 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
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<tr>
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<td>Employee Benefits</td>
<td>010</td>
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<td><strong>Total</strong></td>
<td></td>
<td>$913,247</td>
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</table>

126-Division of Health-

Health Facility Licensing

(WV Code Chapter 16)

### Fund 5172 FY 2004 Org 0506

<table>
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<th>Item</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,800</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>43,712</td>
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<td>Unclassified</td>
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<td>125,070</td>
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<td><strong>Total</strong></td>
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<td>$373,012</td>
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</table>

127-Division of Health-

Hepatitis B Vaccine

(WV Code Chapter 16)

### Fund 5183 FY 2004 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>20,804</td>
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<td>2,996,821</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$3,074,846</td>
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</table>


### 128-Division of Health-
#### Lead Abatement Fund
(WV Code Chapter 16)

Fund 5204 FY 2004 Org 0506

<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>$20,000</td>
</tr>
</tbody>
</table>

### 129-Division of Health-
#### West Virginia Birth to Three Fund
(WV Code Chapter 16)

Fund 5214 FY 2004 Org 0506

<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>Personal Services</td>
<td>001</td>
<td>$500,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>192,276</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>20,303,724</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>099</td>
<td>$21,000,000</td>
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</table>

### 130-West Virginia Health Care Authority
(WV Code Chapter 16)

Fund 5375 FY 2004 Org 0507

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$1,940,548</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>577,273</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>3,463,470</td>
</tr>
<tr>
<td>5</td>
<td>Hospital Assistance</td>
<td>025</td>
<td>$500,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$6,481,291</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.

131-Division of Human Services-

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2004 Org 0511

1 Unclassified-Total ................. 096 $143,350,133

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.

132-Division of Human Services-

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2004 Org 0511

1 Unclassified-Total (R) ............... 096 $30,781,971

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 5094, activity 096) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.
### Appropriations

#### 133-Division of Human Services-

**Medical Services Trust Fund**

(WV Code Chapter 9)

**Fund 5185 FY 2004 Org 0511**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment to Non-State Hospitals DSH</td>
<td>492</td>
<td>$0</td>
</tr>
<tr>
<td>Eligibility Expansion</td>
<td>582</td>
<td>1,958,066</td>
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<tr>
<td>State Institutions DSH Payments</td>
<td>583</td>
<td>0</td>
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<tr>
<td>Hospice Services</td>
<td>584</td>
<td>0</td>
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<tr>
<td>Public Employees Insurance Reserve Fund-Transfer</td>
<td>903</td>
<td>6,000,000</td>
</tr>
<tr>
<td>Match Drop</td>
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<td>Unclassified</td>
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<tr>
<td>Total</td>
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<td>$35,835,993</td>
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</tbody>
</table>

The above appropriation to Unclassified shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of Chapter 9-4A-2a. Expenditures from the fund are limited to the following: Payment of backlogged billings, Funding for services to future federally mandated population groups and payment of the required state match for medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

#### 134-Division of Human Services-

**James “Tiger” Morton Catastrophic Illness Fund**

(WV Code Chapter 16)

**Fund 5454 FY 2004 Org 0511**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$1,700,000</td>
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</tbody>
</table>
135—Family Protection Services Board—
Domestic Violence Legal Services Fund
(WV Code Chapter 48)
Fund 5455 FY 2004 Org 0511
1 Unclassified-Total ................. 096 $ 372,245

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

136—Department of Military Affairs and Public Safety—
Office of the Secretary—
Law-Enforcement, Safety and
Emergency Worker Funeral
Expense Payment Fund
(WV Code Chapter 15)
Fund 6003 FY 2004 Org 0601
1 Unclassified-Total .................... 096 $ 20,000

137—State Armory Board—
General Armory Fund
(WV Code Chapter 15)
Fund 6057 FY 2004 Org 0603
1 Unclassified-Total .................... 096 $ 675,067
138-West Virginia Division of Corrections-

_Parolee Supervision Fees_

_(WV Code Chapter 62)_

Fund 6362 FY 2004 Org 0608

1. Personal Services .................. 001 $ 116,774
2. Annual Increment .................. 004 1,651
3. Employee Benefits ................. 010 52,130
4. Unclassified ...................... 099 234,989
5. Total ............................. $ 405,544

139-West Virginia State Police-

_Motor Vehicle Inspection Fund_

_(WV Code Chapter 17C)_

Fund 6501 FY 2004 Org 0612

1. Personal Services .................. 001 $ 1,141,117
2. Annual Increment .................. 004 3,600
3. Employee Benefits ................. 010 346,696
4. Unclassified ...................... 099 562,979
5. BRIM Premium ...................... 913 190,683
6. Total ............................. $ 2,245,075

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.

140-West Virginia State Police-

_Drunk Driving Prevention Fund_

_(WV Code Chapter 15)_
Fund 6516 FY 2004 Org 0612

1 Unclassified ................. 099 $ 469,082
2 BRIM Premium ............... 913 48,687
3 Total ......................... $ 517,769

4 From the cash balance available the amount of $1,200,000 shall be transferred to fund 6519, fiscal year 2004, organization 0612 as reimbursement for funds transferred by legislative action during fiscal year 2003.
Any unexpended balances remaining in the appropriations for Unclassified (fund 6519, activity 099) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004 with the exception of fund 6519, fiscal year 2002, activity 099 which shall expire on June 30, 2003.

143-West Virginia State Police-

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2004 Org 0612

1 Unclassified ......................... 099 $ 193,884
2 BRIM Premium ....................... 913 11,678
3 Total ................................ $ 205,562

144-West Virginia State Police-

Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532 FY 2004 Org 0612

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

145-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2004 Org 0615

1 Personal Services .................... 001 $ 1,215,646
2 Annual Increment ..................... 004 14,750
The Legislature reasonably expects the West Virginia Regional Jail and Correctional Facility Authority to reimburse the West Virginia State Police for the cost of the acquisition of the approximate 32 acres and three buildings situated along Academy Drive, Institute, West Virginia, and abutting the West Virginia State Police Academy from proceeds of bonds issued by the West Virginia Economic Development Authority on behalf of the West Virginia Regional Jail and Correctional Facility Authority, anticipated to be issued on or about September 1, 2003. The source of original payment for the land acquisition was fund 6516, organization 0612 and upon issuance of the bonds, proceeds thereof not to exceed the amount of such capital expenditures will be applied to reimbursement of fund 6516, organization 0612 from the appropriate account(s) or fund(s) from the West Virginia Regional Jail and Correctional Facility Authority or its trustee. The maximum amount of such reimbursement is $1,500,000 and the maximum principal amount of bonds to be issued for design, acquisition, construction, and equipping of the Regional Jail and Economic Development Authority Projects is $50,000,000.

146-Division of Veterans’ Affairs-

Veterans’ Home

(WV Code Chapter 19A)

Fund 6754 FY 2004 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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### 147-Fire Commission -

**Fire Marshal Fees**

(WV Code Chapter 29)

Fund 6152 FY 2004 Org 0619

<table>
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<th>Code</th>
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<td>7,000</td>
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<td>272,000</td>
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<td>289,950</td>
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<tr>
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</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2003 is hereby available for expenditure as part of the fiscal year 2004 appropriation.

### 148-Division of Criminal Justice Services -

**WV Community Corrections Fund**

(WV Code Chapter 62)

Fund 6386 FY 2004 Org 0620

<table>
<thead>
<tr>
<th>Category</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$2,000,000</td>
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</tbody>
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### 149-Criminal Justice Services -

**Court Security Fund**

(Executive Order)

Fund 6804 FY 2004 Org 0620

<table>
<thead>
<tr>
<th>Category</th>
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<tbody>
<tr>
<td>Unclassified-Total</td>
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## DEPARTMENT OF TAX AND REVENUE

### 150-Division of Banking

*(WV Code Chapter 31A)*

**Fund 3041 FY 2004 Org 0303**

<table>
<thead>
<tr>
<th>Item Description</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,485,680</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>13,350</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
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<td>643,683</td>
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### 151-Tax Division - Cemetery Company Account

*(WV Code Chapter 35)*

**Fund 7071 FY 2004 Org 0702**

<table>
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<tr>
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<th>Code</th>
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<tbody>
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<td>Personal Services</td>
<td>001</td>
<td>$17,274</td>
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<td>125</td>
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### 152-Tax Division - Special Audit and Investigative Unit

*(WV Code Chapter 11)*

**Fund 7073 FY 2004 Org 0702**

<table>
<thead>
<tr>
<th>Item Description</th>
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<td>Annual Increment</td>
<td>004</td>
<td>16,000</td>
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### 153-Insurance Commissioner-

#### Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2004 Org 0704

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<th></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>$556,330</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,500</td>
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<td>Employee Benefits</td>
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</table>

### 154-Insurance Commissioner-

#### Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2004 Org 0704

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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$276,028</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>104,153</td>
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### 155-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2004 Org 0704
1 Personal Services .................................. 001 $ 2,716,953
2 Annual Increment .................................. 004 35,000
3 Employee Benefits ................................ 010 866,220
4 Unclassified ........................................ 099 949,834
5 Total ............................................. $ 4,568,007

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.

156-Racing Commission-

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2004 Org 0707

1 Medical Expenses-Total .................. 245 $ 57,000

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.

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

157-Racing Commission-

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2004 Org 0707

1 Personal Services ............................... 001 $ 66,444
2 Annual Increment ............................... 004 1,000
186 APPROPRIATIONS [Ch. 20

3 Employee Benefits ................. 010 24,152
4 Unclassified .......................... 099 47,358
5 Total ........................................ $ 138,954

158-Racing Commission-
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2004 Org 0707

1 Personal Services .................. 001 $ 1,805,943
2 Annual Increment ................... 004 20,250
3 Employee Benefits .................. 010 482,303
4 Unclassified .......................... 099 374,550
5 Total ........................................ $ 2,683,046

159-Racing Commission-
Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2004 Org 0707

1 Unclassified-Total ................. 096 $ 65,000

160-Alcohol Beverage Control Administration-
Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2004 Org 0708

1 Personal Services .................. 001 $ 224,718
2 Annual Increment ................... 004 3,200
3 Employee Benefits .................. 010 78,856
To the extent permitted by law, four classified exempt positions shall be provided from Personal Services line item for field auditors.

*161-Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2004 Org 0708

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>001</td>
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<td>Annual Increment</td>
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<td>76,000</td>
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<td>1,918,070</td>
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</tbody>
</table>

Any unexpended balance remaining in Unclassified (fund 7352, activity 099) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

From the above appropriation an amount of $500,000 shall be used for the Tobacco/Alcohol Education Program. To the extent permitted by law, classified exempt positions shall be provided from Personal Services line item for the educator-inspector positions to be used in the education and enforcement activities relating to underage tobacco and alcohol use and sales.

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

162-Division of Motor Vehicles -

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2004 Org 0802

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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163-Division of Motor Vehicles -

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2004 Org 0802

<table>
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<tr>
<th>Description</th>
<th>Code</th>
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164-Division of Motor Vehicles -

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2004 Org 0802

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tr>
<td>Personal Services</td>
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<td>$621,000</td>
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</table>
2 Annual Increment .................. 004 $15,750
3 Employee Benefits ................. 010 $258,546
4 Unclassified ...................... 099 $48,165
5 Total .............................. $943,461

165-Division of Motor Vehicles-

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2004 Org 0802

1 Unclassified-Total ................. 096 $247,704

166-Division of Motor Vehicles-

Returned Check Fees

(WV Code Chapter 17)

Fund 8217 FY 2004 Org 0802

1 Unclassified-Total ................. 096 $16,000

167-Division of Motor Vehicles-

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2004 Org 0802

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

168-Division of Highways-

A. James Manchin Fund
### APPROPRIATIONS

(WV Code Chapter 17)

Fund 8319 FY 2004 Org 0803

<table>
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<tr>
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<tr>
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**BUREAU OF COMMERCE**

169-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2004 Org 0305

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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170-Division of Forestry-

Timberland Enforcement Operations

(WV Code Chapter 19)

Fund 3082 FY 2004 Org 0305

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<td>Unclassified-Total</td>
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171-Division of Forestry-

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2004 Org 0305

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<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
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</table>
172-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2004 Org 0306

1 Personal Services ................. 001 $ 42,818
2 Annual Increment .................. 004 709
3 Employee Benefits ................. 010 10,873
4 Unclassified ...................... 099 173,756
5 Total ............................ $ 228,156

The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

173-West Virginia Development Office-

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2004 Org 0307

1 Energy Assistance-Total (R) ............ 647 $ 300,000

2 Any unexpended balance remaining in the appropriation for Energy Assistance-Total (fund 3144, activity 647) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

174-West Virginia Development Office-

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2004 Org 0307

1 Unclassified-Total (R) ............... 096 $ 478,943
Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3162, activity 096) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

175-Division of Labor-

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2004 Org 0308

<table>
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<tr>
<th>Item</th>
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</thead>
<tbody>
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</table>

176-Division of Labor-

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2004 Org 0308

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</table>
Fund 3191 FY 2004 Org 0308

1 Unclassified-Total ................. 096 $ 115,031

178-Division of Labor-

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2004 Org 0308

1 Unclassified-Total ................. 096 $ 101,135

179-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2004 Org 0310

1 Personal Services .................. 001 $ 0
2 Annual Increment .................... 004 0
3 Employee Benefits ................... 010 0
4 Unclassified ........................ 099 0
5 Capital Improvements and
6 Land Purchase (R) ................. 248 1,260,000
7 Administration ...................... 155 1,656,690
8 Wildlife Resources .................. 023 6,074,534
9 Law Enforcement ..................... 806 6,074,534
10 Radio System ....................... 024 2,000,000
11 Total ................................ $ 17,065,758

12 The total amount of this appropriation shall be paid from a
13 special revenue fund out of fees collected by the division of
14 natural resources.

15 Any unexpended balance remaining in the appropriation for
16 Capital Improvements and Land Purchase (fund 3200, activity
17 248) at the close of the fiscal year 2003 is hereby
18 reappropriated for expenditure during the fiscal year 2004.

180-Division of Natural Resources-

*Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

**Fund 3202 FY 2004 Org 0310**

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$20,000</td>
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</tbody>
</table>

181-Division of Natural Resources-

*Nongame Fund*

(WV Code Chapter 20)

**Fund 3203 FY 2004 Org 0310**

<table>
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<th>Item</th>
<th>Budget</th>
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</thead>
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<td><strong>Total</strong></td>
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</table>

182-Division of Natural Resources-

*Planning and Development Division*

(WV Code Chapter 20)

**Fund 3205 FY 2004 Org 0310**

<table>
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<th>Item</th>
<th>Budget</th>
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<tr>
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<td>146,355</td>
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</table>
### 183-Division of Natural Resources -

**Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

**Fund 3253 FY 2004 Org 0310**

<table>
<thead>
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<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>$185,000</td>
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### 184-Division of Natural Resources -

**Recycling Assistance Fund**

(WV Code Chapter 20)

**Fund 3254 FY 2004 Org 0310**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
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<tr>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

### 185-Division of Natural Resources -

**Whitewater Advertising and Promotion Fund**

(WV Code Chapter 20)

**Fund 3256 FY 2004 Org 0310**
196  APPROPRIATIONS  [Ch. 20

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

186-Miners’ Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3351 FY 2004 Org 0314

| 1 | Personal Services .................. 001 | $ 400,300 |
| 2 | Employee Benefits .................. 010 | 143,750 |
| 3 | Unclassified .......................... 099 | 845,950 |
| 4 | WV Mining Extension Service ........ 026 | 150,000 |
| 5 | Total .................................. | $ 1,540,000 |

BUREAU OF EMPLOYMENT PROGRAMS

187-Bureau of Employment Programs-

Workers’ Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2004 Org 0322

| 1 | Personal Services .................. 001 | $ 29,400,673 |
| 2 | Annual Increment .................... 004 | 443,253 |
| 3 | Employee Benefits .................. 010 | 11,114,158 |
| 4 | Unclassified (R) ...................... 099 | 28,301,647 |
| 5 | Technology Improvements (R) ........ 599 | 2,000,000 |
| 6 | Employer Excess Liability Fund ..... 226 | 117,197 |
| 7 | Total .................................. | $ 71,376,928 |

Any unexpended balance remaining in the appropriations for Unclassified (fund 3440, activity 099), and Technology Improvements (fund 3440, activity 599) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.
## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### 188-Solid Waste Management Board

*(WV Code Chapter 20)*

**Fund 3288 FY 2004 Org 0312**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>3,700</td>
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<td>Employee Benefits</td>
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### 189-Division of Environmental Protection - Special Reclamation Trust Fund

*(WV Code Chapter 22A)*

**Fund 3321 FY 2004 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
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### 190-Division of Environmental Protection - Oil and Gas Reclamation Trust

*(WV Code Chapter 22B)*

**Fund 3322 FY 2004 Org 0313**

<table>
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<th>Item</th>
<th>Description</th>
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</table>

### 191-Division of Environmental Protection -
## Appropriations

### Oil and Gas Operating Permits

*(WV Code Chapter 22B)*

**Fund 3323 FY 2004 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Personal Services</td>
<td>$264,368</td>
</tr>
<tr>
<td>2.</td>
<td>Annual Increment</td>
<td>$3,400</td>
</tr>
<tr>
<td>3.</td>
<td>Employee Benefits</td>
<td>$89,686</td>
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<tr>
<td>4.</td>
<td>Unclassified</td>
<td>$503,448</td>
</tr>
<tr>
<td>5.</td>
<td>Total</td>
<td>$860,902</td>
</tr>
</tbody>
</table>

### 192-Division of Environmental Protection-

**Mining and Reclamation Operations Fund**

*(WV Code Chapter 22)*

**Fund 3324 FY 2004 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Personal Services</td>
<td>$5,108,765</td>
</tr>
<tr>
<td>2.</td>
<td>Annual Increment</td>
<td>$53,503</td>
</tr>
<tr>
<td>3.</td>
<td>Employee Benefits</td>
<td>$1,927,506</td>
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<tr>
<td>4.</td>
<td>Unclassified</td>
<td>$3,356,496</td>
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<tr>
<td>5.</td>
<td>Total</td>
<td>$10,446,270</td>
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</table>

### 193-Division of Environmental Protection-

**Underground Storage Tanks-**

**Administrative Fund**

*(WV Code Chapter 20)*

**Fund 3325 FY 2004 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Personal Services</td>
<td>$300,313</td>
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<td>2.</td>
<td>Annual Increment</td>
<td>$3,200</td>
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<td>3.</td>
<td>Employee Benefits</td>
<td>$103,371</td>
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</table>
### 194-Division of Environmental Protection-

**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th></th>
<th>FY 2004</th>
<th>Org 0313</th>
<th></th>
<th>099</th>
<th>124,523</th>
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</thead>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 525,160</td>
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<td>Annual Increment</td>
<td>004</td>
<td>6,680</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>163,706</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>928,550</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 1,624,096</td>
<td></td>
<td></td>
<td></td>
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</table>

### 195-Division of Environmental Protection-

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th></th>
<th>FY 2004</th>
<th>Org 0313</th>
<th></th>
<th>099</th>
<th>1,008,156</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 238,196</td>
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<td>Annual Increment</td>
<td>004</td>
<td>1,900</td>
<td></td>
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<td>Employee Benefits</td>
<td>010</td>
<td>73,084</td>
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<td>099</td>
<td>1,321,336</td>
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</table>

### 196-Division of Environmental Protection-

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)
### Fund 3333 FY 2004 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>26,850</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>545,959</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>729,391</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,911,121</strong></td>
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</table>

#### 197-Division of Environmental Protection-

#### Fees and Operating Expenses

(WV Code Chapter 16)

### Fund 3336 FY 2004 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>$3,725,624</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>32,650</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,169,957</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>2,226,479</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$7,154,710</strong></td>
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</tbody>
</table>

#### 198-Division of Environmental Protection-

#### Environmental Laboratory

#### Certification Fund

(WV Code Chapter 22)

### Fund 3340 FY 2004 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$133,798</td>
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<td>004</td>
<td>2,050</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>50,672</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>185,322</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$371,842</strong></td>
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</tbody>
</table>
199-Division of Environmental Protection -
Stream Restoration Fund

Fund 3349 FY 2004 Org 0313

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

200-Division of Environmental Protection -
Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2004 Org 0313

1 Unclassified-Total .................. 096  $ 1,415,856

201-Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2004 Org 0315

1 Personal Services .................. 001  $ 154,969
2 Annual Increment .................. 004  1,900
3 Employee Benefits .................. 010  30,726
4 Unclassified .................. 099  47,362
5 Total .................. $ 234,957

HIGHER EDUCATION POLICY COMMISSION

202-Health Sciences -

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2004 Org 0463
Any unexpended balance remaining in the appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 2004.

203-Higher Education Policy Commission-
System-
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2004 Org 0442

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 2004 with the exception of fund 4902, fiscal year 2000, activity 251, fund 4902, fiscal year 2000, activity 438, and fund 4902, fiscal year 2002, activity 306 ($7,000,000) which shall expire on June 30, 2003.

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 the institutions.

204-Higher Education Policy Commission-

System-

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund 4903 FY 2004 Org 0442</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R) ............... 040 $14,965,858</td>
</tr>
<tr>
<td>General Capital Expenditures (R) .... 306 500,000</td>
</tr>
<tr>
<td>Facilities Planning and Administration (R) ........ 386 387,975</td>
</tr>
<tr>
<td>Total ................................ $15,853,833</td>
</tr>
</tbody>
</table>


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.
18 The above appropriations, except for debt service, may be
19 transferred to special revenue funds for capital improvement
20 projects at the institutions.

205-Higher Education Policy Commission-

1977 State System Registration Fee Refund Revenue Construction
Fund

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2004 Org 0442

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2003 is hereby reappropriated for
3 expenditure during the fiscal year 2004.

4 The appropriation shall be paid from available unexpended
5 cash balances and interest earnings accruing to the fund. The
6 appropriation shall be expended at the discretion of the Higher
7 Education Policy Commission and the funds may be allocated
8 to any institution within the system.

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

206-Higher Education Policy Commission-

Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2004 Org 0442
Any unexpended balance remaining in the appropriation at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The appropriation 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 Higher Education Policy Commission and the funds may be allocated to any institution within the system.

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

207-Higher Education Policy Commission-

State University System Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4907 FY 2004 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

208-Higher Education Policy Commission-

Fairmont State College

(WV Code Chapters 18 and 18B)

Fund 4457 FY 2004 Org 0484

Capital Improvements - Total (R) . . . . . . 958 $ 235,000
The total amount of this appropriation is from the sale of the Shaw House and shall be used for the additional purchase of real property or technology, or for capital improvements at Fairmont State College. The above appropriation shall be available from the date of passage.

MISCELLANEOUS BOARDS AND COMMISSIONS

209-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2004 Org 0509

<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>$46,074</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>650</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>15,753</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>88,687</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$151,164</td>
</tr>
</tbody>
</table>

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

210-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2004 Org 0706

<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>$161,262</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>58,913</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>81,890</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$306,165</td>
</tr>
</tbody>
</table>
211-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2004 Org 0906

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 348,090

212-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2004 Org 0907

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 882,136

213-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2004 Org 0926

1 Personal Services . . . . . . . . . . . . . . . . . 001 $ 7,916,582
2 Annual Increment . . . . . . . . . . . . . . . . . 004 130,000
3 Employee Benefits . . . . . . . . . . . . . . . . . 010 2,535,487
4 Unclassified . . . . . . . . . . . . . . . . . . . 099 2,449,324
5 Debt Payment/Capital Outlay . . . . . . 520 350,000
6 BRIM Premium . . . . . . . . . . . . . . . . . . 913 139,752
7 Total . . . . . . . . . . . . . . . . . . . . . . . $ 13,521,145

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.

214-Public Service Commission-

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2004 Org 0926

1 Personal Services ....................... 001 $ 146,426
2 Annual Increment ....................... 004 5,556
3 Employee Benefits ..................... 010 50,587
4 Unclassified ........................... 099 87,053
5 Total ................................... $ 289,622

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.

215-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2004 Org 0926

1 Personal Services ....................... 001 $ 1,582,433
2 Annual Increment ....................... 004 40,000
3 Employee Benefits ..................... 010 548,205
4 Unclassified ........................... 099 574,469
5 Total ................................... $ 2,745,107
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.

216-Public Service Commission-

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2004 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>$480,577</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,900</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>135,446</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>284,633</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>2,453</td>
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<td>6</td>
<td>Total</td>
<td></td>
<td>$909,009</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.

217-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2004 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>$360,695</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,900</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>115,491</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>237,335</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$719,421</td>
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</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.
218-WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2004 Org 0930

1 Unclassified-Total ................. 096 $ 54,945

219-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2004 Org 0935

1 Unclassified-Total ................. 096 $ 115,000

220-WV Board of Licensed Dietitians

Fund 8680 FY 2004 Org 0936

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

221-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2004 Org 0938

1 Unclassified-Total ................. 096 $ 80,000

1 Total TITLE II, Section 3-  
2 Other Funds ......................... $ 674,270,312

Sec. 4. Appropriations from lottery net profits.-Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in
the proportion the appropriation for each account bears to the
total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252 and
Fund 3963 pursuant to section eighteen, article twenty-two,
chapter twenty-nine of the code, the director of the lottery shall
make available from the remaining net profits of the lottery any
amounts needed to pay debt service for which the appropriation
is made for Fund 3167, and is authorized to transfer any such
amounts to Fund 3167 for that purpose. Upon receipt of
reimbursement of amounts so transferred, the director of the
lottery shall deposit the reimbursement amounts to the follow-
ing accounts as required by this section.

222-Education, Arts, Sciences and Tourism-

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2004 Org 0211

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

223-West Virginia Development Office-

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2004 Org 0304

<table>
<thead>
<tr>
<th>Lottery Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism-Telemarketing Center</td>
<td>463</td>
</tr>
<tr>
<td></td>
<td>$90,000</td>
</tr>
<tr>
<td>Tourism-Advertising (R)</td>
<td>618</td>
</tr>
<tr>
<td></td>
<td>3,597,930</td>
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<tr>
<td>State Parks and Recreation</td>
<td>619</td>
</tr>
<tr>
<td>Advertising (R)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>684,000</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
</tr>
<tr>
<td>5</td>
<td>Capitol Complex-Capital Outlay (R) . . 417</td>
</tr>
<tr>
<td>6</td>
<td>WV Film Development Office .............. 498</td>
</tr>
<tr>
<td>7</td>
<td>Motor Sports Council .................... 513</td>
</tr>
<tr>
<td>8</td>
<td>Tourism-Special Projects (R) ........... 859</td>
</tr>
<tr>
<td>9</td>
<td>Tourism-Unclassified (R) ............... 662</td>
</tr>
<tr>
<td>10</td>
<td>Total ....................................</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), Capitol Complex-Capital Outlay (fund 3067, activity 417), Tourism-Special Projects (fund 3067, activity 859), Tourism-Unclassified (fund 3067, activity 662), and Tourism-Unclassified-Lottery Surplus (fund 3067, activity 773) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

224-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2004 Org 0310

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R) ..................</td>
<td>099</td>
</tr>
<tr>
<td>2</td>
<td>Pricketts Fort State Park .........</td>
<td>324</td>
</tr>
<tr>
<td>3</td>
<td>Non-Game Wildlife .................</td>
<td>527</td>
</tr>
<tr>
<td>4</td>
<td>West Virginia Stream Partners Program</td>
<td>637</td>
</tr>
<tr>
<td>5</td>
<td>Gypsy Moth Suppression</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Program for State Parks ..........</td>
<td>017</td>
</tr>
<tr>
<td>7</td>
<td>Total .............................</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, activity 099), State Recreation Area Improvements (fund 3267, activity 307), Capital Outlay-Parks (fund 3267, activity 288), Flood Reparations (fund 3267, activity 400), Parks Operations-Unclassified (fund 3267, activity 645), State Parks-Special Projects (fund 3267, activity 773) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.
14 (fund 3267, activity 910), and State Parks Repairs, Renovations, Maintenance and Life Safety Repairs (fund 3267, activity 911) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

225-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2004 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>$6,494,130</td>
</tr>
<tr>
<td>2</td>
<td>Educational Program Allowance</td>
<td>996</td>
<td>250,000</td>
</tr>
<tr>
<td>3</td>
<td>Traditional Student Increased</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>12th grade</td>
<td>997</td>
<td>2,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Safe Schools</td>
<td>143</td>
<td>1,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Computer Basic Skills (R)</td>
<td>145</td>
<td>4,000,000</td>
</tr>
<tr>
<td>7</td>
<td>S.U.C.C.E.S.S (R)</td>
<td>255</td>
<td>4,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Computer Study</td>
<td>998</td>
<td>100,000</td>
</tr>
<tr>
<td>9</td>
<td>Technology Repair and Modernization (R)</td>
<td>298</td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Program Modernization</td>
<td>305</td>
<td>725,000</td>
</tr>
<tr>
<td>11</td>
<td>READS Program</td>
<td>365</td>
<td>300,000</td>
</tr>
<tr>
<td>12</td>
<td>MATH Program</td>
<td>368</td>
<td>300,000</td>
</tr>
<tr>
<td>13</td>
<td>Vocational Education Equipment Replacement</td>
<td>393</td>
<td>819,750</td>
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<tr>
<td>14</td>
<td>Assessment Program</td>
<td>396</td>
<td>6,629,697</td>
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<tr>
<td>15</td>
<td>Employment Programs Rate Relief</td>
<td>401</td>
<td>878,189</td>
</tr>
<tr>
<td>16</td>
<td>Adverse Impact on Counties</td>
<td>968</td>
<td>600,000</td>
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<tr>
<td>17</td>
<td>Three Tier Funding</td>
<td>411</td>
<td>1,000,000</td>
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<tr>
<td>18</td>
<td>Technology and Telecommunications Initiative (R)</td>
<td>596</td>
<td>807,806</td>
</tr>
<tr>
<td>19</td>
<td>Virtual Schools on the Internet</td>
<td>178</td>
<td>445,668</td>
</tr>
<tr>
<td>20</td>
<td>Teacher Reimbursement</td>
<td>573</td>
<td>150,000</td>
</tr>
<tr>
<td>Item Description</td>
<td>Fund</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Teacher Relocation</td>
<td>574</td>
<td>$50,000</td>
<td></td>
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<tr>
<td>National Science Foundation Match/WV</td>
<td>578</td>
<td>$300,000</td>
<td></td>
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<tr>
<td>Statewide Assistance</td>
<td>656</td>
<td>$0</td>
<td></td>
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<tr>
<td>Educational Enhancements</td>
<td>695</td>
<td>$2,427,000</td>
<td></td>
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<tr>
<td>Educational Development</td>
<td>823</td>
<td>$1,500,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$35,777,240</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Computer Basic Skills (fund 3951, activity 145), S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair and Modernization (fund 3951, activity 298), Computer Basic Skills-Total (fund 3951, activity 567), Technology and Telecommunications Initiative (fund 3951, activity 596), Technology Demonstration Project (fund 3951, activity 639), and Educational Development (fund 3951, activity 823) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

**226-State Department of Education-**

**School Building Authority-**

**Debt Service Fund**

(WV Code Chapter 18)

Fund 3963 FY 2004 Org 0402

| Debt Service-Total | 310  | $18,000,000 |

**227-Department of Education and the Arts-**

**Office of the Secretary-**

**Control Account-**

**Lottery Education Fund**
<table>
<thead>
<tr>
<th></th>
<th>Fund 3508 FY 2004 Org 0431</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>WVU Center for Excellence</td>
</tr>
<tr>
<td>2</td>
<td>in Disabilities</td>
</tr>
<tr>
<td>3</td>
<td>Center for Excellence in Disabilities</td>
</tr>
<tr>
<td>4</td>
<td>Special Olympic Games</td>
</tr>
<tr>
<td>5</td>
<td>Commission for National</td>
</tr>
<tr>
<td>6</td>
<td>Community Service</td>
</tr>
<tr>
<td>7</td>
<td>Technical Prep Program</td>
</tr>
<tr>
<td>8</td>
<td>Arts Programs (R)</td>
</tr>
<tr>
<td>9</td>
<td>Hospitality Training</td>
</tr>
<tr>
<td>10</td>
<td>Energy Express</td>
</tr>
<tr>
<td>11</td>
<td>Teacher Education Partnerships (R)</td>
</tr>
<tr>
<td>12</td>
<td>College Readiness (R)</td>
</tr>
<tr>
<td>13</td>
<td>LATA Access (R)</td>
</tr>
<tr>
<td>14</td>
<td>Neurological Research</td>
</tr>
<tr>
<td>15</td>
<td>and Development</td>
</tr>
<tr>
<td>16</td>
<td>Challenger Learning Center</td>
</tr>
<tr>
<td>17</td>
<td>WV Humanities Council</td>
</tr>
<tr>
<td>18</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Arts Programs (fund 3508, activity 500), Teacher Education Partnerships (fund 3508, activity 576), College Readiness (fund 3508, activity 579), LATA Access (fund 3508, activity 580), and WV2001 Project (fund 3508, activity 836) at the close of fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

228-Division of Culture and History-

Lottery Education Fund

(WV Code Chapter 29)
### Appropriations

**Fund 3534 FY 2004 Org 0432**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huntington Symphony</td>
<td>027</td>
<td>$75,000</td>
</tr>
<tr>
<td>Martin Luther King, Jr.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holiday Celebration</td>
<td>031</td>
<td>12,000</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Archeological Curation/Capital Improvements (R)</td>
<td>246</td>
<td>422,715</td>
</tr>
<tr>
<td>Historic Preservation Grants (R)</td>
<td>311</td>
<td>449,388</td>
</tr>
<tr>
<td>West Virginia Public Theater</td>
<td>312</td>
<td>240,000</td>
</tr>
<tr>
<td>Tri-County Fair Association</td>
<td>343</td>
<td>125,000</td>
</tr>
<tr>
<td>George Tyler Moore Center for the Study of the Civil War</td>
<td>397</td>
<td>50,000</td>
</tr>
<tr>
<td>Theater Arts of West Virginia</td>
<td>464</td>
<td>350,000</td>
</tr>
<tr>
<td>Grants for Competitive Arts Program (R)</td>
<td>624</td>
<td>810,000</td>
</tr>
<tr>
<td>Contemporary American Theater Festival</td>
<td>811</td>
<td>90,000</td>
</tr>
<tr>
<td>Independence Hall (R)</td>
<td>812</td>
<td>50,000</td>
</tr>
<tr>
<td>Mountain State Forest Festival</td>
<td>864</td>
<td>50,000</td>
</tr>
<tr>
<td>Project ACCESS (R)</td>
<td>865</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,724,103</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Capital Outlay, Repairs and Equipment (fund 3534, activity 589), Grants for Competitive Arts Program (fund 3534, activity 624), Independence Hall (fund 3534, activity 812), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

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229-Library Commission-

*Lottery Education Fund*
Ch. 20] APPROPRIATIONS 217

(WV Code Chapter 10)

Fund 3559 FY 2004 Org 0433

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Books and Films</td>
<td>179</td>
<td>$150,000</td>
</tr>
<tr>
<td>2</td>
<td>Grants to Public Libraries</td>
<td>182</td>
<td>7,348,884</td>
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<tr>
<td>3</td>
<td>Libraries-Special Projects</td>
<td>625</td>
<td>990,000</td>
</tr>
<tr>
<td>4</td>
<td>Infomine Network</td>
<td>884</td>
<td>900,091</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$9,388,975</td>
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</tbody>
</table>

230-Educational Broadcasting Authority-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2004 Org 0439

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Star Schools</td>
<td>509</td>
<td>$242,500</td>
</tr>
<tr>
<td>2</td>
<td>Mountain Stage</td>
<td>249</td>
<td>180,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$422,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

231-Bureau of Senior Services-

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2004 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Local Programs Service Delivery Costs</td>
<td>200</td>
<td>$2,475,250</td>
</tr>
<tr>
<td>2</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>1,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Nutrition Services for the Elderly</td>
<td>337</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>
4 Senior Citizen Centers and Programs (R) ................. 462 3,900,000
6 Direct Services ........................................ 481 2,800,000
7 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens ............... 539 13,000,000
10 Senior Services Medicaid Transfer .................. 871 10,300,000
11 Legislative Initiatives for the Elderly ................. 904 3,700,000
13 Long Term Care Ombudsmen .......................... 905 96,000
14 Total .................................................. $ 38,271,250

Any unexpended balances remaining in the appropriations for Senior Citizen Centers and Programs (fund 5405, activity 462), and Holly Grove Mansion Restoration (fund 5405, activity 685) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens along with the federal moneys 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.

232-Higher Education Policy Commission-

Lottery Education-

Higher Education Policy Commission-

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2004 Org 0441
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
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<tr>
<td>Higher Education Grant Program (R)</td>
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<td>18,000,000</td>
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<tr>
<td>Tuition Contract Program (R)</td>
<td>165</td>
<td>749,561</td>
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<tr>
<td>Minority Doctoral Fellowship (R)</td>
<td>166</td>
<td>150,000</td>
</tr>
<tr>
<td>Underwood - Smith Scholarship</td>
<td>403</td>
<td>90,249</td>
</tr>
<tr>
<td>Higher Education Grant Program (R)</td>
<td>167</td>
<td>150,000</td>
</tr>
<tr>
<td>School of Osteopathic Medicine (R)</td>
<td>172</td>
<td>6,618,138</td>
</tr>
<tr>
<td>School of Osteopathic Medicine BRIM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subsidy (R)</td>
<td>581</td>
<td>522,923</td>
</tr>
<tr>
<td>Rural Health Initiative - Medical Schools</td>
<td>595</td>
<td>868,000</td>
</tr>
<tr>
<td>Vice Chancellor for Health Sciences - Rural Health Initiative Program and Site Support (R)</td>
<td>176</td>
<td>148,500</td>
</tr>
<tr>
<td>Health Sciences Scholarship (R)</td>
<td>176</td>
<td>148,500</td>
</tr>
<tr>
<td>Higher Education-Special Projects (R)</td>
<td>488</td>
<td>1,901,808</td>
</tr>
<tr>
<td>MA Public Health Program and Health Science Technology</td>
<td>623</td>
<td>65,379</td>
</tr>
<tr>
<td>HEAPS Grant Program (R)</td>
<td>867</td>
<td>3,000,000</td>
</tr>
<tr>
<td>WV Engineering, Science, and Technology Scholarship</td>
<td>868</td>
<td>500,000</td>
</tr>
<tr>
<td>Health Sciences Career</td>
<td>869</td>
<td>65,898</td>
</tr>
<tr>
<td>Opportunities Program (R)</td>
<td>870</td>
<td>1,017,341</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$36,847,797</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

Included in the appropriation for Higher Education - Special Projects is $1,400,000 for the WVU-Health Sciences Eastern Rural Health Initiative and $561,808 for the Fairmont State College E-Learning Clusters and Services.

*CLERK'S NOTE: This amount was reduced by the Governor by $60,000.*
233-Lottery Commission-

General Purpose Account

Fund 7206 FY 2004 Org 0705

Activity Funds

1 Unclassified-Total-Transfer ............... 402 $ 65,000,000

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund as determined by the director of the lottery.

234-Economic Development Authority-

Economic Development Project Fund

Fund 3167 FY 2004 Org 0307

1 Debt Service-Total ....................... 310 $ 19,000,000

Pursuant to subsection (f), section eighteen-a, article twenty-two, chapter twenty-nine of the code, excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and

Sec. 5. Appropriations from state excess lottery revenue fund.- In accordance with section eighteen-a, article twenty-two, chapter twenty-nine of the code, the following appropriations shall be deposited and disbursed by the director of the lottery to the following accounts in this section in the amounts indicated.
subsection (f), section eighteen, article twenty-two, chapter twenty-nine of the code.

235-\textit{Education Improvement Fund}

Fund 4295 FY 2004 Org 0441

1 Unclassified-Total-Transfer (R) \ldots \ldots \ldots 402 \$17,000,000

Any unexpended balance remaining in the appropriation at the close of fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by section seven, article seven, chapter eighteen-c of the code.

236-\textit{School Building Authority}

Fund 3514 FY 2004 Org 0402

1 Unclassified-Total-Transfer (R) \ldots \ldots \ldots 402 \$20,000,000

Any unexpended balance remaining in the appropriation at the close of fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the School Building Debt Service Fund (fund 3515, org 0402) established by section six, article nine-d, chapter eighteen of the code.

237-\textit{West Virginia Infrastructure Council}

Fund 3390 FY 2004 Org 0316

1 Unclassified-Total-Transfer (R) \ldots \ldots \ldots 402 \$40,000,000
Any unexpended balance remaining in the appropriation at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for Unclassified-Total-Transfer(activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3384, org 0316) created by section nine, article fifteen-a, chapter thirty-one of the code.

238-Higher Education Improvement Fund

Fund 4297 FY 2004 Org 0441

1 Unclassified-Total (R) ................ 096 $ 10,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

239-State Park Improvement Fund

Fund 3277 FY 2004 Org 0310

1 Unclassified-Total (R) ................ 096 $ 5,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

240-Lottery Commission-

Refundable Credit

Fund 7207 FY 2004 Org 0705

1 Unclassified-Total-Transfer .......... 402 $ 10,000,000
The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under chapter eleven, article twenty-two, section twenty-one of the code. The amount of the required transfer shall be determined solely by the state tax commissioner and shall be completed by the director of the lottery upon the commissioners request.

241-Lottery Commission-

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2004 Org 0705

1 Unclassified-Total-Transfer . . . . . . . . . . 402 $ 61,800,000

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the code has been satisfied as determined by the director of the lottery.

242-Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2004 Org 2300

1 Any unexpended balance remaining in the appropriation at the close of fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The above appropriation for Tax Reduction and Federal Funding Increased Compliance (TRAFFIC)-Total (fund 0175, activity 620) 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.

Total TITLE II, Section 5-Excess

Lottery Funds

$247,800,000

Sec. 6. 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 four.

**LEGISLATIVE**

243-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2004 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096 $ 1,200,715</td>
</tr>
</tbody>
</table>

**EXECUTIVE**

244-Governor's Office-

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2004 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096 $ 450,000</td>
</tr>
</tbody>
</table>
245-Governor’s Office-
Office of Economic Opportunity
(WV Code Chapter 5)
Fund 8797 FY 2004 Org 0100
1 Unclassified-Total ................. 096 $ 4,811,976

246-Governor’s Office-
Commission for National and Community Service
(WV Code Chapter 5)
Fund 8800 FY 2004 Org 0100
1 Unclassified-Total ................. 096 $ 5,431,517

247-Auditor’s Office-
National White Collar Crime Center
(WV Code Chapter 12)
Fund 8807 FY 2004 Org 1200
1 Unclassified-Total ................. 096 $ 14,000,942

248-Department of Agriculture
(WV Code Chapter 19)
Fund 8736 FY 2004 Org 1400
1 Unclassified-Total ................. 096 $ 4,246,459
APPROPRIATIONS

249-Department of Agriculture-

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2004 Org 1400

1 Unclassified-Total ................. 096 $ 818,829

250-Department of Agriculture-

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2004 Org 1400

1 Unclassified-Total ................. 096 $ 341,174

251-Secretary of State-

(WV Code Chapter 3)

Fund 8854 FY 2004 Org 1600

1 Unclassified-Total ................. 096 $ 19,500,000

DEPARTMENT OF ADMINISTRATION

252-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2004 Org 0228

1 Unclassified-Total ................. 096 $ 199,468

*CLERK'S NOTE: Language deleted by the Governor.*
253-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2004 Org 0230

1 Unclassified-Total .................. 096 $ 33,648,118

DEPARTMENT OF EDUCATION

254-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2004 Org 0402

1 Unclassified-Total .................. 096 $ 40,000,000

255-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2004 Org 0402

1 Unclassified-Total .................. 096 $ 85,000,000

256-State Board of Education-

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2004 Org 0402

1 Unclassified-Total .................. 096 $ 21,000,000
APPROPRIATIONS

257-State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2004 Org 0402

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

DEPARTMENT OF EDUCATION AND THE ARTS

258-Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2004 Org 0431

1 Unclassified-Total .................. 096 $ 7,402,293

259-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2004 Org 0432

1 Unclassified-Total .................. 096 $ 2,065,200

260-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2004 Org 0433

1 Unclassified-Total .................. 096 $ 1,932,637
261-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2004 Org 0439

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

262-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2004 Org 0932

1 Unclassified-Total ...................... 096 $ 46,323,075

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

263-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2004 Org 0506

1 Unclassified-Total ...................... 096 $ 7,308,797

264-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2004 Org 0506

1 Unclassified-Total ...................... 096 $ 63,692,425
265-Division of Health-
West Virginia Safe Drinking Water Treatment
(WV Code Chapter 16)
Fund 8824 FY 2004 Org 0506
1 Unclassified-Total .................. 096 $ 16,000,000

266-West Virginia Health Care Authority
(WV Code Chapter 16)
Fund 8851 FY 2004 Org 0507
1 Unclassified-Total .................. 096 $ 450,000

267-Human Rights Commission
(WV Code Chapter 5)
Fund 8725 FY 2004 Org 0510
1 Unclassified-Total .................. 096 $ 510,467

268-Division of Human Services
(WV Code Chapters 9, 48 and 49)
Fund 8722 FY 2004 Org 0511
1 Unclassified-Total .................. 096 $ 1,771,108,058

DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY

269-Adjutant General-State Militia
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
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<tr>
<td>8726</td>
<td>2004</td>
<td>0603</td>
<td>$57,396,445</td>
<td></td>
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<tr>
<td>8727</td>
<td>2004</td>
<td>0606</td>
<td>$8,693,164</td>
<td></td>
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<tr>
<td>8836</td>
<td>2004</td>
<td>0608</td>
<td>$650,000</td>
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<tr>
<td>8741</td>
<td>2004</td>
<td>0612</td>
<td>$1,070,309</td>
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<tr>
<td>8728</td>
<td>2004</td>
<td>0618</td>
<td>$1,203,780</td>
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</table>
274-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2004 Org 0620

1 Unclassified-Total ..................... 096 $ 12,147,834

275-Division of Juvenile Services

(WV Code Chapter 49)

Fund 8855 FY 2004 Org 0621

1 Unclassified-Total ..................... 096 $ 331,000

DEPARTMENT OF TAX AND REVENUE

276-Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2004 Org 0702

1 Unclassified-Total ..................... 096 $ 25,000

DEPARTMENT OF TRANSPORTATION

277-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2004 Org 0802

1 Unclassified-Total ..................... 096 $ 9,819,900

278-Division of Public Transit

(WV Code Chapter 17)
<table>
<thead>
<tr>
<th>Fund 8745 FY 2004 Org 0805</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total ...... 096 $11,602,638</td>
</tr>
<tr>
<td><strong>279-Public Port Authority</strong></td>
</tr>
<tr>
<td>(WV Code Chapter 17)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Fund 8830 FY 2004 Org 0806</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total ...... 096 $ 2,395,000</td>
</tr>
<tr>
<td><strong>280-Aeronautics Commission</strong></td>
</tr>
<tr>
<td>(WV Code Chapter 29)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fund 8831 FY 2004 Org 0807</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total ...... 096 $ 196,875</td>
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</table>

**BUREAU OF COMMERCE**

<table>
<thead>
<tr>
<th>Fund 8703 FY 2004 Org 0305</th>
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<tbody>
<tr>
<td>1 Unclassified-Total ...... 096 $ 1,507,485</td>
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<tr>
<td><strong>282-Geological and Economic Survey</strong></td>
</tr>
<tr>
<td>(WV Code Chapter 29)</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Fund 8704 FY 2004 Org 0306</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total ...... 096 $ 386,000</td>
</tr>
<tr>
<td><strong>283-West Virginia Development Office</strong></td>
</tr>
</tbody>
</table>
(WV Code Chapter 5B)

Fund 8705 FY 2004 Org 0307

1 Unclassified-Total ................. 096  $ 9,595,134

284-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2004 Org 0308

1 Unclassified-Total ................. 096  $ 540,822

285-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2004 Org 0310

1 Unclassified-Total ................. 096  $ 8,629,568

286-Division of Miners’ Health,
Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2004 Org 0314

1 Unclassified-Total ................. 096  $ 590,765

BUREAU OF EMPLOYMENT PROGRAMS

287-Bureau of Employment Programs

(WV Code Chapter 21A)

Fund 8835 FY 2004 Org 0323
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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

288-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2004 Org 0313

1 Unclassified-Total ....................... 096 $ 98,015,470

BUREAU OF SENIOR SERVICES

289-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2004 Org 0508

1 Unclassified-Total ....................... 096 $ 14,249,100
### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 290-Public Service Commission-

*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2004 Org 0926

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$1,514,718</td>
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</table>

#### 291-Public Service Commission-

*Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2004 Org 0926

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>Unclassified-Total</td>
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<td>$270,918</td>
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</table>

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<th>Section</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-</td>
<td>Total TITLE II, Section 6- Federal Funds</td>
<td>$2,468,535,879</td>
</tr>
</tbody>
</table>

#### Sec. 7. Appropriations from federal block grants.-The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2004.

#### 292-Governor's Office-

*Office of Economic Opportunity*

Fund 8799 FY 2004 Org 0100
1 Unclassified-Total ................... 096 $ 12,734,724

293-West Virginia Development Office-

Community Development

Fund 8746 FY 2004 Org 0307

1 Unclassified-Total ................... 096 $ 28,330,852

294-West Virginia Development Office-

Workforce Investment Act

Fund 8848 FY 2004 Org 0307

1 Unclassified-Total ................... 096 $ 55,369,286

295-State Department of Education-

Education Grant

Fund 8748 FY 2004 Org 0402

1 Unclassified-Total ................... 096 $ 130,000,000

296-Division of Health-

Maternal and Child Health

Fund 8750 FY 2004 Org 0506

1 Unclassified-Total ................... 096 $ 10,878,891

297-Division of Health-

Preventive Health

Fund 8753 FY 2004 Org 0506
<table>
<thead>
<tr>
<th>Division</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Unclassified-Total</th>
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<tbody>
<tr>
<td>298</td>
<td>8793</td>
<td>2004</td>
<td>0506</td>
<td>096</td>
<td>$2,237,034</td>
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<td>0506</td>
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<td>8825</td>
<td>2004</td>
<td>0506</td>
<td>096</td>
<td>$3,314,733</td>
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<tr>
<td>301</td>
<td>8755</td>
<td>2004</td>
<td>0511</td>
<td>096</td>
<td>$976,837</td>
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<td>8757</td>
<td>2004</td>
<td>0511</td>
<td>096</td>
<td>$21,100,942</td>
</tr>
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</table>
1 Unclassified-Total .......................... 096 $ 15,346,237

303-Division of Human Services-
Temporary Assistance Needy Families

Fund 8816 FY 2004 Org 0511

1 Unclassified-Total .......................... 096 $ 175,000,000

304-Division of Human Services-
Child Care and Development

Fund 8817 FY 2004 Org 0511

1 Unclassified-Total .......................... 096 $ 38,080,000

305-Division of Criminal Justice Services-
Juvenile Accountability Incentive

Fund 8829 FY 2004 Org 0620

1 Unclassified-Total .......................... 096 $ 1,800,000

306-Division of Criminal Justice Services-
Local Law Enforcement

Fund 8833 FY 2004 Org 0620

1 Unclassified-Total .......................... 096 $ 621,280

1 Total TITLE II, Section 7-
2 Federal Block Grants ........ $ 507,348,120

Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2004, from the fund as
designated, in the amounts as specified, general revenue funds in the amount of $7,095,097, special revenue fund in the amount of $902,865, state road funds in the amount of $700,257, and federal funds in the amount of $4,148 for payment of claims against the state.

The total general revenue funds above do not include payment for claims in the amount of $937.34 from the supreme court - general judicial, fund 0180, specifically made payable from the appropriation for the current fiscal year 2003.

Sec. 9. Appropriations from surplus accrued. - The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2004 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand three, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand three from the fiscal year ending the thirtieth day of June two thousand three.

In the event that surplus revenues available on the thirty-first day of July, two thousand three, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section.

307-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2004 Org 0506
Institutional Facilities

The above appropriation for Institutional Facilities Operations-Surplus shall be expended only to the extent necessary to offset any shortfall in the Department of Health and Human Resources-Division of Health-Tobacco Settlement Expenditure Fund (fund 5124, fiscal year 2004, org 0506) as determined by the Secretary of the Department of Administration.

308-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2004 Org 0211

Capitol Complex-
Capital Outlay-Surplus 526 $ 0

309-Department of Agriculture-

(WV Code Chapter 19)

Fund 0132 FY 2004 Org 1400

Soil Conservation Projects-Surplus 269 $ 500,000

310-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2004 Org 0606

Homeland Security Grant
Match-Surplus 957 $ 250,000

Total TITLE II, Section 9-Surplus Accrued $ 750,000
Sec. 10. Special revenue appropriations.-There are hereby appropriated for expenditure during the fiscal year two thousand four 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. 11. 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 four, 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 four 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. 12. 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. 13. 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. 14. 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. 15. 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. 16. 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. 17. 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.
§1. Appropriations conditional.
§2. Legislative intent.
§3. 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. Legislative intent.- It is the intent of the Legislature that the duly appointed members of the conference committee on this bill may formulate and set forth in a budget digest recommendations for the expenditure of money appropriated by this bill after its enactment. It is the further intent of the Legislature that the recommendations set forth in the budget digest are an expression of legislative intent, do not have the force and effect of law, and may not be construed to alter the lawful enactment of this bill.

Sec. 3. 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.
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 four, in the amount of one million two hundred fifty thousand dollars from the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2004, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2004, 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 the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, to the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2004, organization 0704, be decreased by expiring the amount of one million two hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand four.

9 The purpose of this bill is to expire the sum of one million two hundred fifty thousand dollars from the insurance commissioner—insurance commission fund, fund 7152, fiscal
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 four, in the amount of one million two hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2004, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2004, 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:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, to the public service commission, fund 8623, fiscal year 2004, organization 0926, be decreased by expiring the amount of one million two hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand four.
The purpose of this bill is to expire the sum of one million two hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2004, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand four, to be available for appropriation during the fiscal year two thousand four.

CHAPTER 23
(H. B. 3206 — By Delegates Stalnaker, Evans, Doyle, Michael and Browning)
[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702, and the department of transportation-aeronautics commission, fund 0582, fiscal year 2003, organization 0807, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702, be amended and reduced in the existing line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.
And, that the items of the total appropriation from the state fund, general revenue, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702, be amended and increased in the line item as follows:

### TITLE II—APPROPRIATIONS

Section 1. Appropriations from general revenue.

**DEPARTMENT OF TAX AND REVENUE**

65—*Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2003 Org 0702

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
</tr>
</tbody>
</table>

$161,373

And, that the items of the total appropriation from the state fund, general revenue, to the department of transportation—
aeronautics commission, fund 0582, fiscal year 2003, organization 0807, be amended and reduced in the existing line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

70—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2003 Org 0807

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Civil Air Patrol</td>
<td>234 $ 30,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue, to the department of transportation-aeronautics commission, fund 0582, fiscal year 2003, organization 0807, be amended and increased in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

70—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2003 Org 0807
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.

CHAPTER 24

(H. B. 3207 — By Delegates Mezzatesta, Stalnaker, Houston, Cann, Evans, Leach and R. M. Thompson)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of juvenile services, fund 0570, fiscal year 2003, organization 0621 and the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:
That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of juvenile services, fund 0570, fiscal year 2003, organization 0621, be amended and reduced in the line item as follows:

1

TITLE II—APPROPRIATIONS.

2

Section 1. Appropriations from general revenue.

3

DEPARTMENT OF MILITARY AFFAIRS

4

AND PUBLIC SAFETY

5

63—Division of Juvenile Services

6

(WV Code Chapter 49)

7

Fund 0570 FY 2003 Org 0621

8

9

Activity

10

General Revenue Funds

11 1 Personal Services . . . . . . . . . . . . . . . 001 $ 2,017,000

12

And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, be amended and increased in the line item as follows:

17

TITLE II—APPROPRIATIONS.

18

Section 1. Appropriations from general revenue.
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.

CHAPTER 25

(H. B. 3208 — By Delegates Cann, Mezzatesta, Stalnaker, Houston, Evans, Leach and R. M. Thompson)

[Passed March 8, 2003: in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, be amended and reduced in the existing line items as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 St. Mary's Correctional Facility</td>
<td>881</td>
<td>$500,000</td>
</tr>
<tr>
<td>25 Lakin Correctional Facility</td>
<td>896</td>
<td>2,900,000</td>
</tr>
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</table>
And, that the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

57—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2003 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments to Federal, County and/or Regional Jails</td>
<td>555 $ 2,900,000</td>
</tr>
<tr>
<td>6 Regional Jails</td>
<td></td>
</tr>
<tr>
<td>16 Inmate Medical Expenses</td>
<td>535 500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—West Virginia parole board, fund 0440, fiscal year 2003, organization 0605, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—West Virginia parole board, fund 0440, fiscal year 2003, organization 0605, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 54—West Virginia Parole Board
6 (WV Code Chapter 62)
7 Fund 0440 FY 2003 Org 0605
And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety—West Virginia parole board, fund 0440, fiscal year 2003, organization 0605, be amended and increased in the line item as follows:

<table>
<thead>
<tr>
<th>TITLE</th>
<th>II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
<td></td>
</tr>
</tbody>
</table>

**DEPARTMENT OF MILITARY AFFAIRS**

AND PUBLIC SAFETY

54—*West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2003 Org 0605

<table>
<thead>
<tr>
<th>General</th>
<th>Activity</th>
<th>Revenue</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>913</td>
<td>099</td>
<td>$22,208</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of protective services, fund 0585, fiscal year 2003, organization 0622, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety—division of protective services, fund 0585, fiscal year 2003, organization 0622, be amended and reduced in the line item as follows:

1    TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3    DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5    64—Division of Protective Services

6 (WV Code Chapter 15)

7 Fund 0585 FY 2003 Org 0622
And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of protective services, fund 0585, fiscal year 2003, organization 0622, be amended and increased in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

64—Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2003 Org 0622

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.
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, two thousand three, in the amount of five hundred seventy-seven thousand nine hundred nine dollars from the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, in the amount of one hundred sixteen thousand three hundred eighteen dollars from the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606, in the amount of two hundred thirty-one thousand eight hundred twenty-one dollars from the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, in the amount of fifty-seven thousand one hundred twenty-two dollars from the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, in the amount of one hundred twenty-three thousand four hundred eighty-eight dollars from the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, in the amount of thirteen thousand three hundred fifty-eight dollars from the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606, in the amount of seventy-seven thousand nine hundred seventy-seven dollars from the governor’s office - flood disaster, January 1996, fund 1021, fiscal year 2003, organization 0100, in the amount of ten thousand six hundred
forty-one dollars from the division of health - flood disaster, January 1996, fund 5194, fiscal year 2003, organization 0506, in the amount of three thousand seven hundred nineteen dollars from the division of human services - flood disaster, January 1996, fund 5095, fiscal year 2003, organization 0511, in the amount of six thousand three hundred eighty-nine dollars from the division of health - flood disaster, June 1998, fund 5206, fiscal year 2003, organization 0506, and in the amount of one hundred fifty-one thousand two hundred seventy-four dollars from the West Virginia state police, central abuse registry fund, fund 6527, fiscal year 2003, organization 0612, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of administration—public defender services, fund 0226, fiscal year 2003, organization 0221 and to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 2003, organization 0608.

WHEREAS, The Legislature finds that the account balance in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606, the governor’s office - flood disaster, January 1996, fund 1021, fiscal year 2003, organization 0100, the division of health - flood disaster, January 1996, fund 5194, fiscal year 2003, organization 0506, the division of human services - flood disaster, January 1996, fund 5095, fiscal year 2003, organization 0511, the division of health - flood disaster, June 1998, fund 5206,
fiscal year 2003, organization 0506, and the West Virginia state
police, central abuse registry fund, fund 6527, fiscal year 2003,
organization 0612, exceeds that which is necessary for the purposes
for which the accounts were established; and

WHEREAS, The governor submitted to the Legislature a statement
of the state fund, general revenue, dated the eighth day of January,
two thousand three, setting forth therein the cash balance as of the
first day of July, two thousand two; and further included the estimate
of revenues for the fiscal year two thousand three, less net appropria-
tion balances forwarded and regular appropriations for fiscal year two
thousand three; and

WHEREAS, By the provision of the statement of the state fund,
general revenue and this legislation there now remains an unappropria-
ted surplus balance in the state treasury which is available for
appropriation during the fiscal year ending the thirtieth day of June,
two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds in the office of emergency
2 services—flood disaster, January 1996, fund 6258, fiscal year
3 2003, organization 0606, be decreased by expiring the amount
4 of five hundred seventy-seven thousand nine hundred nine
dollars, the office of emergency services—flood disaster, May
6 1996, fund 6260, fiscal year 2003, be decreased by expiring the
7 amount of one hundred sixteen thousand three hundred eighteen
dollars, the office of emergency services—flood disaster, July
9 1996, fund 6261, fiscal year 2003, organization 0606, be
decreased by expiring the amount of one hundred sixteen thousand three hundred eighteen
dollars, the office of emergency services—flood disaster, September 1996, fund
11 6262, fiscal year 2003, organization 0606, be decreased by
12 expiring the amount of fifty-seven thousand one hundred
13 twenty-two dollars, the office of emergency services—flood
disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, be decreased by expiring the amount of one hundred twenty-three thousand four hundred eighty-eight dollars, the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606, be decreased by expiring the amount of thirteen thousand three hundred fifty-eight dollars, the governor’s office—flood disaster, January 1996, fund 1021, fiscal year 2003, organization 0100 be decreased by expiring the amount of seventy-seven thousand nine hundred seventy-seven dollars, the division of health—flood disaster, January 1996, fund 5194, fiscal year 2003, organization 0506, be decreased by expiring the amount of ten thousand six hundred forty-one dollars, the division of human services—flood disaster, January 1996, fund 5095, fiscal year 2003, organization 0511, be decreased by expiring the amount of three thousand seven hundred nineteen dollars, the division of health—flood disaster, June 1998, fund 5206, fiscal year 2003, organization 0506, be decreased by expiring the amount of six thousand three hundred eighty-nine dollars, and the West Virginia state police, central abuse registry fund, fund 6527, fiscal year 2003, organization 0612, be decreased by expiring the amount of one hundred fifty-one thousand two hundred seventy-four 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, two thousand three, to fund 0226, fiscal year 2003, organization 0221, be supplemented and amended by increasing the total appropriation as follows:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF ADMINISTRATION**
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

57—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2003 Org 0608

5 Payments to Federal, County, and/or
6 Regional Jails—Surplus . . . . . . . . 008 $ 1,383,000
The purpose of this supplemental appropriation bill is to supplement and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand three.

CHAPTER 29

(H. B. 3212 — By Delegates Warner, Boggs, Border, Browning, Frederick, R. M. Thompson and Ashley)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one million two hundred thousand dollars from the department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, and making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature finds that the account in the department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, exceeds that which is necessary for the purposes for which the account was established; therefore
Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, be decreased by expiring the amount of one million two hundred thousand dollars to the balance of the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, during the fiscal year two thousand three, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 139—West Virginia State Police—

6 Surplus Real Property Proceeds Fund

7 (WV Code Chapter 15)

8 Fund 6516 FY 2003 Org 0612

9

10 General

11 Activity

12 Revenue

13 Funds

12 1 Unclassified 099 $1,200,000
The purpose of this supplementary appropriation bill is to expire the sum of one million two hundred thousand dollars from the department of military affairs and public safety—West Virginia state police—surplus transfer account, fund 6519, fiscal year 2003, organization 0612, to the balance of the department of military affairs and public safety—West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, and to supplement the West Virginia state police—surplus real property proceeds fund, fund 6516, fiscal year 2003, organization 0612, in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by adding one million two hundred thousand dollars to the existing appropriation for unclassified for expenditure during fiscal year two thousand three.

CHAPTER 30

(H. B. 3214 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the secretary of state - state election fund, fund 1614, fiscal year 2003, organization 1600, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one hundred thousand dollars from the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600, exceeds that which is necessary for the purposes for which the account was established; therefore
Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, to the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600, be decreased by expiring the amount of one hundred thousand dollars to the balance of the secretary of state - state election fund, fund 1614, fiscal year 2003, organization 1600, during the fiscal year two thousand three.

The purpose of this bill is to expire the sum of one hundred thousand dollars from the secretary of state - service fees and collections account, fund 1612, fiscal year 2003, organization 1600, to the balance of the secretary of state - state election fund, fund 1614, fiscal year 2003, organization 1600, for the fiscal year ending the thirtieth day of June, two thousand three, to be available for expenditure during the fiscal year two thousand three.

CHAPTER 31

(H. B. 3215 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; 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, two thousand three, in the amount of ninety-nine thousand six hundred eighty-four dollars from the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097; in the amount of seventy-two thousand three hundred sixty-nine
dollars from the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599; in the amount of fifty-five thousand seven hundred forty-five dollars from the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 099; and in the amount of three hundred thirteen thousand eight hundred sixteen dollars from the secretary of state, fund 0155, fiscal year 2002, organization 1600, activity 099; and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the secretary of state election fund, fund 1614, fiscal year 2003, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097; the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599; the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 099; and secretary of state. fund 0155, fiscal year 2002, organization 1600, activity 099 exceeds that which is necessary for the purposes for which the accounts were established;

WHEREAS, 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, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the secretary of state, fund 0155, fiscal year 2001, organization 1600, activity 097, be decreased by expiring the amount of ninety-nine thousand six hundred eighty-four dollars; in the secretary of state, fund 0155, fiscal year 1998, organization 1600, activity 599, be decreased by expiring the amount of
seventy-two thousand three hundred sixty-nine dollars; in the
secretary of state, fund 0155, fiscal year 2001, organization 1600,
activity 099, be decreased by expiring the amount of fifty-five
thousand seven hundred forty-five dollars; and in the secretary of
state, fund 0155, fiscal year 2002, organization 1600, activity 099, be
decreased by expiring the amount of three hundred thirteen thousand
eight hundred sixteen 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, two thousand three, to the secretary of state, fund 0155, fiscal
year 2003, organization 1600, be supplemented and amended by
increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2003 Org 1600

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>8a</td>
<td>Help America Vote Act - Transfer</td>
</tr>
<tr>
<td>8b</td>
<td>Surplus ...................... 244</td>
</tr>
</tbody>
</table>

The above appropriation for Help America Vote Act - Transfer (activity 244) shall be transferred to the State Election Fund (fund 1614, organization 1600).
The purpose of this supplemental appropriation bill is to expire, supplement, decrease, increase, and transfer items of appropriation in the aforesaid accounts for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 32

(H. B. 3216 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the secretary of state, fund 0155, fiscal year 2003, organization 1600, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the secretary of state, fund 0155, fiscal year 2003, organization 1600, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 16—Secretary of State
And, that the items of the total appropriations from the state fund, general revenue, to the secretary of state, fund 0155, fiscal year 2003, organization 1600, be amended and increased in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

i6—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2003 Org 1600

The above appropriation for Help America Vote Act - Transfer (activity 100) shall be transferred to the State Election Fund (fund 1614, organization 1600).
28 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.

CHAPTER 33

(H. B. 3217 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT amending and supplementing chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, by adding thereto a new fund with an 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, two thousand three, to the new fund, designated secretary of state fund 8854, fiscal year 2003, organization 1600, for fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature has established the availability of federal funds for programs now available for expenditure in fiscal year ending the thirtieth day of June, two thousand three, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be amended and supplemented by adding to Title II, section six thereof a new fund with an appropriation in the line item therein as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 6. Appropriations of federal funds.

3 EXECUTIVE

4 249a—Secretary of State—

5 (WV Code Chapter 3)

6 Fund 8854 FY 2003 Org 1600

7 | Activity | Federal Funds |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to create a new fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, and to provide for an appropriation therein of federal funds made available under the federal help America vote act in an amount of nine million dollars for expenditure during fiscal year two thousand three.

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CHAPTER 34

(H. B. 3218 — By Delegates Hall, Leach, Mezzatesta and Campbell)

[Passed March 8, 2003; 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, two thousand three, in the amount of fifty thousand dollars from the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606; in the amount of fifty thousand dollars from the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606; in the amount of thirty-three thousand eight hundred and four dollars from the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003, organization 0606; fifty thousand dollars from the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606; in the amount of eleven thousand six hundred seventy-five dollars from the office of emergency services—flood disaster, February 2000—governor's civil contingent fund, fund 6266, fiscal year 2003, organization 0606; making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety—office of emergency services, fund 0443, fiscal year 2003, organization 0606.

WHEREAS, The Legislature finds that the account balance in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003,
organization 0606; the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606; the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606; exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision 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, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the office of emergency services—flood disaster, January 1996, fund 6258, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, May 1996, fund 6260, fiscal year 2003, be decreased by expiring fifty thousand dollars; the office of emergency services—flood disaster, July 1996, fund 6261, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, September 1996, fund 6262, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, March 1997, fund 6263, fiscal year 2003, organization 0606, be decreased by expiring the amount of thirty-three thousand eight hundred and four dollars; the office of emergency services—flood disaster, June 1998, fund 6264, fiscal year 2003, organization 0606, be decreased by expiring the amount of fifty thousand dollars; the office of emergency services—flood disaster, February 2000—governor’s civil contingent fund, fund 6266, fiscal year 2003, organization 0606, be decreased by expiring the amount of eleven thousand six hundred seventy-five 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, two
thousand three, to fund 0443, fiscal year 2003, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—appropriations.

2 Section 1. Appropriations from general revenue.

3 department of military affairs

4 and public safety

5 55—Office of Emergency Services

6 (WV code chapter 15)

7 Fund 0443 FY 2003 Org 0606

8

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified - Surplus</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>097</td>
<td>78,000</td>
</tr>
</tbody>
</table>

11 Any unexpended balances remaining in the appropriation for Federal Emergency Management Agency Match - Surplus (fund 0443, activity ) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

19 The purpose of this supplemental appropriation bill is to supplement and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand three.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - West Virginia health care authority, fund 5375, fiscal year 2003, organization 0507, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - West Virginia health care authority, fund 5375, fiscal year 2003, organization 0507, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5375, fiscal year 2003, organization 0507, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

128—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2003 Org 0507

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$127,365</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$33,115</td>
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<tr>
<td>099</td>
<td>Unclassified</td>
<td>$1,089,520</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 36

(S. B. 637 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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 motor vehicles, fund 9007, fiscal year 2003, organization 0802, supplementing and
amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund to the department of transportation - division of motor vehicles, fund 9007, fiscal year 2003, organization 0802, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 89—Division of Motor Vehicles

5 (WV Code Chapters 17, 17A, 17B, 17D, 20 and 24A)

6 Fund 9007 FY 2003 Org 0802

7

8

9 State

Act-

Road

ivity

Fund

10 4 Unclassified .................. 099 $ 257,000

11 And that the items of the total appropriations from the state road fund to the department of transportation - division of motor vehicles, fund 9007, fiscal year 2003, organization 0802, be amended and increased in the line items as follows:

15 TITLE II—APPROPRIATIONS.

16 Sec. 2. Appropriations from state road fund.

17 DEPARTMENT OF TRANSPORTATION
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending unit. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.

CHAPTER 37

(S. B. 638 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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, two thousand three, to the department of military affairs and public safety - West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year
2003, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety - West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2003, organization 0608, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 6362, fiscal year 2003, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 136—West Virginia Division of Corrections—

6 Parolee Supervision Fees

7 (WV Code Chapter 62)

8 Fund 6362 FY 2003 Org 0608

9

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<thead>
<tr>
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<tr>
<td>099</td>
<td>$ 50,000</td>
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The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 38

(S. B. 639 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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, two thousand three, to the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2003, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2003, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8213, fiscal year 2003,
organization 0802, be supplemented and amended by increasing the total appropriation as follows:

1. **TITLE II—APPROPRIATIONS.**

2. Sec. 3. Appropriations from other funds.

3. **DEPARTMENT OF TRANSPORTATION**

4. 162—Division of Motor Vehicles—

5. Driver's License Reinstatement Fund

6. (WV Code Chapter 17B)

7. Fund 8213 FY 2003 Org 0802

<table>
<thead>
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</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

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**CHAPTER 39**

(S. B. 640 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety - division of veterans’ affairs - veterans’ home, fund 8728, fiscal year 2003, organization 0618, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, 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, two thousand three, to fund 8728, fiscal year 2003, organization 0618, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 270—Division of Veterans’ Affairs—

6 Veterans’ Home

7 (WV Code Chapter 9A)

8 Fund 8728 FY 2003 Org 0618
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 40

(S. B. 641 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guil!s and Sprouse)

[Passed March 7, 2003; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of administration - children’s health insurance agency, fund 8838, fiscal year 2003, organization 0230, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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, two thousand three, 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, two thousand three, to fund 8838, fiscal year 2003, organization 0230, be supplemented and amended by increasing the total appropriation as follows:

1. TITLE II—APPROPRIATIONS.

2. Sec. 6. Appropriations of federal funds.

3. DEPARTMENT OF ADMINISTRATION

4. 251—Children’s Health Insurance Agency

(WV Code Chapter 5)

5. Fund 8838 FY 2003 Org 0230

<table>
<thead>
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The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 41

(S. B. 642 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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, two thousand three, to the department of health and human resources - division of human services - child support enforcement, fund 5094, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - child support enforcement, fund 5094, fiscal year 2003, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5094, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 130—Division of Human Services—

6 Child Support Enforcement

7 (WV Code Chapter 48A)

8 Fund 5094 FY 2003 Org 0511
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 42

(S. B. 643 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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, two thousand three, to the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 3200, fiscal year 2003, organization 0310, be supplemented and amended by increasing the total appropriation in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**BUREAU OF COMMERCE**

179—*Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2003 Org 0310

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6A Point of Sales Licensing System (R)</td>
<td>043</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Point of Sales Licensing System (fund 3200, activity 043) at the close of the fiscal year two thousand three is hereby reappropriated for expenditure during the fiscal year two thousand four.

The purpose of this supplementary appropriation bill is to supplement the Budget Bill by adding a new item of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.
CHAPTER 43

(S. B. 644 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 7, 2003; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of military affairs and public safety - division of corrections, fund 8836, fiscal year 2003, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, 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, two thousand three, to fund 8836, fiscal year 2003, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three, 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, two thousand three, to fund 8743, fiscal year 2003, organization 0926, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 286—Public Service Commission—

5 Motor Carrier Division

(WV Code Chapter 24A)

6 Fund 8743 FY 2003 Org 0926

8 Activity Federal Funds

10 1 Unclassified—Total .............. 096 $ 82,125

11 The purpose of this supplementary appropriation bill is to

12 supplement and increase items of appropriation in the aforesaid

13 account for the designated spending unit for expenditure during

14 fiscal year two thousand three.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - division of human services - James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2003, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 5454, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.
Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

132—Division of Human Services—
James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2003 Org 0511

<table>
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<tbody>
<tr>
<td>Unclassified—Total</td>
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</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 46

(S. B. 659 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; 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, two thousand three, to the West Virginia state board of examiners for licensed practical nurses, fund 8517,
fiscal year 2003, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2003, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8517, fiscal year 2003, organization 0906, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified—Total</th>
<th>$ 096</th>
<th>$ 15,000</th>
</tr>
</thead>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.
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, fund 9017, fiscal year 2003, organization 0803, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund, fund 9017, fiscal year 2003, organization 0803, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 90—Division of Highways

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2003 Org 0803
And that the items of the total appropriation from the state road fund, fund 9017, fiscal year 2003, organization 0803, be amended and increased in the existing line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

90—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2003 Org 0803

298  APPROPRIATIONS

State Road Fund

Activity

Bridge Repair and Replacement . . . 273 $ 3,000,000

Interstate Construction .............. 278 10,000,000

Other Federal Aid Programs ........... 279 41,000,000

Appalachian Programs ................ 280 17,000,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand three.
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, two thousand three, to the department of health and human resources - division of health - maternal and child health, fund 8750, fiscal year 2003, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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, two thousand three, 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, two thousand three, to fund 8750, fiscal year 2003, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 7. Appropriations from federal block grants.
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.

CHAPTER 49

(S. B. 662 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; 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, two thousand three, in the amount of one hundred fifty thousand dollars from the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303, in the amount of one hundred thousand dollars from the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704, and in the amount of one hundred thousand dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal
year 2003, organization 0708, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of tax and revenue - tax division, fund 0470, fiscal year 2003, organization 0702.

WHEREAS, The Legislature finds that the account balances in the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303, the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 exceeds that which is necessary for the purposes for which the accounts were established; therefore

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

That the balance of funds in the division of banking - assessment and examination fund, fund 3041, fiscal year 2003, organization 0303 be decreased by expiring the amount of one hundred fifty thousand dollars, the insurance commissioner - insurance commission fund, fund 7152, fiscal year 2003, organization 0704 be decreased by expiring the amount of one hundred thousand dollars, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 be decreased by expiring the amount of one hundred thousand 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, two thousand three, to fund 0470, fiscal year 2003, organization 0702, be supplemented and amended by increasing the total appropriation by three hundred fifty thousand dollars as follows:

1. **TITLE II—APPROPRIATIONS.**

2. **Section 1. Appropriations from general revenue.**
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 50

(Com. Sub. for S. B. 450 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-c, relating to creation, development and funding of an automated tax administration system; setting forth legislative findings and purpose; authorizing contracts to finance and acquire automated tax administration
system and associated products and services; requiring reports to joint committee on government and finance; expiring authority to enter into certain contracts; specifying methods of payment for system; requiring determination of increase in the amount of taxes, interest and penalties collected which is attributable to successful implementation of the automated tax administration system and reports; creating special revenue fund and providing amounts to be deposited into fund; providing purposes for which moneys of the fund are to be expended; excluding from deposit moneys derived for local or municipal subdivisions; requiring annual report; and repeal of article.

Be it enacted by the Legislature of West Virginia:

That chapter eleven 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-c, to read as follows:

ARTICLE 10C. BENEFITS-FUNDED PURCHASING.

§11-10C-1. Legislative finding; short title and purpose.
§11-10C-2. Authorization of benefits-funded automated tax administration system purchasing program; reports; expiration of authority.
§11-10C-3. Benefits funding.
§11-10C-4. Monthly determination of increased revenue attributable to automated tax administration system; monthly report; deposit of moneys; creation and operation of automated tax administration system development fund; annual report.
§11-10C-5. Transfer of funds; repeal of article.

§11-10C-1. Legislative finding; short title and purpose.

The Legislature hereby finds that creation, development, acquisition and maintenance of an automated tax administration system by the tax division of the department of tax and revenue are crucial to efficient operation of state government and in the best interests of the people of West Virginia; that the accuracy, efficiency and cost effectiveness of an automated tax administration system will benefit the people of West Virginia through
cost savings, more efficient tax administration and more
uniform and effective application of the tax laws of the state.

This article shall be known as the "Benefits-funded
Purchasing Act" and is hereby established by the Legislature
for the purpose of creating, developing and maintaining an
automated tax administration system by the tax division of the
department of tax and revenue.

§11-10C-2. Authorization of benefits-funded automated tax
administration system purchasing program; reports; expiration of authority.

(a) The tax commissioner is hereby authorized to enter into
contracts to finance and acquire an automated tax administra-
tion system and associated computer hardware and software for
use in the registration of taxpayers, processing of remittances
and returns and collection of delinquent taxes and any interest
and penalties thereon and for general tax administration. The
tax commissioner is further authorized to acquire the technical
services and related services necessary to develop, implement
and maintain such system and associated computer hardware
and software.

(b) Prior to entering into any contract authorized by this
article, the tax commissioner shall provide to the joint commit-
tee on government and finance a copy of the contract and a
report setting forth a detailed summary of the terms of the
contract, including the estimated amounts of vendor payments
and other terms of financing anticipated under the contract and
the date upon which vendor payments will end under the
contract, and a description and the cost of the technical services
and related services the tax commissioner determines is
necessary to develop, implement and maintain the system and
associated hardware or software to be acquired under the
contract.
(c) The authority of the tax commissioner to enter into contracts to finance and acquire an automated tax administration system expires the thirtieth day of June, two thousand five. The expiration of that authority does not affect the authority of the tax commissioner to enter into contracts to maintain an automated tax administration system acquired pursuant to this section, including contracts for the acquisition of associated hardware, software or services after meeting the requirements of subsection (b) of this section.

§11-10C-3. Benefits funding.

Notwithstanding any provision of article three, chapter five-a of this code or any other provision of this code to the contrary, payment of costs and compensation for the automated tax administration system, related hardware, software and services may be computed and paid: (1) On the basis of a percentage of the increase in the amount of taxes, interest and penalties collected which is attributable to implementation of the automated tax administration system, as may be described in detail by contract; or (2) on a fixed-fee contract basis, such fees to be paid from the increase in the amount of taxes, interest and penalties collected which is attributable to implementation of the automated tax administration system, as may be described in detail by contract.

§11-10C-4. Monthly determination of increased revenue attributable to automated tax administration system; monthly report; deposit of moneys; creation and operation of automated tax administration system development fund; annual report.

(a) Revenue increment, fund created, operation of fund. —

(1) The tax commissioner shall determine monthly the total amount of increased revenue attributable to the successful implementation of the automated tax administration system
under this article and the amount shall be paid into the state
treasury and deposited to the credit of a special fund known as
the "Automated Tax Administration System Development
Fund" which is hereby created. The tax commissioner is
authorized to use moneys deposited in the automated tax
administration system development fund to pay vendors of
hardware, software or services pursuant to the terms of con-
tracts created in accordance with this article. All moneys in
excess of that required to be paid to the vendors, as determined
by the tax commissioner, shall be transferred to the general
fund: Provided, That all moneys in excess of seven hundred
fifty thousand dollars remaining in the fund at the end of each
fiscal year shall be transferred to the general fund.

(2) The total monthly amount of increased revenue attribut-
able to the successful implementation of the automated tax
administration system as determined by the tax commissioner
and the basis for the determination shall be reported to the joint
committee on government and finance within ten days follow-
ing the determination.

(b) Treatment of local moneys. --

(1) The amount of the local moneys derived from any tax
imposed under this code which is directed or dedicated to local
or municipal subdivisions shall not be deposited in the auto-
mated tax administration system development fund, but shall be
paid undiminished, including any increase resulting from
implementation of the automated tax administration system, to
the local or municipal subdivision to which it is directed or
dedicated by law. Local or municipal moneys shall be depos-
ited, as directed by law, in those funds designated for orderly
distribution of revenues to local or municipal subdivisions.

(2) For purposes of this section, the total amount of
increased revenue attributable to the successful implementation
of an automated tax administration system for purposes of determining the amount to be deposited in the automated tax administration system development fund and the amount of any benefits-funded payments to vendors under this article shall be determined after subtraction of any tax revenues payable to a local or municipal subdivision under this code.

(c) Reports.—Prior to the fifteenth day of January of each year, the tax commissioner shall submit a report to the governor, the president of the Senate and the speaker of the House of Delegates. The report shall include detailed information on the costs and benefits of implementing the automated tax administration system pursuant to this article during the fiscal year immediately preceding the submission of the report. The report shall be made until two complete fiscal years have elapsed following payment in full for the acquisition of the automated tax administration system by the tax commissioner.

(d) Other contracts and purchases not prohibited or hindered.—This article shall not be construed to prohibit or hinder the tax commissioner from acquiring any goods or services for any tax division function or program not specifically included in any contract entered into pursuant to this article.

§11-10C-5. Transfer of funds; repeal of article.

At the end of fiscal year two thousand thirteen, all moneys in the automated tax administration system development fund shall be transferred to the general fund and the provisions of this article are repealed.
CHAPTER 51

(Com. Sub. for H. B. 2480 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulatory authority of the commissioner of banking over residential mortgage brokers and lenders and the commissioner’s authority to assess civil administrative penalties and to expend funds to foster consumer understanding of mortgage laws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner has supervision and jurisdiction over state banks, regulated consumer lenders, residential mortgage lenders and brokers licensed pursuant to article seventeen, chapter thirty-one of this code, credit unions and all other persons now or hereafter made subject to his or her
supervision or jurisdiction. All powers, duties, rights and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the division of banking and is responsible for the division's organization, services and personnel and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the division of banking. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate, and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner and extent
the other records in his or her office and the information contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and

(4) Require a criminal background investigation, including fingerprint checks, of each: (A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office; (B) applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under article two, chapter thirty-two-a of this code; (C) applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending or brokering; and (D) division of banking financial institutions regulatory employee applicant, to be made through the West Virginia state police and the federal bureau of investigation: Provided, That where the applicant is a company or entity already subject to supervision and regulation by the federal reserve board or other federal bank, thrift or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal securities and exchange commission whose stock is publicly traded on a registered exchange or through the national association of securities dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for
the purpose of facilitating the acquisition of another bank pursuant to section five, article four of this chapter: Provided, however, That where a nonexempt applicant under this subdivision is not a natural person, the principals of the applicant are subject to the requirements of this subdivision. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee or other person controlling the conduct of the affairs of a licensee. A person controlling ten percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner may:

(1) Provide for the organization of the division and the procedures and practices of the division and implement the procedures and practices by the promulgation of rules and forms as appropriate and the rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant examiners, conservators and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other
meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports and information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;
(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, receive from any person or persons and consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act on the request, petition or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;
(9) Issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) Study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) Implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as long as the rules do not conflict with any rules promulgated by the state's attorney general;

(13) Foster and encourage a working relationship between the division of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions and any other forms and printed materials found by
him or her to be helpful to financial institutions, their shareholders, depositors and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other division personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;
(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not more than five thousand dollars per day for each violation: Provided, That all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any assessment of a penalty under this subsection;

(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending; and

(19) Take other action as he or she may consider necessary to enforce and administer the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce and apply to any court of competent jurisdiction for appropriate orders, writs, processes and remedies.

CHAPTER 52

(S. B. 190 — By Senators Minard, Sharpe, Jenkins, Rowe and Sprouse)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
thirty-one, as amended, relating to the bank examination schedule for certain banking institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

The commissioner shall make, at least once every twelve months, a thorough examination of all the books, accounts, records and papers of every depository financial institution with: (1) Assets of more than two hundred fifty million dollars; or (2) banks with a composite rating of three, four or five under the federal uniform financial institution rating system. For all other depository financial institutions the commissioner of banking shall make, at least once every eighteen months, a thorough examination of all the books, accounts, records and papers. He or she shall carefully examine all of the assets of each such institution, including its notes, drafts, checks, mortgages, securities deposited to assure the payment of debts unto it and all papers, documents and records showing, or in any manner relating to, its business affairs, and shall ascertain the full amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his or her discretion, make or cause to be made an annual or periodic examination of the books, accounts, records and papers of other financial institutions under his or her supervision for the purposes of determining compliance with applicable consumer and credit
lending laws and verifying information provided in any license
application or annual report submitted to the commissioner. The
commissioner may also make such examination of any subsid-
iaries or affiliates of a financial institution as he or she may
dean necessary to ascertain the financial condition of the
financial institution, the relations between the financial institu-
tion and its subsidiaries and affiliates and the effect of the
relations upon the affairs of such financial institution. A full
report of every examination shall be made and filed and
preserved in the office of the commissioner and a copy thereof
forthwith mailed to the institution examined. Every institution
shall retain all of its records of final entry for the period of time
as required in section thirty-five, article four of this chapter for
banking institutions. Unless otherwise covered by assessments
or a specific provision of this code, the cost of examinations
made pursuant to this section shall be borne by the financial
institution at a rate of fifty dollars per each examiner hour
expended.

Every official communication from the commissioner to
any institution, or to any officer thereof, relating to an examina-
tion or an investigation of the affairs of the institution con-
ducted by the commissioner or containing suggestions or
recommendations as to the manner of conducting the business
of the institution, shall be read by the board of directors at the
next meeting after the receipt thereof and the president, or other
executive officer, of the institution shall forthwith notify the
commissioner in writing of the presentation and reading of the
communication and of any action taken thereon by the institu-
tion.

The commissioner of banking, in his or her discretion, may:
(a) Accept a copy of a reasonably current examination of any
banking institution made by the federal deposit insurance
corporation or the federal reserve system in lieu of an examina-
tion of the banking institution required or authorized to be made
by the laws of this state and the commissioner may furnish to the federal deposit insurance corporation or the federal reserve system or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; (b) accept a copy of a reasonably current examination of any out-of-state bank or any West Virginia state bank's out-of-state activities made by another state's banking regulatory authority in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to such other state's banking regulatory authority or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on such banking institutions; but nothing herein shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws. The provision or exchange of examination reports and other records of financial condition and individuals pursuant to cooperative, coordinating or information-sharing agreements with other bank supervisory agencies and persons as permitted by this chapter under an agreement of confidentiality shall not constitute a violation of section four of this article.

CHAPTER 53

(Com. Sub. for H. B. 2443 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the assessment of banking institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner’s assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the “commissioner’s assessment and examination fund” which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the division of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the division of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution
20 or bank holding company and pay into a special revenue
21 account in the state treasury for the division of banking assess-
22 ments as follows:

23 (1) For each state banking institution, a semiannual
24 assessment payable on the first day of January and the first day
25 of July, each year, computed upon the total assets of the
26 banking institution shown on the report of condition of the
27 banking institution filed as of the preceding thirtieth day of
28 June and the thirty-first day of December, respectively, as
29 follows:

30 Total Assets

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<th>But Not Over Million</th>
<th>This Amount</th>
<th>Of Excess Plus</th>
<th>Over Million</th>
</tr>
</thead>
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34 (2) For each regulated consumer lender, an annual assess-
35 ment payable on the first day of July, each year, computed upon
36 the total outstanding gross loan balances and installment sales
37 contract balances net of unearned interest of the regulated
38 consumer lender shown on the report of condition of the
39 regulated consumer lender as of the preceding thirty-first day of
40 December, respectively, as follows:
50  **Total Outstanding Balances**

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<th>Of Excess Over</th>
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</thead>
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57  If a regulated consumer lender’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

61  (3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:

64  **Total Assets**

<table>
<thead>
<tr>
<th>Over</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Over</th>
</tr>
</thead>
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<tr>
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<td>-</td>
<td>3,100</td>
<td>.000100</td>
</tr>
</tbody>
</table>

73  (4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.
(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments may be prescribed every six months, not later than the fifteenth day of June and the fifteenth day of December, by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.
(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

CHAPTER 54

(H. B. 2514 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the board of banking and financial institutions to remove directors, officers or employees of financial institutions and prohibit them from participating in the conduct of affairs of other financial institutions.

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 to read as follows:
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. (1) Regulate its own procedure and practice;

2. (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. (3) Advise the commissioner in all matters within his or her jurisdiction;

4. (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. (5) Grant permission and authority to a financial institution:

6. (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;

7. (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 regulations 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 participation, 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 and prohibit that director, officer or employee from participating in the affairs of any other financial institution until further order of the board;
(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 consolidation 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 applications, 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 subdivision (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 ownership 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.

CHAPTER 55

(H. B. 2441 — By Delegates R. M. Thompson, Perry and G. White)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section three, article four, 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 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

(a) No banking institution may hereafter be incorporated unless it shall have bona fide subscribed capital stock and capital surplus equal to at least four million dollars. The West Virginia board of banking and financial institutions shall require capital in excess of four million dollars if, in its judgment, economic conditions or the operating environment of the proposed banking institution, make such a requirement necessary.

(b) Notwithstanding any provision of subsection (a) above, the commissioner or the West Virginia board of banking and financial institutions may approve the incorporation of a bank newly organized solely for the purpose of facilitating the acquisition of another bank if the proposed newly organized bank has a bona fide subscribed capital stock and capital surplus of at least sixty thousand dollars.

(c) Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than one dollar nor more than one hundred dollars each, and as to each banking institution each share shall be equal in all respects with any other share.

(d) Any banking institution may change the par value of its shares, when and to the extent that any such action may be authorized in writing by the commissioner.
AN ACT to amend and reenact section seven, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the notice required from bank holding companies that apply for financial holding company status.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-7. Reports; examinations.

(a) To the extent specified by the commissioner by rule, order or written request, each bank holding company that directly or indirectly controls a West Virginia bank, bank branch in West Virginia or a West Virginia bank holding company shall submit to the commissioner an annual report specifying for each bank and branch (excluding automated teller machines) in this state controlled by the bank holding company.
(i) The location of each office, including county and, where applicable, municipality;

(ii) The amount of deposits held by each office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each office at the end of the preceding calendar year.

The foregoing report shall be based upon each bank's allocation of its deposit base and loan portfolio among its main office and branches. The report shall be filed with the commissioner on or before the fifteenth day of February of each year on forms prescribed by the commissioner.

(b) A parent bank holding company controlling a bank or bank holding company having, or through a subsidiary having, a place of business in this state shall, on or before the thirty-first day of March of each year, register with the commissioner on forms provided or prescribed by said office which shall include such information with respect to the financial condition, operation, management and intercompany relationships of the parent bank holding company and its subsidiaries and related matters as the commissioner may consider necessary or appropriate to carry out the purposes of this article. The information required herein may be supplied by submission of copies of other similar federal or state regulatory filings or forms containing the information unless otherwise required by order or rule.

(c) The commissioner may enter into cooperative agreements with any other bank supervisory agencies to facilitate the examination of any bank holding company that: (i) Has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to this article; or (ii) operates a subsidiary doing business in this state which is subject to the jurisdiction or supervision of the
commissioner. The commissioner may accept reports of examinations and other records from other authorities in lieu of conducting his or her own examination of the bank holding companies or their subsidiaries. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over the bank holding companies or subsidiaries or may take action independently in order to carry out his or her responsibilities under this chapter.

(d) When the commissioner considers it necessary, he or she may require any bank holding company that has acquired a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company to submit the reports to the commissioner as he or she determines to be necessary or appropriate for the purpose of carrying out his or her responsibilities.

(e) When the commissioner of banking considers it necessary or appropriate, he or she may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company. The cost of an examination in connection with an application, if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of the examination. The cost of an examination for a bank holding company controlling a West Virginia bank or West Virginia bank holding company regarding compliance with the law of this state or safe and sound banking practices shall be assessed against and paid by the bank holding company examined.

(f) Any parent bank holding company or bank holding company having, or through a subsidiary having, a place of business in this state, shall provide the commissioner with
notice of any filing it makes with the board of governors of the federal reserve to declare its intent to become a financial holding company. The notice required herein may be met by filing copies of the federal filings or forms containing the information filed with the board of governors of the federal reserve and shall be filed with the commissioner no later than two weeks after the date the declaration of intent is filed with the federal reserve.

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CHAPTER 57

(S. B. 189 — By Senators Minard, Sharpe and Jenkins)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article eight-e, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the requirement of notice and conditions for approval of out-of-state bank applications to establish bank branches in West Virginia; alternate method of providing notice to the commissioner; and removal of the commissioner’s right to object to branch proposals upon grounds purely dealing with the procedures of the out-of-state bank’s supervisory agency.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article eight-e, chapter thirty-one-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 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.
§31A-8E-5. Requirement of notice.

An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this state pursuant to this article shall provide written notice of the proposed transaction to the commissioner not later than the date on which the bank applies to the responsible federal or state bank supervisory agency for approval to establish the branch. The out-of-state bank may comply with this requirement by filing an additional copy of its branch application with its home state regulator and requesting that the home state regulator provide the copy to the commissioner. The commissioner may notify the home state regulator that the out-of-state bank must pay to the West Virginia division of banking a fee of up to two hundred fifty dollars.

§31A-8E-6. Conditions for approval.

No branch of an out-of-state bank may be established in this state under this article unless the bank or its home state regulator:

(a) Confirms in writing to the commissioner that as long as it maintains a branch in West Virginia, the out-of-state bank will comply with all applicable laws of this state, including consumer protection laws and any acquisition deposit limitations, as well as maintenance of deposit insurance and capital requirements in the same manner as required for West Virginia state banks.

(b) Provides satisfactory evidence to the commissioner of compliance with the applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia.
(c) The commissioner, acting within thirty days after receiving notice of an application under section five of this article, or within seven days after a decision if a hearing is held, certifies to the responsible federal bank supervisory agency that the requirements of this article have been met. Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice to object to the proposed transaction and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner or, in his or her discretion, the commissioner may, at any time, consent in writing.

CHAPTER 58

(Com. Sub. for S. B. 191 — By Senators Minard, Sharpe and Jenkins)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter thirty-one-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure for a state-chartered credit union to convert to a federal charter or a charter of another state; removing the requirement of having a hearing; and increasing the period of required notice to members prior to voting on the issue of conversion.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, chapter thirty-one-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 10. CHANGE IN CORPORATE STATUS.

§31C-10-3. Conversion.

(a) A credit union incorporated under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States by complying with the following requirements:

1. The proposition for the conversion shall first be approved and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date) by a majority of the directors of the West Virginia state credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than sixty or less than fourteen days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of two thirds of the members voting in person or in writing;

2. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the commissioner of banking within ten days after the vote is taken; however, no West Virginia state-chartered credit union may convert its charter to that of another state unless: (i) The conversion is approved by the commissioner of banking in writing after notice; (ii) the other state allows conversions of its credit unions to a West Virginia state charter on a reciprocal basis; and (iii) the majority, or in the event the credit union operates offices in more than two states, the plurality, of the credit union’s members are residents of that other state. To the extent that an out-of-state credit union created by conversion seeks to conduct business through a
branch or service facility in West Virginia, the provisions of section six, article two of this chapter shall apply;

(3) Promptly after the commissioner of banking has approved the conversion in writing, and in no event later than ninety days thereafter, the credit union shall take such action as may be necessary under the applicable federal or state law to make it a federal credit union or credit union of another state and within ten days after receipt of the federal credit union charter or out-of-state credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing, the credit union shall cease to be a West Virginia state-chartered credit union;

(4) The successor federal credit union or out-of-state chartered credit union shall be vested with all the assets and shall continue to be responsible for all of the obligations of the West Virginia state credit union to the same extent as though the conversion had not taken place.

(b) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the laws and rules of this state and file proof of compliance with the commissioner. The commissioner shall generally treat the conversion to a West Virginia state-chartered credit union as a formation of a new credit union pursuant to article two of this chapter and the procedures and requirements therein shall be followed to the extent applicable.
AN ACT to amend and reenact sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to worthless checks; and increasing the allowable service charge for a dishonored check.

Be it enacted by the Legislature of West Virginia:

That sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-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 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.
§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

§61-3-39e. Notice of dishonor by payee; service charge.

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any dishonored check may impose a fee of up to twenty-five dollars a worthless check. This fee may not be imposed or collected after a complaint for warrant has been
delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of the notice shall be substantially as follows:

“You are hereby notified that a check, number ................., issued by you on (date of check), drawn upon (name of bank), and payable to ......................, has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of the check plus a fee of $.................... (not to exceed twenty-five dollars a worthless check) to the undersigned at ...................... You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated ......................, 20.....

........................................
(Signed).”

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order.

The holder or payee of any check, draft or order shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through the court and any holder or payee unlawfully accepting payment after that time shall be liable for all costs which may be imposed by the magistrate court in the
matter, including all costs which may have accrued by the time
the magistrate court is notified of the payment.

§61-3-39g. Complaint; notice of complaint; issuance of warrant;
payment procedures; costs.

After receipt of a complaint for warrant for a violation of
section thirty-nine or thirty-nine-a of this article the magistrate
court shall proceed with the issuance of the warrant as is
provided by law: Provided, That no warrant may issue for an
offense under section thirty-nine or thirty-nine-a of this article
which, upon conviction, would be punishable as a misde-
meanor, unless the payee or holder of the check, draft or order
which has been dishonored has sent notice thereof to the drawer
of the check, draft or order in accordance with the provisions of
section thirty-nine-e of this article, or unless notice has been
sent by the magistrate as hereinafter provided. Proof that the
notice was sent by the payee or holder may be evidenced by
presentation of a return receipt indicating that the notice was
mailed to the drawer by certified mail, or, in the event the
mailed notice was not received or was refused by the drawer, by
presentation of the mailed notice itself. The magistrate court
shall receive and hold the check, draft or order.

Upon receipt of a complaint for a misdemeanor warrant
unaccompanied by proof that notice was sent by the payee or
holder, the magistrate court shall immediately prepare and mail
to the drawer of the check, draft or order a notice in form
substantially as follows. The magistrate court shall impose any
service charge reflected in the complaint as having been
imposed on the payee or holder by the payee's or holder's bank
or financial institution in connection with the check, draft or
order and additional court costs in the amount of twenty-five
dollars. This notice shall be mailed to the drawer by United
States mail, first class and postpaid, at the address provided at
the time of presenting the check, draft or order. Service of this
notice is complete upon mailing. The notice shall be in form substantially as follows:

"You are hereby notified that a complaint for a warrant for your arrest has been filed with this office to the following effect and purpose by .............. who upon oath complains that on the ...... day of .............., 20...., you did unlawfully issue and deliver unto him a certain check, draft or order in the amount of .............. drawn on ....................................... (name of bank or financial institution) ................. where you did not have funds on deposit in or credit with the bank or financial institution with which to pay the check, draft or order upon presentation and pray that a warrant issue and that you be apprehended wherever you may be found by an officer authorized to make an arrest and dealt with in accordance with the laws of the state of West Virginia.

"A warrant for arrest will be issued on or after the .......... day of .............., 20......

"You can nullify the effect of this complaint and avoid arrest by paying to the magistrate court clerk at .......... the amount due on the check, draft or order; service charges imposed on the payee or holder by the payee’s or holder’s bank or financial institution in connection with the check, draft or order in the amount of ..........; and the costs of this proceeding in the amount of twenty-five dollars on or before the .......... day of .............., 20......, at which time you will be given a receipt with which you can obtain the check, draft or order from the magistrate court. The complainant is forbidden by law to accept payment after the complaint is filed.

Magistrate Court of .............. County

Date: .............................."
This notice shall give the drawer of any such check, draft or order ten days within which to make payment to magistrate court. In the event the drawer pays the total amount set forth in the notice to the magistrate court within the ten-day period, no warrant may issue. The payment may be made to the magistrate court in person or by mail by cash, certified check, bank draft or money order and, in the event the payment is made by mail, the magistrate court clerk shall immediately mail to the maker of the check, draft or order the receipt required by this section. In the event the total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by law.

Upon receipt of payment of the total amount the magistrate court clerk shall issue to the drawer a receipt sufficiently describing the check, draft or order with which receipt the drawer is entitled to receive the dishonored check, draft or order from the magistrate court holding it. The magistrate court clerk shall forward the amount of the check, draft or order, together with any service charge reflected on the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order, to the payee or holder thereof, along with a description of the check, draft or order sufficient to enable the person filing the complaint to identify it and the transaction involved. Costs collected shall be dealt with as is provided by law for other criminal proceedings.

The drawer of a check, draft or order against whom a warrant has been issued may at any time prior to trial pay to the court the amount of the check, draft or order; any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order; and the court costs which would be assessed if the person were found guilty of the offense charged. These costs shall be imposed in accordance with the provisions of section two, article three, chapter fifty of this code.
AN ACT to amend and reenact sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; lowering amount of tax credits available; making a portion of the venture capital company tax credit available to investors in economic development and technology advancement centers generally; declaration of policy; definitions; providing for tax credits for centers; and authorizing promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-2. Declaration of policy.
§5E-1-4. Definitions.
§5E-1-5. Rules.
§5E-1-8. Tax credits.

§5E-1-2. Declaration of policy.
(a) The Legislature finds and declares that the West Virginia economy can be strengthened by promoting private investment in West Virginia businesses.

(b) The Legislature further finds that:

(1) Investment of capital in the West Virginia economy can be promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

(2) Economic development in the West Virginia economy can be stimulated and higher education can be promoted by making tax credits available to taxpayers investing in economic development and technology advancement centers organized to partner with institutions of higher education and qualified pursuant to the provisions of article twelve-a, chapter eighteen-b of this code.

(3) Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives;

(4) Establishment of a tax credit program, which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage investment in West Virginia businesses; and

(5) The promotion of private investment in West Virginia businesses will tend to reduce unemployment by creating new or maintaining existing employment opportunities for the citizens of this state.

§5E-1-4. Definitions.
As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(a) "Authority" means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) "Capital base" means equity capital or net worth.

c) "Certified West Virginia capital company" means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments that has been certified by the authority.

(d) "Qualified investment" means a debt or equity financing of a West Virginia business, but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; service industry; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; computer software development companies engaged in the creation of computer software; and wholesale or retail distribution activities within the state. The investment by a West Virginia capital company in purchases of property to be leased by it, as lessor, through a capital lease to a West Virginia business lessee engaged in one of the above enumerated activities is a qualified investment.
(e) "Qualified West Virginia capital company" means a West Virginia capital company that has been designated by the authority as a qualified capital company under the provisions of section six of this article.


(g) "State" means the state of West Virginia.

(h) "Capital lease" means a lease meeting one or more of the following criteria:

1. The lease transfers ownership of the property to the lessee at the end of the lease term by the lessee’s exercise of a purchase option which is de minimis in amount; or

2. The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used; or

3. Under generally accepted accounting principles, the lessee cannot treat payments to the capital company as payments under an operating lease; or

4. For federal income tax purposes, the parties are required to treat payments as amortization of principal and interest.

(i) "Economic development and technology advancement center" or "center" means an economic development and technology advancement center organized and operating under the laws of this state which has been designated by the authority
§5E-1-5. Rules.

The authority shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article. The authority may promulgate additional rules in accordance with article three, chapter twenty-nine-a of this code that it considers necessary to provide for the efficient administration of the credits allowed for investments in economic development and technology advancement centers.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. The total amount of tax credits authorized for a single economic development and technology advancement center may not exceed one million dollars. Capitalization of the company or center may be increased pursuant to rule of the authority.

(b) (1) The total credits authorized by the authority for all companies and centers may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total credits authorized for all companies may not exceed a total of four million dollars: Provided further, That for the fiscal year beginning on the first day of July, two thousand one, the total credits authorized for all companies may not
exceed a total of four million dollars: And provided further, that for the fiscal year beginning on the first day of July, two thousand two, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, that for the fiscal year beginning on the first day of July, two thousand three, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, that the capital base of any qualified company other than an economic development and technology advancement center qualified under the provisions of article twelve-a, chapter eighteen-b of this code shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies and centers in the order that the companies are qualified.

(2) Not more than two million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision. After a portion of the credits are allocated to small business investment companies as provided in this section, not more than one million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more economic development and technology advancement centers qualified by the authority under article twelve-a, chapter eighteen-b of this code. The remainder of the tax credits allowed during the fiscal year shall be allocated by the authority under the provisions of section four, article two of this chapter. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year and may only be allocated to companies that: (A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) are licensed by the small business administration as a small business investment company under the small business
investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified. The portion of the tax credits allowed for economic development and technology advancement centers described in article twelve-a, chapter eighteen-b of the code shall be similarly allowed only if allocated by the authority during the first ninety days of the fiscal year. Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies or to qualified economic development and technology advancement centers during the first ninety days of the fiscal year shall be made available and allocated by the authority under the provisions of section four, article two of this chapter.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity who makes a capital investment in a qualified West Virginia capital company is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article: Provided, That the tax credit available to investors who make a capital investment in an economic development and technology advancement center shall be one hundred percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership, limited liability company, a corporation electing to be treated as a subchapter S corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be
(d) The tax credit allowed under this section is to be credited against the taxpayer’s tax liability for the taxable year in which the investment in a qualified West Virginia capital company or economic development and technology advancement center is made. If the amount of the tax credit exceeds the taxpayer’s tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: *Provided, That:* (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

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

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

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

1. More than $1.00, but not more than $50,000;
2. More than $50,000, but not more than $100,000;
3. More than $100,000, but not more than $250,000;
AN ACT to amend and reenact section forty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child passenger safety seats, booster seats and safety devices; requiring every driver transporting children less than nine years of age in certain motor vehicles to maintain and secure the child in a child passenger safety seat or booster seat or other safety device meeting federal motor vehicle safety standards; and providing that a seat belt meets this requirement for children at least four years of age or over forty pounds in weight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

Every driver who transports a child under the age of nine years in a passenger automobile, van or pickup truck other than one operated for hire shall, while such motor vehicle is in motion and operated on a street or highway of this state, provide for the protection of such child by properly placing, maintaining and securing such child in a child passenger safety device system meeting applicable federal motor vehicle safety standards: Provided, That if a child is at least four years of age or at least forty pounds in weight, a safety belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars.

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.

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver shall not be considered as violating this section.
AN ACT to repeal sections one hundred ten and one hundred eleven, article seventeen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred one, one hundred two, one hundred seven and one hundred nine, article seventeen of said chapter; and to amend and reenact section one hundred five, article eighteen of said chapter, all relating to child support enforcement; providing for the membership, duties and powers of the support enforcement commission; and providing for the general duties and powers of the bureau for child support enforcement.

Be it enacted by the Legislature of West Virginia:

That sections one hundred ten and one hundred eleven, article seventeen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one hundred one, one hundred two, one hundred seven and one hundred nine, article seventeen of said chapter, be amended and reenacted; and that section one hundred five, article eighteen of said chapter be amended and reenacted, all to read as follows:

Article

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of support enforcement commission; number of members.
§48-17-101. Creation of support enforcement commission; number of members.

The West Virginia support enforcement commission, consisting of eight members, is hereby created in the department of health and human resources and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the department of health and human resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter.

The commission is a part-time commission whose members perform such duties as specified in this chapter. The ministerial duties of the commission shall be administered and carried out by the commissioner of the bureau for child support enforcement, with the assistance of such staff of the department of health and human resources as the secretary may assign.

Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the six members appointed by the governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the commissioner are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b [§§ 6-9A-1 et seq., §§ 6B-1-1 et seq., §§ 29A-1-1 et seq. and §§ 29B-1-1 et seq.] of this code.

§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.
(a) Of the eight members of the commission, seven members are to be appointed by the governor: Provided, That no more than five members of the commission may belong to the same political party.

(1) One member is to be a lawyer licensed by, and in good standing with, the West Virginia state bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(2) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;

(3) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

(4) One member is to be a practicing family court judge, as an ex-officio member, who will serve in an advisory capacity, without compensation or voting rights; and

(5) Three members are to be representatives of the public at large, with at least one being an obligor and one being an obligee.

(b) One member is to be the commissioner of the bureau for children and families, department of health and human resources, or his or her designee.

(c) Each member of the commission is to be a citizen of the United States, a resident of the state of West Virginia and at least twenty-one years of age.

§48-17-107. Meeting requirements.

(a) The commission shall meet within the state at least twice per calendar year and at such other times as the chairman may decide. The commission shall also meet upon a call of four
or more members upon seventy-two hours written notice to each member.

(b) Four members of the commission are a quorum for the transaction of any business and for the performance of any duty.

(c) A majority vote of the members present is required for any final determination by the commission.

d) The commission may elect to meet in executive session after an affirmative vote of a majority of its members present according to section four [§ 6-9A-4], article nine-a, chapter six of this code;

e) The commission shall keep a complete and accurate record of all its meetings according to section five [§ 6-9A-5], article nine-a, chapter six of this code.

§48-17-109. General duties of support enforcement commission.

The support enforcement commission shall have general responsibility to review and provide comment to the bureau for child support enforcement on its policies and procedures for obtaining and enforcing support orders and establishing paternity according to this chapter, as hereinafter provided, including, without limitation, the responsibility for the following:

(a) To serve as a clearinghouse for information;

(b) To keep a record of all commission proceedings available for public inspection;

(c) To file a written annual 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
such additional reports as the governor or Legislature may request;

(d) To apply for grants;

(e) To form partnerships with state institutions of higher learning;

(f) The commission shall conduct the federally required review [45 C.F.R. 302.56(C)(3)(e)] of the child support formula every four years and make a report to the Legislature of their findings.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-105. General duties and powers of the bureau for child support enforcement.

In carrying out the policies and procedures for enforcing the provisions of this chapter, the bureau shall have the following power and authority:

(1) To establish policies and procedures for obtaining and enforcing support orders and establishing paternity according to this chapter;

(2) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;

(3) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

(4) To undertake directly, or by contract, activities to collect and disburse support payments;

(5) To contract for professional services with any person, firm, partnership, professional corporation, association or other
(6) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys’ professional responsibilities as established in the rules of professional conduct as promulgated by the supreme court of appeals;

(7) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(8) To ensure the compliance of contractors and their employees with the provisions of this chapter, and to terminate, after notice and hearing, the contractual relationship between the bureau and a contractor who fails to comply;

(9) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(10) To locate parents who owe a duty to pay child support;

(11) To cooperate with other agencies of this state and other states to search their records to help locate parents;

(12) To cooperate with other states in establishing and enforcing support obligations;

(13) To exercise such other powers as may be necessary to effectuate the provisions of this chapter;
To establish and maintain procedures under which expedited processes, administrative or judicial are in effect for obtaining and enforcing support orders and establishing paternity according to this chapter;

To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code as are required by this chapter: Provided, That all rules which are in effect at the time of the implementation of this section shall continue in full force and effect until the commissioner of the bureau for child support enforcement promulgates a rule or rules regarding the same subject matter;

To adopt standards for staffing, record-keeping, reporting, intergovernmental cooperation, training, physical structures and time frames for case processing;

To review the state plan for child and spousal support to determine its conformance or nonconformance with the provisions of 42 U.S.C. § 654;

To cooperate with judicial organizations and the private bar to provide training to persons involved in the establishment and enforcement of child support orders; and

To promulgate legislative rules pursuant to chapter twenty-nine-a [§§29A-1-1] of this code which may aid the bureau for child support enforcement in the establishment and enforcement of child support orders. In addition to the specific designation of such rules that constitute emergency rules within the meaning of section fifteen [§29A-3-15], article three, chapter twenty-nine-a of this code, the commissioner may promulgate other rules as emergency rules when such rule is necessary to ensure that the state is awarded federal funds for the actions described in the rule or when the promulgation of such rule is necessary to prevent substantial harm to the public
75 interest by ensuring that child support is timely collected and
76 disbursed.

CHAPTER 63

(Com. Sub. for S. B. 364 — By Senators Prezioso, Unger, Rowe, Kessler, Helmick, Caldwell, Plymale, Sharpe, Ross, Dempsey, Love, Hunter, Sprouse, Minard, Jenkins, Fanning, White, McCabe, Bowman, Minear and Tomblin, Mr. President)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and twenty-one, article five, chapter forty-nine 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 sixteen-b; to amend and reenact section three, article five-d of said chapter; and to further amend said article by adding thereto two new sections, designated sections three-a and eight, all relating to child welfare and juvenile justice generally; requiring notice of certain proceedings to the department of health and human resources and the division of juvenile services for purposes of multidisciplinary hearings; providing for greater involvement of multidisciplinary teams in juvenile and abuse and neglect proceedings; providing that quarterly judicial reviews be continued while child remains in custody; exceptions to meeting requirement; providing for when offenses are committed while in custody; providing for recommended court orders; requiring that recommended service plans be considered; requiring written findings when order deviates from treatment team’s recommended plan; and affording multidisciplinary treatment team notice and opportunity to present evidence.
Be it enacted by the Legislature of West Virginia:

That sections seven and twenty-one, article five, chapter forty-nine 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 sixteen-b; that section three, article five-d of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three-a and eight, all to read as follows:

Article
5D. Multidisciplinary Teams.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

§49-5-16b. Conviction for offense while in custody.

§49-5-21. Quarterly judicial review of juvenile proceedings.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

(a) (1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the juvenile’s parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred: Provided, That any proceeding under this chapter may be removed, for good cause shown, in accordance with the provisions of section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged
(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing as provided in section nine of this article and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless such respondent cannot be found after diligent search. If any such respondent cannot be found after diligent search, the court may proceed without further requirement of notice: Provided, That the court may order service by first class mail to the last known address of such respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court or referee.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the
court or referee shall forthwith cause the juvenile and his or her
parents, guardians or custodians to be served with a petition as
provided in subsections (a) and (b) of this section. In the event
the juvenile is in custody, the petition shall be served upon the
juvenile within ninety-six hours of the time custody began and
if the petition is not served within that time, the juvenile shall
be released forthwith.

(e) The clerk of the court shall promptly notify the local
office of the department of health and human resources of all
proceedings under this article, which shall then be responsible
for convening and directing the multidisciplinary treatment
planning process in accordance with the provisions of section
three, article five-d of this chapter: Provided, That in status
offense or delinquency cases where a case manager has not
been assigned, the juvenile probation officer shall be responsi-
ble for notifying the local office of the department of health and
human services which will assign a case manager who will
initiate assessment and be responsible for convening and
directing the multidisciplinary treatment planning process.

§49-5-16b. Conviction for offense while in custody.

Notwithstanding any other provision of law to the contrary,
any person who is eighteen years of age or older who is
convicted as an adult of an offense that he or she committed
while in the custody of the division of juvenile services and
who is therefor sentenced to a regional jail or state correctional
facility for said offense may not be returned to the custody of
the division upon the completion of his or her adult sentence
until a hearing is held before the court which committed the
person to the custody of the division of juvenile services at
which hearing the division may present any objections it may
have to return the person to its custody. If the division does
object and the court overrules the division’s objections, it shall
make specific written findings as to its rationale for overruling
the objections: *Provided*, That no person who is eighteen years of age or older who is convicted as an adult of a felony crime of violence against the person while in the custody of the division of juvenile services be returned to the custody of the division of juvenile services upon completion of his or her adult sentence.

§49-5-21. Quarterly judicial review of juvenile proceedings.

For cases under this article in which the provisions of section three, article five-d of this chapter apply, the court wherein the juvenile proceeding is pending shall conduct regular judicial review of the case with the multidisciplinary treatment team and a juvenile probation officer in attendance. Such judicial review may be conducted as often as is considered necessary by the court, but shall be conducted at least once every three calendar months as long as the child remains in the legal or physical custody of the state.

In conducting the judicial review required by this section, the court shall address the extent of progress in the case, treatment and service needs, permanent placement planning for the juvenile, any uncontested issues and any other matters that the court considers pertinent. An order reflecting the matters considered, any uncontested rulings and the scheduling of an evidentiary hearing on any contested issue shall be issued by the court within ten judicial days of the judicial review.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

§49-5D-8. Exemption from multidisciplinary team review for emergency out-of-home placements.

§49-5D-3. Multidisciplinary treatment planning process.
(a) (1) On or before the first day of January, one thousand nine hundred ninety-five, a multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code.

(2) Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children for juveniles and their families involved in status offense or delinquency proceedings when, in a status offense proceeding, the court refers the juvenile for services pursuant to sections eleven and eleven-a, article five of this chapter and when, in a delinquency proceeding, the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to the provisions of section thirteen of said article. In any such status offense or delinquency case, the juvenile probation officer shall notify the local office of the department of health and human resources and the division of juvenile services at least five working days before the court proceeding in order to allow the multidisciplinary treatment team to convene and develop a comprehensive individualized service plan for the child: Provided, That such notice is not required in cases where the child is already in state custody or there exist exigent circumstances which justify taking the child immediately into custody without a judicial proceeding.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child.
(b) Each treatment team shall be convened and directed by the child’s or family’s case manager. The treatment team shall consist of the child’s custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the parent or parents of the child, the guardian ad litem, if any, the prosecuting attorney or his or her designee and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile probation officer shall be a member of the treatment team.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) State, county and local agencies shall provide the multidisciplinary treatment teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term “confidential” shall be construed in accordance with the provisions of section one, article seven of this chapter.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

In any case in which a multidisciplinary treatment team develops an individualized service plan for a child pursuant to
the provisions of section three of this article, the court shall
review the proposed service plan to determine if implementa-
tion of the plan is in the child’s best interests. If the court
determines not to adopt the team’s recommendations, it shall,
sua sponte, schedule and hold within ten days of such determi-
nation, and prior to the entry of an order placing the child in the
custody of the department or in an out-of-home setting, a
hearing to consider evidence from the team as to its rationale
for the proposed service plan. If, after a hearing held pursuant
to the provisions of this section, the court does not adopt the
team’s recommended service plan, it shall make specific written
findings as to why the team’s recommended service plan was
not adopted.

§49-5D-8. Exemption from multidisciplinary team review for
emergency out-of-home placements.

Notwithstanding any provisions of this article to the
contrary, a multidisciplinary team recommendation shall not be
required for temporary out-of-home placement of a child in an
emergency circumstance or for purposes of assessment as
provided for by the provisions of this article.

CHAPTER 64

(H. B. 3018 — By Delegates Beane, G. White, Paxton,
Mezzatesta and Stalnaker)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six-a, chapter
forty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to changing the amount of time that department of health and human resources must retain child protective services' records from six years to thirty years.

Be it enacted by the Legislature of West Virginia:

That section five, article six-a, 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 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-5. Reporting procedures.

1 Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

9 A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential and unless there are pending proceedings with regard thereto shall be destroyed thirty years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.
CHAPTER 65

(S. B. 535 — By Senators Kessler, Snyder, Fanning, Rowe, Ross, Deem, McKenzie, Smith, White, Harrison, Weeks and Hunter)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-nine and thirty, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to clarifying that foster care services do not constitute behavioral health care services; and directing the West Virginia supreme court of appeals and department of health and human resources to promulgate court orders for out-of-home placements.

Be it enacted by the Legislature of West Virginia:

That sections twenty-nine and thirty, article seven, chapter forty-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 7. GENERAL PROVISIONS.

§49-7-29. General provisions relating to court orders regarding custody; promulgation of rules.

§49-7-30. Certificate of need not required.

§49-7-29. General provisions relating to court orders regarding custody; promulgation of rules.

1 The supreme court of appeals, in consultation with the department of health and human resources and the division of juvenile services in order to eliminate unnecessary state funding of out-of-home placements where federal funding is available, shall develop and cause to be disseminated no later than the
first day of July, two thousand three, form court orders to effectuate provisions of chapter forty-nine of this code which authorize disclosure and transfer of juvenile records between agencies while requiring maintenance of confidentiality, the provisions of Title 142 U. S. C. Section 620, *et seq.*, and Title 42 U. S. C. Section 670, *et seq.*, relating to the promulgation of uniform court orders for placement of minor children and the regulations promulgated thereunder, for use in the magistrate and circuit courts of the state.

Circuit judges and magistrates, upon being supplied the form orders required by the provision of this section, shall act to ensure the proper form order is entered in such case so as to allow federal funding of eligible out-of-home placements.

§49-7-30. Certificate of need not required.

(a) A certificate of need, as provided for in article two-d, chapter sixteen of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, if a summary review is performed in accordance with the provisions of this section.

(b) A summary review of proposed health care facilities or health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, is initiated when the proposal is recommended to the health care cost review authority by the secretary of the department of health and human resources and the secretary has made the following findings:

(1) That the proposed facility or service is consistent with the state health plan;
(2) That the proposed facility or service is consistent with the department’s programmatic and fiscal plan for behavioral health services for children with mental health and addiction disorders;

(3) That the proposed facility or service contributes to providing services that are child and family driven, with priority given to keeping children in their own homes;

(4) That the proposed facility or service will contribute to reducing the number of child placements in out-of-state facilities by making placements available in in-state facilities;

(5) That the proposed facility or service contributes to reducing the number of child placements in in-state or out-of-state facilities by returning children to their families, placing them in foster care programs or making available school-based and out-patient services; and

(6) If applicable, that the proposed services will be community-based, locally accessible and provided in an appropriate setting consistent with the unique needs and potential of each child and his or her family.

(c) The secretary’s findings required by subsection (b) of this section shall be filed with the secretary’s recommendation and appropriate documentation. If the secretary’s findings are supported by the accompanying documentation, the proposal shall not require a certificate of need.

(d) Any entity that does not qualify for summary review shall be subject to certificate of need review.

(e) Notwithstanding any other provision of law to the contrary, the provision of regular or therapeutic foster care services does not constitute a behavioral health care facility or a behavioral health care service that would subject it to the
summary review procedure established in this section or to the certificate of need requirements provided in article two-d, chapter sixteen of this code.

CHAPTER 66

(H. B. 3019 — By Delegates Campbell, Cann, Susman, Proudfoot, Evans, Hall and Stalnaker)

[Passed March 5, 2003; 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; alcohol beverage control administration; auditor's office; bureau of employment programs; department of administration; department of administration - surplus property; department of agriculture - donated foods; department of agriculture - rural development council; department of agriculture - soil conservation committee; department of education; department of education and the arts; department of health and human resources; department of health and human resources - division of health; department of health and human resources - division of human services; department of tax and revenue; development office; division of corrections; division of criminal justice services; division of culture and history; division of environmental protection; division of highways; division of information services and communications; division
of juvenile services; division of labor; division of miners’
health, safety and training; division of motor vehicles; division
of natural resources; division of tourism; educational broadcast-
ing authority; geological and economic survey; governor’s
office; higher education policy commission; library commis-
sion; public service commission; regional jail and correctional
facility authority; state fire marshal; state of West Virginia;
supreme court; treasurer’s office; water development authority;
West Virginia Development Office; West Virginia education
and state employees grievance board; West Virginia Senate;
West Virginia state police; and workers’ compensation 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 concern-
ing 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) Claim against the Adjutant General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $ 1,108.35

(b) Claim against the Alcohol Beverage Control Administra-
tion:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Xerox Corporation ......................... $ 1,408.68

(c) Claim against the Auditor’s Office:

(TO BE PAID FROM GENERAL REVENUE FUND)
48 (1) Verizon West Virginia, Inc. ............... $ 6,055.23

49 (d) Claim against the Bureau of Employment Programs:

50 (TO BE PAID FROM SPECIAL REVENUE FUND)

51 (1) Advizex Technologies, LLC ............... $ 46,420.00

52 (2) Verizon West Virginia, Inc. ............... $ 240,678.21

53 (e) Claim against the Department of Administration:

54 (TO BE PAID FROM GENERAL REVENUE FUND)

55 (1) Verizon West Virginia, Inc. ............... $ 1,388.91

56 (f) Claim against the Department of Administration - Surplus Property:

57 (TO BE PAID FROM GENERAL REVENUE FUND)

58 (1) Verizon West Virginia, Inc. ............... $ 2,211.15

59 (g) Claim against the Department of Agriculture - Donated Foods:

60 (TO BE PAID FROM GENERAL REVENUE FUND)

61 (1) Verizon West Virginia, Inc. ............... $ 1,061.76

62 (h) Claim against the Department of Agriculture - Rural Development Council:

63 (TO BE PAID FROM GENERAL REVENUE FUND)

64 (1) Verizon West Virginia, Inc. ............... $ 1,403.26

65 (i) Claim against the Department of Agriculture - Soil Conservation Committee:

66 (TO BE PAID FROM GENERAL REVENUE FUND)

67 (1) Verizon West Virginia, Inc. ............... $ 764.38
(j) **Claim against the Department of Education:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ................ $1,452.66

(k) **Claim against the Department of Education and the Arts:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $747.00

(l) **Claims against the Department of Health and Human Resources:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Special Services Bureau, Inc. ............ $3,550.00

(2) Verizon West Virginia, Inc. ............. $132,823.96

(m) **Claim against the Department of Health and Human Resources - Division of Health:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............. $77,314.63

(n) **Claim against the Department of Health and Human Resources - Division of Human Services:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............. $264.00

(o) **Claims against the Department of Tax and Revenue:**

(TO BE PAID FROM SPECIAL REVENUE FUND)
Ch. 66] CLAIMS 377

94  (1) Verizon West Virginia, Inc. .............. $  155,871.20

95  (TO BE PAID FROM GENERAL REVENUE FUND)

96  (2) Xerox Capital Services, LLC ........ $  818.00

97  (p) Claims against the Division of Corrections:

98  (TO BE PAID FROM GENERAL REVENUE FUND)

99  (1) Aramark Uniform Services ............... $  207.83
100  (2) Bureau of Employment Programs .... $ 1,031.39
101  (3) Cabell County Commission .............. $  341.31
102  (4) William Mahood ....................... $  71.47
103  (5) Peerless Foodservice .................. $  929.18
104  (6) Peerless Handcuff Company ............ $  30.00
105  (7) Scott Rodes .......................... $  246.74
106  (8) United Parcel Service, Inc. ............ $  111.26
107  (9) WV Regional Jail and
108    Correctional Facility Authority .... $  4,224,565.50
109  (10) West Publishing Corporation ....... $  232.68
110  (11) West Virginia Network for Educ.
111    Telecomputing ......................... $  24.00
112  (12) West Virginia Uniforms .............. $  934.80

113  (q) Claim against the Division of Criminal Justice Services:

114  (TO BE PAID FROM GENERAL REVENUE FUND)

115  (1) Verizon West Virginia, Inc. .............. $  1,371.55

116  (r) Claim against the Division of Culture and History:

117  (TO BE PAID FROM FEDERAL REVENUE FUND)

118  (1) Joy L. Stalnaker ......................... $  4,147.61

119  (s) Claim against the Division of Environmental Protection:
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<td>Macel E. Rhodes</td>
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<td>171</td>
<td>Macel E. Rhodes as the Legal Guardian of Roman A. Tarantini, an infant</td>
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<td>Raymond Scott</td>
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<td>Lee B. Sipple</td>
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<td>174</td>
<td>Randy L. Sisler, Jr., and Lillian D. Sisler</td>
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<td>Carolyn Rose Smith</td>
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<td>176</td>
<td>Jeffrey L. Smith and Carolyn Smith</td>
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<td>Nancy C. Tyree and Jackie L. Tyree</td>
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<td>179</td>
<td>Dawn L. Urchasko</td>
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<td>(52) Richard VanGilder and Crystal VanGilder</td>
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<td>(53) Verizon West Virginia, Inc.</td>
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<td>(54) Margaret Louise Walsh-Ellison</td>
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<td>(55) Walter H. Warren, Jr. and Lola B. Warren</td>
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<td>(56) James E. Willis</td>
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<td>(u) Claim against the Division of Information Services and Communications:</td>
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<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
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<td>(v) Claims against the Division of Juvenile Services:</td>
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<td>(1) Ear, Nose and Throat Associates</td>
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<td>(2) Telepage Communication Systems</td>
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<td>(w) Claim against the Division of Labor:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>(x) Claim against the Division of Miners' Health, Safety and Training:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>(1) Verizon West Virginia, Inc.</td>
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<td>211</td>
<td>(y) Claims against the Division of Motor Vehicles:</td>
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<td>212</td>
<td>(TO BE PAID FROM STATE ROAD FUND)</td>
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<td>213</td>
<td>(1) Jared B. Casdorph and Bernard G. Casdorph</td>
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215 (2) Bryant M. Hatfield, Jr. .................. $ 5,000.00
216 (3) Tasha Nicole Ross .................. $ 150.00
217 (4) Verizon West Virginia, Inc. .......... $ 134,295.07

218 (z) Claims against the Division of Natural Resources:

219 (TO BE PAID FROM SPECIAL REVENUE FUND)

220 (1) Jason R. Brown .................. $ 12,518.00
221 (2) Nathan G. Hanshaw .......... $ 9,525.00

222 (aa) Claim against the Division of Tourism:

223 (TO BE PAID FROM GENERAL REVENUE FUND)

224 (1) Verizon West Virginia, Inc. .......... $ 1,040.00

225 (bb) Claim against the Educational Broadcasting Authority:

226 (TO BE PAID FROM SPECIAL REVENUE FUND)

227 (1) Verizon West Virginia, Inc. .......... $ 3,302.81

228 (cc) Claim against Geological and Economic Survey:

229 (TO BE PAID FROM GENERAL REVENUE FUND)

230 (1) Verizon West Virginia, Inc. .......... $ 1,495.60

231 (dd) Claim against the Governor's Office:

232 (TO BE PAID FROM GENERAL REVENUE FUND)

233 (1) Verizon West Virginia, Inc. .......... $ 810.32

234 (ee) Claims against the Higher Education Policy Commission:

235 (TO BE PAID FROM SPECIAL REVENUE FUND)

236 (1) Tmaro Corporation .................. $ 90,648.51
237 (2) Verizon West Virginia, Inc. .......... $ 144,675.56
Claims

(3) Liang Wei ........................................... $ 150.00

Claim against the Library Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $ 55,181.44

Claims against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Commercial Vehicle Safety Alliance ................................ $ 39,291.28
(2) Fayette County Board of Education ................................ $ 83.87
(3) C. Scott Pauley ........................................ $ 288.03

Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Edward Collins ......................................... $ 1,070.00
(2) Denzil Grant ........................................... $ 92.00
(3) Brenda K. Mitchell .................................... $ 3,000.00
(4) Matthew Jay Newman, Sr. ................................ $ 75.00
(5) Randall Kevin Sarrett ................................ $ 85.00
(6) Michael Shan Slevin ................................... $ 100.00
(7) Verizon West Virginia, Inc. ............................. $ 5,990.00
(8) Thomas E. Wyatt ....................................... $ 450.00

Claims against the State Fire Marshal:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Ridge Runner Industries ..................................... $ 2,136.00
(2) Verizon West Virginia, Inc. ................................ $ 3,523.68

Claim against the State of West Virginia:

(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Larry David Holdren ............... $ 1,650,000.00

(kk) **Claim against the Supreme Court:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $ 937.34

(II) **Claim against the Treasurer’s Office:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ......... $ 5,346.00

(mm) **Claim against the Water Development Authority:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ......... $ 2,119.23

(nn) **Claim against the West Virginia Development Office:**

(TO BE PAID FROM GENERAL REVENUE)

(1) Verizon West Virginia, Inc. ......... $ 689.50

(oo) **Claim against the West Virginia Education and State Employees Grievance Board:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) The Water Shop ..................... $ 410.00

(pp) **Claim against the West Virginia Senate:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ......... $ 1,250.00

(qq) **Claims against the West Virginia State Police:**
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 administration and the division of corrections 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 the state spending units, the 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 the 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, 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 Administration:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) West Virginia Association of Rehabilitation Facilities ........ $ 639.84
28 (b)  **Claims against the Division of Corrections:**

29 (TO BE PAID FROM GENERAL REVENUE FUND)

30 (1) Anthony Creek Rescue Squad ........ $ 4,226.50

31 (2) Associated Emergency Physicians, Inc. ................ $ 758.00

32 (3) Associated Radiologists, Inc. ........ $ 1,091.00

33 (4) Sammar Atassi, M. D. ............... $ 1,540.00

34 (5) Ravin Bhirud, M. D. ................. $ 9,991.65

35 (6) John Byers, D. D. S. ................. $ 85.00

36 (7) Charleston Cardiology Group ......... $ 275.00

37 (8) Charleston Heart Specialists ......... $ 3,995.00

38 (9) Charleston Psychiatric Group, Inc. .. $ 1,766.78

39 (10) Charleston Radiation Therapy ...... $ 8,339.00

40 (11) Clarksburg Anesthesia Associates, Inc. ................ $ 4,550.00

41 (12) Nancy A. Collins, O. D. ............ $ 135.00

42 (13) Correctional Medical Services, Inc. ................ $ 314,106.25

43 (14) Cottrill’s Cars, Inc. ................. $ 522.65

44 (15) G. Y. Dagher, M. D. ................. $ 1,275.00

45 (16) Davis Memorial Hospital ............. $ 47,600.69

46 (17) Dr. Bhirud, Inc. .................... $ 4,015.36
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<td>50</td>
<td>(18) Fairmont General Hospital</td>
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<td>(19) Frederick A. Gall, Jr., M. D.</td>
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<td>(23) Greenbrier Valley Medical Center</td>
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<td>(24) Haven N. Wall, Jr., M. D., Inc.</td>
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<td>(26) John P. Henderson, M. D.</td>
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<td>(36) Stephen K. Milroy, M. D.</td>
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<td>70</td>
<td>(37) Montgomery General Hospital ..................................................</td>
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<td>(39) Morgantown Internal Medicine Group, Inc. ..................................</td>
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<td>(40) Neurological Associates, Inc. .................................................</td>
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<td>(41) Pharmacy Associates, dba Option Care ........................................</td>
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<td>(42) Pocahontas Memorial Hospital ..................................................</td>
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<td>(46) Luis E. Soriano, M. D. ...............................................................</td>
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<td>(50) Vision Health Care, Inc. ............................................................</td>
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<td>(51) West Virginia University Hospitals, Inc. .....................................</td>
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<td>89</td>
<td>(52) Wheeling Hospital, Inc. .............................................................</td>
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</table>
AN ACT to amend and reenact section one, article six, chapter seventeen-c 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 ten; to amend and reenact sections ten and eleven, article seventeen of said chapter; to further amend said article by adding thereto a new section, designated section eleven-d; to further amend said chapter by adding thereto two new articles, designated articles seventeen-a and seventeen-b; to amend and reenact section three, article one, chapter seventeen-e of said code; to amend chapter twenty-four-a of said code by adding thereto a new article, designated article one-a; and to amend article seven of said chapter by adding thereto a new section, designated section seven, all relating to the regulation of commercial vehicles; increasing speeding fines for certain commercial vehicles transporting coal; authorizing public service commission to enforce laws of the road for commercial vehicles; authorizing public service commission to issue special permits; authorizing weight enforcement for commercial vehicles moving or parked on or within one hundred feet of a public highway or right-of-way; establishing administrative enforcement process and penalties for vehicles transporting coal; issuance of special permits for designated roads; setting maximum highway weights; providing legislative findings for special regulation of coal transportation on the coal resource.
transportation road system; defining terms; designating eligible counties; directing public service commission to administer commercial vehicle weights and measures; providing that division of highways and public service commission administer all aspects of weight and safety requirements; providing that division of highways coordinate establishment of coal resource transportation roads with the public service commission; establishing a permitting program for vehicles transporting coal which allows higher weight limits upon meeting certain requirements; authorizing public service commission to promulgate emergency and legislative rules; providing special operator and vehicle permit and safety requirements; providing for fees to be assessed for permits; providing reporting requirements for vehicle owners, coal shippers and coal receivers; authorizing commission employees to inspect certain weight transportation records; establishing administrative sanctions for coal vehicle weight violations; establishing new penalties for weight violations; establishing procedure and criteria for commissioner of division of highways to designate special coal resource transportation roads; setting an effective date; authorizing commissioner of division of highways to enter into agreements with persons responsible for coal transport to undertake road and bridge improvements; exclusion of off-road vehicles and interstate highways; providing penalties for spotting; providing for transfer of certain duties, authority and employees of the division of highways to the public service commission; providing dates for transfer of these duties; providing that state road funds for these costs be transferred to public service commission; providing that transfer of these duties does not alter other law-enforcement agencies' authority; costs of enforcement; removing weight from the list of nonserious traffic violations; creating commercial motor vehicle weight and safety enforcement advisory committee; providing for its membership, organization, compensation, expense reimbursements, duties and termination of committee; and providing that certain employees of the public service
commission are authorized to enforce certain traffic offenses and use radar.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-c 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 ten; that sections ten and eleven, article seventeen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-d; that said chapter be further amended by adding thereto two new articles, designated articles seventeen-a and seventeen-b; that section three, article one, chapter seventeen-e of said code be amended and reenacted; that chapter twenty-four-a of said code be amended by adding thereto a new article, designated article one-a; and that article seven of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

Chapter

17C. Traffic Regulations and Laws of the Road.
17E. Uniform Commercial Driver's License Act.
24A. Commercial Motor Carriers.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

6. Speed Restrictions.
17. Size, Weight and Load.
17A. Regulation of the Commercial Transportation of Coal.
17B. Transfer of Certain Jurisdiction and Employees to Public Service Commission.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.
§17C-6-10. Enforcement of article with respect to operations of commercial motor vehicles.
§17C-6-1. Speed limitations generally; penalty.

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the division of highways;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.
(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars: Provided, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars: Provided, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or
more in the presence of one or more children, then upon
conviction, shall be fined not less than one hundred dollars nor
more than five hundred dollars or confined in the regional or
county jail for not more than six months, or both.

(g) If an owner or driver is arrested under the provisions of
this section for the offense of driving above the posted speed
limit on a controlled access highway or interstate highway and
if the evidence shows that the motor vehicle was being operated
at ten miles per hour or less above the speed limit, then, upon
conviction thereof, that person shall be fined not more than five
dollars, plus court costs.

(h) Any person operating a commercial motor vehicle
engaged in the transportation of coal on the coal resource
transportation road system who violates subsection (a), (b) or
(c) of this section shall, upon conviction, be subject to fines in
triple the amount otherwise provided in subsection (e) of this
section.

(i) If an owner or driver is convicted under the provisions
of this section for the offense of driving above the speed limit
on a controlled-access highway or interstate highway of this
state and if the evidence shows that the motor vehicle was being
operated at ten miles per hour or less above the speed limit,
then notwithstanding the provisions of section four, article
three, chapter seventeen-b of this code, a certified abstract of
the judgment on the conviction shall not be transmitted to the
division of motor vehicles: Provided, That the provisions of this
subsection do not apply to conviction of owners or drivers who
have been issued a commercial driver’s license as defined in
chapter seventeen-e of this code, if the offense was committed
while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the
offense of driving above the maximum speed limit on a
96 controlled-access highway or interstate highway and if the
97 maximum speed limit in the other state is less than the maxi-
98 mum speed limit for a comparable controlled-access highway
99 or interstate highway in this state, and if the evidence shows
100 that the motor vehicle was being operated at ten miles per hour
101 or less above what would be the maximum speed limit for a
102 comparable controlled-access highway or interstate highway in
103 this state, then notwithstanding the provisions of section four,
104 article three, chapter seventeen-b of this code, a certified
105 abstract of the judgment on the conviction shall not be transmit-
106 ted to the division of motor vehicles or, if transmitted, shall not
107 be recorded by the division, unless within a reasonable time
108 after conviction, the person convicted has failed to pay all fines
109 and costs imposed by the other state: Provided, That the
110 provisions of this subsection do not apply to conviction of
111 owners or drivers who have been issued a commercial driver's
112 license as defined in chapter seventeen-e of this code, if the
113 offense was committed while operating a commercial vehicle.

§17C-6-10. Enforcement of article with respect to operations of
commercial motor vehicles.

In addition to enforcement by officers and other persons
authorized by law, designated employees of the public service
commission of West Virginia may enforce the provisions of this
article as they relate to the operation of commercial motor
vehicles.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-10. Officers may weigh, measure or examine vehicles and require
removal or rearrangement of excess loads.

§17C-17-11. Permits for excess size and weight.
§17C-17-11d. Establishing maximum road highway weights.

§17C-17-10. Officers may weigh, measure or examine vehicles and require removal or rearrangement of excess loads.
(a) Any police officer or employee of the division of highways or the public service commission designated as a member of an official weighing crew by his or her representative agency may require the driver of any vehicle or combination of vehicles located on or within one hundred feet of any public highway or right-of-way, and whether moving or stopped, to submit the vehicle or combination of vehicles to a weighing with portable or stationary weighing devices or submit the vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if the vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, and may require that the vehicle or combination of vehicles be driven to the nearest weighing device.

No vehicle or combination of vehicles may be detained for weighing unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to the nearest portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more than one hour from the time it is stopped for weighing unless the vehicle or combination of vehicles is impounded for another violation or placed out of service for a safety violation.

(b) Whenever a police officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, he or she may require the driver to remain in place or be moved to a suitable location until the vehicle or combination of vehicles is brought into conformity with the provisions violated.
In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of the vehicle or combination of vehicles at the risk of the owner, lessee or borrower: Provided, That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal of the load from the vehicle, reduces the axle loads of the vehicle to the limit permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor, or in the case of any driver of a vehicle engaged in the transportation of coal, any other additional penalties that may be applicable under the provisions of article seventeen-a of this chapter.

§17C-17-11. Permits for excess size and weight.

(a) The public service commission may, in its discretion, upon application in writing and good cause shown issue a special permit in writing authorizing: (1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not, provided the applicant agrees to compensate the commissioner of highways for all damages or expenses incurred in connection with the crossing; (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and (3) the applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the
vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that: (A) The container be hauled only on the roadways and highways designated by the commissioner of highways; (B) the contents of the container are not changed from the time it is loaded by the consignor or the consignor’s agent to the time it is delivered to the consignee or the consignee’s agent; and (C) any additional conditions as the commissioner of highways or the public service commission may impose to otherwise ensure compliance with the provisions of this chapter.

(b) (1) The commissioner of highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the commissioner of highways upon terms and restrictions prescribed by the public service commission, together with the commissioner of highways.

(2) For purposes of this section, nondivisible load means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would: (A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended; (B) destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or (C) require more than eight workhours to dismantle using appropriate equipment: Provided, That the applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(c) The application for any permit other than a special annual permit shall specifically describe the vehicle or vehicles
and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which the permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(d) The public service commission is authorized to issue or withhold a permit at his or her discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond or other security considered necessary to compensate for any injury to any roadway structure and to specify the type, number and the location for escort vehicles for any vehicle: Provided, That in establishing limitations on permits issued under this section, the public service commission shall consult with the commissioner of highways, and may not issue, limit or condition a permit in a manner inconsistent with the authority of the commissioner of highways.

The public service commission may charge a fee for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.

(e) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the commissioner of highways or the public service commission and no person shall violate any of the terms or conditions of the special permit.

§17C-17-11d. Establishing maximum road highway weights.
Effective the first day of July, two thousand three, the maximum gross vehicle weight on existing state-maintained roads and public highways designated for gross weight vehicle load of eighty thousand pounds shall have a tolerance of ten percent. All requirements for vehicle design and axle weights otherwise established under this code remain applicable. In no case may the commissioner authorize weight limits on any state maintained road or public highway that would jeopardize or otherwise limit federal highway fund appropriations to this state. The commissioner of highways shall, by the thirty-first day of December, two thousand three, review and revise, as the commissioner deems appropriate, weight limits for all state maintained roads and public highways and provide to the joint committee of government and finance a report denoting all weight limits as they have been designated on state maintained roads and public highways.

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-1. Legislative findings and creation of program.
§17C-17A-2. Definitions.
§17C-17A-3. Authority of the division of highways and public service commission generally.
§17C-17A-4. Special permit issuance; and promulgation of rules.
§17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.
§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.
§17C-17A-7. Permit application procedure.
§17C-17A-8. Powers and duties of the commission.
§17C-17A-9. Administrative sanctions.
§17C-17A-10. Penalties for violation of weight laws; impounding vehicles.
§17C-17A-11. Effective date.
§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.
§17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.
§17C-17A-14. Exclusion of off-road vehicles.
§17C-17A-15. Exclusion of interstate highways.
§17C-17A-16. Spotting unlawful; penalties.
§17C-17A-1. Legislative findings and creation of program.

1. (a) The Legislature finds and declares that:

1. (1) No other economic undertaking in the history of West Virginia has had a greater impact upon the citizens of this state, providing such an economic force and affecting the social construct and day-to-day life and environment of the people and communities of this state, than the activities associated with the extraction, transportation and consumption of coal or its byproducts. In areas of this state where the coal industry exists, the economic benefits of coal production are an indispensable part of the local community’s vitality.

1. (2) The historic progression of the coal industry has resulted in an increasing use of the public highways of this state for the transportation of coal to river ports, power generators or rail loading facilities. Roads where coal is transported are mainly two-lane rural roads and highways of varying grades and conditions. The daily presence of large commercial motor vehicles on these roads and highways causes significant impact to local communities and the local transportation infrastructure. Local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of these vehicles.

1. (3) The increased capacity and ability of coal hauling vehicles, tied with increased economic pressures to reduce industry transportation costs, have created economic incentives for transporting coal at higher than legal limits, and for drivers to drive long hours and operate these vehicles at higher rates of speed. Consequently, average vehicle weights have increased and many coal transport vehicles regularly exceed the lawful limit by more than one hundred percent. The excessive weights of these vehicles have also resulted in the rapid deterioration of
state roads and bridges, creating significant costs to the state of millions of dollars in lost road and bridge use and life.

(4) Advances in truck stability, braking and safety technology have made modern coal transporters much safer conveyances than those used by the industry when the state’s current weight laws were enacted. Further advances in technology have made tracking and recording individual vehicles, their operators and load significantly more efficient.

(5) Enforcement of truck safety and driver safety laws has been divided between various jurisdictions such as local and state law enforcement, the division of highways and the public service commission. As a result, local and state enforcement of those comprehensive laws has not been uniform, with the result that many of these laws have not been enforced.

(6) The resulting need for a remedy for hauling these additional amounts of coal is most severe in a limited and discrete geographic area of the state where the limited access to rail and river transportation options and economic conditions require a regulatory program that allows a greater weight allowance for coal hauling vehicles to address the unique economic circumstances of that region.

(7) That this limited highway system must include additional safety protections for the public sharing the roads with a large coal hauling vehicle fleet and specialized training for operators of these vehicles, requiring the program be designed to assure that state weight and safety requirements be effectively administered and enforced.

(b) A special regulatory program with administrative enforcement authority over all vehicles hauling coal in West Virginia is created. This program is designed to address the economic needs of the state coal industry within the confines of the ability of the transportation infrastructure to accommodate
these needs and in careful consideration for road safety and
maintenance requirements of these vehicles, by providing for
statewide coal truck weight reporting requirements and allow-
ing a limited statewide increase in weights for commercial
vehicles and an additional, limited increase for vehicles hauling
coal where the greater increase is required.

§17C-17A-2. Definitions.

For purposes of this article:

(a) A “coal resource transportation road” means a road
designated by the department of transportation as safe and
sufficient to allow vehicles hauling coal to carry a greater gross
and axle weight of up to one hundred and twenty thousand
pounds, with a five percent variance.

(b) “Coal” or “coal by-products” means the mineral in raw
or clean state and includes synthetic fuel manufactured or
produced for which credit is allowable under 26 U. S. C. §29 of
the Internal Revenue Code (1996).

(c) “Commission” means the public service commission of
West Virginia.

(d) “Division” means the division of highways within the
department of transportation.

(e) “Mining operation” means any activity related to
extraction of coal regulated under the provisions of this code.

(f) “Operator” means the person driving a commercial
motor vehicle transporting coal on any public highway of this
state.

(g) “Person” means any individual, partnership, firm,
society, association, trust, corporation, other business entity or
any agency, unit or instrumentality of federal, state or local

government.

(h) "Shipper" means the person who loads coal or causes
c coal to be loaded into any commercial motor vehicle that will
operate on any public highway in this state.

(i) "Receiver" means the person who accepts for unloading
c coal from any vehicle that has operated on any public highway
in this state.

(j) "Vehicle owner" means the person who as owner of a
commercial motor vehicle employs, contracts or otherwise
directs a driver to operate that vehicle on a public highway of
this state for the purpose of transporting coal.

§17C-17A-3. Authority of the division of highways and public
service commission generally.

(a) The division of highways shall establish all legal vehicle
weight limits for all public highways including roads within the
coal resource transportation road system. Public highways shall
be designated as coal resource transportation roads by the
commissioner of the division of highways pursuant to this
article. Only state-maintained roads and public highways found
in the following areas: Boone; Fayette; Lincoln; Logan;
McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming
counties; in Greenbrier County, routes west of Sam Black
Church and southwest to the Summers County line; in Clay
County, routes 4 and 16; in Nicholas County, routes 19, 20, 39,
41 and 55; in Webster County, routes 9, 20 and 82; and all
state-maintained roads and public highways found in Washing-
ton, Malden, Loudon and Cabin Creek districts, Kanawha
County, are eligible to qualify as part of the coal resource
transportation road system. The division shall post signs on
roads informing the public of the designation and shall also list
a toll free telephone line for public reporting of poor driving or
law violations by special permit operators. The division shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of coal resource transportation roads. The periodic reports shall include the following at a minimum: (1) Citations issued for violations of this chapter; (2) disposition of the violations; (3) road conditions and maintenance; and (4) the amount of undue road damage attributable to coal resource transportation road system permit use.

(b) The public service commission shall administer the coal resource transportation road permitting program and otherwise enforce the provisions of this article. The commission shall establish requirements for vehicle operators holding coal resource transportation road permits pursuant to section five of this article consistent with federal statutory and regulatory requirements.

(1) The commission may, during normal business hours, conduct inspections of all trucking related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to commission employees upon request. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however the commission may use any weight measurement records as evidence of a violation of this article.

(2) The commission shall establish and maintain a toll free telephone line for public reporting of poor driving or law violations by special permit operators. In addition, the commission shall require all vehicles operating under a permit issued pursuant to the provisions of this article to clearly display on the vehicle the toll free telephone number.
(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of motor vehicle weight and safety enforcement.

(4) The commission shall establish procedures to use electronic real time reporting of coal vehicle weights by shippers and receivers. The commission may require daily certified reports from shippers or receivers if electronic reporting methods are not used. The commission may authorize alternative measures of reporting that require same-day reporting of weight measurements by shippers and receivers.

(5) The commission shall impose and collect from shippers of coal on the coal resource transportation road system through the use of the special permit, issued pursuant to section five of this article, for the privilege of loading coal in excess of eighty-eight thousand pounds for transport on a coal resource transportation road. The fee shall be assessed in the amount of five cents per ton of coal hauled over the road. Revenue from the fees shall be deposited in the coal resource transportation fund created in section five of this article.

(c) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission and the division shall each propose legislative rules for promulgation in accordance with the provisions of article three of said chapter to carry out their duties and responsibilities pursuant to the provisions of this article.

§17C-17A-4. Special permit issuance; and promulgation of rules.
(a) The commission may issue permits to authorize the hauling of coal of a greater gross and axle weight than otherwise authorized by state law on roads designated by the commissioner of highways as coal resource transportation roads.

(b) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission shall promulgate emergency and legislative rules to effectuate purposes of this section, which shall provide, at a minimum, the following:

1. Twenty-four hours' mandatory specialized training requirements for commercial vehicles operators with less than two years of commercial driving experience;

2. Requirements for random drug and alcohol testing; and

3. Requirements for daily records consistent with the provisions of any applicable federal statutory or regulatory requirements.

§17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.

(a) Any vehicle, when transporting coal over certain public highways, designated as coal resource transportation roads by the commissioner of the department of highways, may be operated at the weights as set forth in this section in excess of the maximum gross weight prescribed in section nine, article seventeen of this chapter and any other maximum weight limitations on any public highway by paying the corresponding special permit fee and otherwise complying with the provisions of this article.

(b) Special permits shall be issued subject to the following requirements:
(1) A single unit truck having one steering axle and two axles in tandem shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of five percent and pay a special permit fee annually of one hundred dollars;

(2) A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross weight of ninety thousand pounds with a tolerance of five percent and pay a special permit fee annually of one hundred sixty dollars;

(3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross weight of one hundred ten thousand pounds with a tolerance of five percent and pay a special permit fee annually of three hundred dollars;

(4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum gross weight of one hundred twenty thousand pounds with a tolerance of five percent and pay a special permit fee annually of five hundred dollars.

(c) The axle loads set forth in subsection (b) of this section may in no event exceed the maximum axle load allowable based upon the minimum axle spacings as determined by the division of highways in accordance with generally accepted industry standards and bridge loading analysis.

(d) In order to qualify for issuance of a special permit, the applicant shall provide information that demonstrates that the vehicle, as configured, has a total combined axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought. The information may include, but not be limited to, the manufacturer’s rated capacity. In the event that manufacturer’s rated capacity is not available, any other information reasonably determined by the secretary of the department of transportation to give evidence of adequate combined axle rating capacity may be submitted.
(e) Special permits authorized by this section shall be issued by the commission on forms prescribed and furnished by it. The special permit indicium shall be permanently affixed immediately below the window glass on the top of the door on the driver's side of the vehicle. Lost, destroyed, stolen or otherwise unusable special permits indicia shall be replaced in accordance with legislative rules to be promulgated by the commission. The special permit indicium shall be issued to a particular vehicle and shall remain with the vehicle upon transfer of possession or ownership of the vehicle.

(f) Special permits issued pursuant to the provisions of this article are valid for a period of one year from the date of purchase: Provided, That no renewal permits shall be issued to any permittee who, at the time of the renewal, has any administrative or criminal actions pending relating to the operation of commercial motor vehicles in this or other states.

(g) For purposes of this section, the dimensional requirements of motor vehicles shall conform to all applicable federal laws and regulations. Nothing in this section may be construed or administered to jeopardize the receipt of federal funds for highway purposes.

(h) Any operator of a vehicle with a special permit issued under the provisions of this article shall submit the vehicle or combination of vehicles to weighing with portable or stationary weighing devices as required by section ten, article seventeen of this chapter. Any driver or owner of a vehicle or combination of vehicles operating under the provisions of this section who fails or refuses to comply with any requirement of section ten, article seventeen of this chapter forfeits all privileges granted by the special permits.

(i) Any vehicle or combination of vehicles transporting coal pursuant to the provisions of this article shall be securely
covered to prevent the escape of the load on any trip exceeding a total distance of one mile on any public highway.

(j) As a condition of receipt of a special permit, vehicle owners and operators shall submit permitted vehicles to safety checks and other vehicle inspection requirements as required by legislative rules of the commission. The commission may impose additional vehicle operation and maintenance requirements by rule as the commission deems appropriate to assure the safe operation of vehicles issued a special permit.

(k) The commission shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the implementation of the requirements of this section. The rules shall be initially promulgated as emergency rules pursuant to the provisions of said article by no later than the first day of October, two thousand three.

(l) The payment of the special permit fee is in addition to any state registration fee, user fee or other decal fee.

(m) All revenues generated pursuant to this section shall be credited to a special account within the road fund which is created and shall be designated as the "coal resource transportation road fund". Moneys of the fund shall be used by the division of highways for construction, maintenance and repair of public highways and bridges over which substantial quantities of coal are transported.

(n) For periods of less than one year, the permit fee imposed by subsection (b) of this section shall be prorated to the nearest month.

§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.
(a) Every shipper of coal for transport on a public highway in this state that loads vehicles to a gross weight in excess of eighty thousand gross pounds shall be required to report to the commission weight and other transport-related data as required in this article. The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made upon any public highway of this state. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report weight or other required data.

(b) Every vehicle owner who transports coal on a public highway of this state is subject to the provisions of this article and any rules established by the commission requiring reporting, monitoring or removal from service of any unsafe vehicle or driver.

(c) Every receiver of coal transported on a public highway in this state that unloads or causes to be unloaded any shipment of coal shall report to the commission the weight of the shipment and other data related to the shipment as required by rules promulgated by the commission. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report the weight or other data. Compliance with the reporting requirements shall cause the receiver to be immune from any and all criminal, civil and administrative liability, damages, costs, fines and penalties based on, arising out of or resulting from the receiver’s receipt or acceptance of the shipment.

(d) The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a public highway of this state.

§17C-17A-7. Permit application procedure.
The commission shall propose in accordance with provisions of article three, chapter twenty-nine-a of this code by emergency and legislative rules, filed no later than the first day of October, two thousand three, a permit application procedure for the issuance of permits pursuant to the authority contained within this article.

§17C-17A-8. Powers and duties of the commission.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the commission in this code and elsewhere prescribed by law, notwithstanding any provision of the code to the contrary:

(1) The commission shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review;

(2) The commission or any authorized representative, employee or agent may, at reasonable times, enter onto any coal shipping or receiving facility in the state for the purpose of making an inspection or investigation;

(3) The commission may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated under this article;

(4) The commission, its authorized representative, employee or agent shall make periodic inspections at coal shipping or receiving facilities to effectively implement and enforce the requirements of this article or its rules and may conduct at weigh stations or any other adequate site or facility inspections of coal in transit.
§17C-17A-9. Administrative sanctions.

(a) This section imposes administrative sanctions for violations occurring on the coal resource transportation road system. It is the intent of the Legislature to impose administrative sanctions in addition and separate from any criminal or civil penalties upon any person violating or assisting in the violation of the provisions of this article.

(b) For a particular violation, the commission may take administrative notice of criminal convictions, or a plea of nolo contendere, for a violation for purposes of imposing the administrative sanctions in this section in lieu of the procedure provided in subsection (f) of this section. After providing notice and an opportunity to show cause why penalties should not be imposed for the violation of provisions of this article, the commission shall impose sanctions upon an operator, shipper, receiver or truck owner when a violation is found to have occurred. Lack of intent is not a defense to a violation except as it applies to receivers.

(c) Administrative sanctions for violations shall be imposed as follows:

(1) Every shipper of coal for transport on the public roads or highways of this state which loads coal in an amount which results in gross vehicle weight to be in excess of the weight limits established in this article shall be subject to an administrative penalty per pound in excess of the lawful weight pursuant to the penalty schedule established in section ten of this article;

(2) It is unlawful for any person to operate a commercial motor vehicle engaged in the transportation of coal with a gross vehicle weight for nonpermitted vehicles in excess of the lawful maximum weight on a coal resource transportation road without a permit required by section five of this article. Any person
violating this subsection shall have his or her driver’s license suspended by the commissioner of the division of motor vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator may present a valid permit to the commission within five days of the date of the offense in order to avoid the penalty;

(3) Any owner of a commercial motor vehicle engaged in the transportation of coal operating without an excess weight hauling permit and bearing a gross vehicle weight in excess of the lawful maximum weight for the public highway for nonpermitted vehicles who allows the operation of that vehicle upon a coal resource transportation road of this state shall have any state-issued hauling permit then in force suspended by the commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator may present a valid permit to the commission of motor vehicles within five days of the date of the offense in order to avoid the penalty: Provided, however, That should there be no state-issued hauling permit then in force, the owner shall have his or her vehicle registration suspended by the commissioner of motor vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense;

(4) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the division upon the coal resource transportation road system and who operates the vehicle with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have his or her driver’s license suspended by the commissioner of the division of motor vehicles for a period
of three days for the first offense, thirty days for the second
offense and six months for the third offense;

(5) Any owner of a vehicle engaged in the transportation of
coal that has been issued a special permit by the commission
who allows the operation of that vehicle upon the coal resource
transportation road system with a gross vehicle weight that is in
excess of the lawful maximum weight allowed pursuant to the
permit shall have the special permit suspended by the commis-
sion for a period of three days for the first offense, thirty days
for the second offense and revoked for the third offense;

(6) Any operator who operates a vehicle engaged in the
transportation of coal with a suspended excess weight hauling
permit at a weight in excess of the limits imposed by article
seventeen of this chapter upon the coal resource transportation
system shall have his or her driver's license suspended by the
commissioner of the division of motor vehicles for a period of
six months for the first offense, twelve months for the second
offense, and two years for the third offense: Provided, That if
the operator is also the owner of the vehicle, the owner penal-
ties set forth in subdivision (5) of this subsection also apply;

(7) Any owner of a vehicle engaged in the transportation of
coal with a suspended excess weight hauling permit who allows
the operation of that vehicle upon the roads or highways of this
state during a period of permit suspension at a weight in excess
of the limits imposed by article seventeen of this chapter shall
have all state-issued hauling permits then in force suspended by
the commission or, if applicable, the commissioner of highways
for a period of twelve months for the first offense, two years for
the second offense and revoked for the third offense;

(8) Any operator who operates a vehicle engaged in the
transportation of coal that has been issued a special permit by
the commission under the provisions of section five of this
article and who is charged with a violation of section one, article six, chapter seventeen-c of this code upon a road or highway of this state designated by the commissioner of division of highways as a part of the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the division of motor vehicles for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(9) Any person who falsifies information relating to the acquisition of a hauling permit shall have his or her driver's license suspended by the commissioner of the division of motor vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense;

(10) Any person regulated pursuant to this article that falsifies information relating to the acquisition of a hauling permit shall have its state-issued business license suspended by the commissioner of the state tax division for a period of six months for the first offense, one year for the second offense and two years for the third offense;

(11) Any person who fabricates or displays an altered, forged or counterfeited permit shall have his or her driver's license suspended by the commissioner of the division of motor vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(12) Any person that bribes or attempts to bribe an employee of the state of West Virginia or who gives an employee of the state of West Virginia a gift, gratuity, entertainment, loan, favor or other thing of monetary value for the purpose of avoiding any penalties permitted under this article shall have his or her state-issued hauling permit then in force suspended
by the commission for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense; and

(13) In the case of multiple violations by a permittee, shipper, operator or receiver, the commission may direct that the imposed suspension be served concurrently or consecutively, taking into account the frequency of violations committed during the inclusive time periods, or in the same course of misconduct if the commission determines that sufficient mitigating or aggravating circumstances are present.

(14) Any person who aids or abets another person's attempt to avoid suspension shall have his or her driver's license suspended by the commissioner of the division of motor vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense.

(15) Any person that aids or abets a person's attempt to avoid suspension shall have its state-issued business license suspended by the tax commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

(d) Without providing a hearing, the commission may immediately suspend a person from obtaining permits or operating under permit authority for failure to pay a fee required under this article until proper payment is received. Upon the completion of all administrative appeals of any violation that results in a license suspension, the commission shall notify the division of motor vehicles which shall act accordingly.

(e) Without providing a hearing, the commission and law-enforcement personnel may immediately confiscate an altered, forged or counterfeited permit, or a permit used in violation of
its terms and conditions. Upon issuance of a citation alleging a violation of this subsection, the vehicle and its load shall be impounded by law-enforcement personnel until such time as a hearing on the matter is conducted by the division.

(f) Administrative sanctions may be imposed pursuant to the following procedures:

(1) No administrative sanction may be imposed until after the person has been notified by certified mail or personal service. The notice shall include: A reference to the section of statute, rule, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the administrative penalties to be imposed; and a statement of the person’s right to a hearing. The person has twenty days from receipt of the notice within which to deliver to the commission a written request for a hearing.

(2) Subsequent to the hearing and upon finding that a violation has occurred, the commission shall issue a final order. If no hearing is requested, the notice shall become a final order upon the expiration of the twenty-day period.

(3) For purposes of the enhanced penalty provisions of this section, the second and subsequent offenses shall be calculated on a per-year basis.

(4) In addition to the imposition of an administrative sanction, the commission or division may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs, as established by rules of any investigation, inspection or monitoring survey which led to the establishment of the violation.

§17C-17A-10. Penalties for violation of weight laws; impounding vehicles.
(a) Any owner, lessee or borrower of a commercial motor vehicle or combination of vehicles transporting coal who operates or permits to be operated on any highway the vehicle or combination of vehicles with a total gross weight load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine based on the number of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Excess Weight</th>
<th>Amount of Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 4,000 pounds</td>
<td>1 cent per overweight pound</td>
</tr>
<tr>
<td>4,001 to 8,000 pounds</td>
<td>3 cents per overweight pound</td>
</tr>
<tr>
<td>8,001 to 12,000 pounds</td>
<td>7 cents per overweight pound</td>
</tr>
<tr>
<td>12,001 to 16,000 pounds</td>
<td>10 cents per overweight pound</td>
</tr>
<tr>
<td>16,001 to 20,000 pounds</td>
<td>15 cents per overweight pound</td>
</tr>
<tr>
<td>20,001 to 40,000 pounds</td>
<td>30 cents per overweight pound</td>
</tr>
<tr>
<td>40,001 pounds or more</td>
<td>45 cents per overweight pound</td>
</tr>
</tbody>
</table>

(b) Upon a second or subsequent conviction within two years thereafter, the owner, lessee or borrower shall be punished by a fine according to the following schedule:

<table>
<thead>
<tr>
<th>Excess Weight</th>
<th>Amount of Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 4,000 pounds</td>
<td>1 cent per overweight pound</td>
</tr>
<tr>
<td>4,001 to 8,000 pounds</td>
<td>5 cents per overweight pound</td>
</tr>
</tbody>
</table>
8,001 to 12,000 pounds .... 10 cents per overweight pound
12,001 to 16,000 pounds .... 15 cents per overweight pound
16,001 to 20,000 pounds .... 20 cents per overweight pound
20,001 to 40,000 pounds .... 40 cents per overweight pound
40,001 pounds or more ...... 80 cents per overweight pound

(c) The fines specified in subsections (a) and (b) of this section are mandatory and may not be waived or reduced by any judicial officer.

(d) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle charged to have been overloaded shall be impounded by the arresting officer. The vehicle shall not be released to the alleged offender or the owner unless and until he or she either has: (1) Been acquitted of the charge; (2) been found guilty of the charge and paid any fine assessed under subsection (a) or (b) of this section; or (3) furnished cash or surety bond in at least double the amount of the fine which may be assessed the offender under subsection (a) or (b) of this section conditioned upon the payment of any fine and costs assessed for the violation. The offender is liable for any reasonable storage costs incurred in storing impounded vehicles: Provided, That if the owner of the vehicle is a resident of or has a principal place of business located in this state and the vehicle has been duly licensed in the state, then the vehicle may not be impounded by the arresting officer who shall deliver to the operator a written notice of the violation; the place, date and time of violation; the license number of the vehicle; the title number and name and address of the owner; the driver’s name, address and the number of his or her commercial driver’s license; and the court, place, date and time for hearing, which shall be within ten days of the violation, Saturdays, Sundays and holidays excluded. A
copy of the notice shall be mailed to the owner of the vehicle within forty-eight hours. If the owner or his, her or its agent fails to appear at the designated place and time or, if convicted, fails to pay the fine and costs assessed for the violation, the court shall order the owner to post a bond or the impounding of the vehicle as provided in this section.

(e) Any shipper or receiver who directs or knowingly permits a commercial motor vehicle to be loaded in excess of registered weight, allowable weights for single axle or allowable weights for groups of two or more consecutive axles is also guilty of a misdemeanor and, upon conviction, shall be punished by a fine equal to that which may be imposed on the owner, lessee or borrower of a commercial motor vehicle under subsection (a) of this section.

(f) The penalties and fees specified in this section are in addition to any other liability that may be legally fixed against the owner, operator or other person charged with a weight violation.

§17C-17A-11. Effective date.

Criminal and administrative penalties imposed by this article take effect on the first day of October, two thousand three.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

(a) From those counties and districts described in subdivision (a), section two of this article, the commissioner of the division of highways shall identify those public roads, highways and bridges used during the previous twelve month period for transportation of quantities of coal in excess of fifty thousand tons or projected to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing year.
The identification process shall include the following as to each discretely identifiable section of the public highway:

1. The current condition of the public roads, highways and bridges;
2. The estimated quantities of coal transported;
3. Any planned or necessary maintenance or improvement;
4. The number of truck loads of coal transported in an average day;
5. Any anticipated increase or decrease in the quantity of coal being transported; and
6. Other information determined by the commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than the first day of July, two thousand three, the commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The commissioner shall establish a process for the receipt and evaluation of public comment on the designsations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.

(c) By no later than the first day of January, two thousand four, the commissioner shall designate by order the coal
The commissioner shall establish a process for periodic evaluation of the designations contained in the coal resource transportation road system in order to add to or delete from the road system certain additional sections of public highways: Provided, That the evaluations and modifications of the road system shall be completed at a minimum on an annual basis.

§17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.

(a) In addition to all other powers provided by law to the commissioner of highways, he or she may enter into agreements with coal shippers, motor vehicle operators or owners holding or applying for permits issued pursuant to this article, or with any other persons, for the purpose of replacing, repairing, widening, reconstructing, altering, improving or maintaining public highways used for coal resource transportation. These agreements shall contain necessary criteria to assure any damages associated with the transport of coal upon the respective public highways are ameliorated.

(b) All moneys collected by the commissioner shall be deposited in a special account created within the state road fund, known as the coal resource transportation fund, to be expended for the purposes set forth in subsection (a) of this section.

§17C-17A-14. Exclusion of off-road vehicles.

Notwithstanding any other provisions of state law to the contrary, the provisions of this article shall not apply to coal
§17C-17A-15. Exclusion of interstate highways.

Notwithstanding any other provisions of this code to the contrary, the provisions of this article shall not apply to the interstate highways in this state.

§17C-17A-16. Spotting unlawful; penalties.

It is unlawful for any person to intentionally assist an owner or operator of a commercial motor vehicle engaged in the transportation of coal to avoid a road, safety or other lawful inspection or enforcement activity by any law or weight enforcement officer through electronic communications or other means intended to give the commercial vehicle driver knowledge of the location of the officers. Any person who violates this section is guilty of a misdemeanor and shall, upon conviction, be fined not less than one thousand dollars and upon a second or subsequent conviction, fined not less than two thousand dollars.

ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION AND EMPLOYEES TO PUBLIC SERVICE COMMISSION.

§17C-17B-1. Legislative findings and purposes.

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

§17C-17B-5. Exceptions.

§17C-17B-1. Legislative findings and purposes.

(a) The Legislature finds that:

(1) Enforcement officers of the public service commission of West Virginia are, as part of their enforcement of chapters
twenty-four and twenty-four-a of this code with respect to
common and contract carriers by motor vehicle, other for-hire
carriers and private commercial carriers, currently inspecting
for safety many of the same vehicles and loads that are in-
spected for size and weight by employees of the department of
transportation;

(2) To effectuate the legislative findings and declarations
set forth in section one, article one, chapter five-f of this code,
the jurisdiction over the administration and enforcement of state
statutes and rules relating to vehicular weight and the jurisdic-
tion over the issuance of permits for excess vehicular weight
should be transferred to the public service commission;

(3) To preserve continuity and to maximize efficiency,
those employees of the department of transportation who are
employed primarily in the performance of the governmental
duties described in this section should be transferred to the
public service commission; and

(4) The enforcement of state statutes and rules relating to
coal truck weight, including costs of inspections of the vehicles
and loads, training of enforcement officers, program oversight,
administrative proceedings, personal services, employee
benefits and all other costs associated with enforcement
matters, falls within the scope of maintenance of state roads and
public highways as described in section fifty-two, article six of
the constitution of this state and in section one, article three,
chapter seventeen of this code.

(b) The purposes of this article are to transfer:

(1) Jurisdiction over the enforcement of state statutes and
rules, including, but not limited to, the provisions of article
seventeen-a of this chapter, relating to coal truck weight, from
the department of transportation to the public service commis-
sion of West Virginia;
(2) Jurisdiction over the issuance of permits for excess vehicular weight under section eleven, article seventeen of this chapter, from the department of transportation to the public service commission of West Virginia; and

(3) To the public service commission of West Virginia those employees of the department of transportation whose primary governmental duties include the administration and enforcement of statutes and rules relating to vehicular weight.

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to public service commission.

(a) Effective the first day of July, two thousand three, the jurisdiction over the enforcement of state statutes and rules, including, but not limited to, applicable provisions of article seventeen of this chapter relating to vehicular weight, shall be transferred from the department of transportation to the public service commission of West Virginia.

(b) Effective the first day of July, two thousand three, the jurisdiction over the issuance of permits for excess vehicular weight shall be transferred from the department of transportation to the public service commission of West Virginia.

§17C-17B-3. Transfer of certain employees from department of transportation to public service commission.

(a) Effective the first day of July, two thousand three, employees of the department of transportation whose primary governmental duties as of the thirtieth day of June, two thousand three, included the administration and enforcement of this code and rules promulgated under this code relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the department of transportation to the public service commission of West Virginia.
(b) Upon the transfer of employees as provided in subsection (a) of this section, the department of transportation shall pay to the public service commission the costs of personal services, employees benefits and other associated costs of the transferred employees.

§17C-17B-4. Costs of enforcement to be funded from revenues in state road fund.

(a) On and after the first day of July, two thousand three, the cost of enforcement of this code and rules promulgated under this code, relating to vehicular weight, including inspections of vehicles and loads, training of enforcement officers, administrative proceedings, personal services, employees benefits and all other costs associated with enforcement matters, shall be funded by revenues in the state road fund, established pursuant to the provisions of section one, article three, chapter seventeen of this code.

(b) The secretary of transportation and the treasurer shall take all actions necessary to implement the transfer of funding to effectuate the purposes of this article.

(c) For fiscal years beginning on and after the first day of July, two thousand four, the commission shall include in its budget to the Legislature the costs of implementation and continuing enforcement of this article for payment and appropriation from the state road fund, or other sources as deemed appropriated, into the public service commission fund.

§17C-17B-5. Exceptions.

(a) Nothing in this article reduces or eliminates the authority of any police officer to enforce the provisions of article seventeen of this chapter.
(b) Nothing in this article reduces or eliminates the jurisdiction of the department of transportation to administer and enforce sections eleven-a, eleven-b, eleven-c and twelve, article seventeen of this chapter.

(c) Nothing in this article expands, reduces or eliminates any remedies otherwise available by law.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the following definitions apply to this article:

“Alcohol” means:

(a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

(b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;

(c) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or

(d) Wine of not less than one half of one percent of alcohol by volume.
“Alcohol concentration” means:

(a) The number of grams of alcohol per one hundred milliliters of blood;

(b) The number of grams of alcohol per two hundred ten liters of breath; or

(c) The number of grams of alcohol per sixty-seven milliliters of urine.

“Commercial driver’s license” means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

“Commercial driver’s license information system” is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

“Commercial driver instruction permit” means a permit issued pursuant to subsection (d), section nine of this article.

“Commercial motor vehicle” means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C. F. R. part 172, subpart F.
“Commissioner” means the commissioner of motor vehicles of this state.

“Controlled substance” means any substance classified under the provisions of chapter sixty-a of this code (uniform controlled substances act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter sixty-a, as they are revised.

“Conviction” means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.

“Division” means the division of motor vehicles.

“Disqualification” means a prohibition against driving a commercial motor vehicle.

“Drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, “drive” includes operation or physical control of a motor vehicle anywhere in this state.

“Driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver’s license.

“Driver’s license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.
“Employee” means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is self-employed as a commercial motor vehicle driver shall comply with the requirements of this article pertaining to both employees and employers.

“Employer” means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

“Farm vehicle” includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.

“Farmer” includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years’ licensed driving experience.

“Farmer vehicle driver” means the person employed and designated by the “farmer” to drive a “farm vehicle” as long as driving is not his or her sole or principal function on the farm who is at least eighteen years of age with two years’ licensed driving experience.

“Gross combination weight rating (GCWR)” means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value
specified by the manufacturer, GCWR will be determined by
adding the GVWR of the power unit and the total weight of the
towed unit and any load thereon.

“Gross vehicle weight rating (GVWR)” means the value
specified by the manufacturer as the loaded weight of a single
vehicle. In the absence of a value specified by the manufacturer
the GVWR will be determined by the total weight of the vehicle
and any load thereon.

“Hazardous materials” has the meaning as that found in the
seq., (1998)).

“Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power
obtained from overhead trolley wires but not operated upon
rails.

“Out-of-service order” means a temporary prohibition
against driving a commercial motor vehicle as a result of a
determination by a federal agency or the public service com-
mission, pursuant to chapter twenty-four-a of this code, that: (a)
The continued use of a commercial motor vehicle may result in
death, serious injury or severe personal injury; or (b) the
continued actions by the driver of a commercial motor vehicle
poses an imminent hazard to public safety.

“Violation of an out-of-service order” means: (a) The
operation of a commercial motor vehicle during the period the
driver was placed out of service; or (b) the operation of a
commercial motor vehicle by a driver after the vehicle was
placed out of service and before the required repairs are made.

“Serious traffic violation” means:
(a) Excessive speeding which is defined as fifteen miles per hour in excess of all posted limits;

(b) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, including erratic lane changes and following the vehicle ahead too closely;

(c) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident. Vehicle defects are excluded as serious traffic violations, except as to violations committed by a special permittee on the coal resource transportation road system; or

(d) Any other serious violations determined by the United States secretary of transportation.

“State” means a state of the United States and the District of Columbia.

“Tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. These vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C. F. R. Part 171 (1998). However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

“At fault traffic accident” means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.
§24A-1A-1. Regulation of commercial vehicle weights.

(a) Effective the first day of July, two thousand three, the commission has jurisdiction over the enforcement of this code and rules promulgated under this code, including, but not limited to, applicable provisions of article seventeen-a, chapter seventeen-c of this code relating to vehicular weight.

(b) Effective the first day of January, two thousand three, the commission has jurisdiction over the issuance of permits for excess vehicular weight.

(c) Effective the first day of January, two thousand three, employees of the division of highways, department of transportation, whose primary governmental duties as of the thirtieth day of June, two thousand two, included the administration and enforcement of state statutes and rules relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the division of highways and department of transportation to the commission.

(d) The commission shall implement and administer the provisions of this section and of articles six, six-a and six-b of this chapter.

§24A-1A-2. Creation of advisory committee; purpose; members; terms.

(a) There is created the commercial motor vehicle weight and safety enforcement advisory committee, the purpose of which is to study the implementation of the commercial motor vehicle weight and safety enforcement program set forth in this article.

(b) The committee consists of the following members:
(1) One member who is an employee of the division of highways, to be appointed by the commissioner of highways;

(2) One member who is an employee of the public service commission, to be appointed by the chairman of the public service commission;

(3) One member who is a state police officer, to be appointed by the superintendent of the state police;

(4) One member who is an employee of the division of motor vehicles, to be appointed by the commissioner of motor vehicles;

(5) One member who is an employee of the development office, to be appointed by the governor;

(6) One member who is representative of the coal industry, to be appointed by the governor;

(7) One member of the Senate, to be appointed by the president of the Senate;

(8) One member of the House of Delegates, to be appointed by the speaker of the House of Delegates;

(9) One citizen member, to be appointed by the governor; and

(10) One member of the largest organization representing coal miners, to be appointed by the governor.

(c) Members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms.

(d) The committee shall annually nominate from its members a chair, who shall hold office for one year.
(e) The committee shall hold at least four meetings each year or more often as may, in the discretion of the chair, be necessary to effectuate the purposes of this article.

(f) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law.

(g) Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the department of administration.

(h) On or before the first day of January, two thousand four, and each subsequent year thereafter, the committee shall submit to the governor and to the Legislature a report of its recommendations for improving the effectiveness of the commercial vehicle weight and safety enforcement program.

(i) The commercial vehicle weight and safety enforcement advisory committee shall continue to exist until the first day of July, two thousand seven, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

(a) The employees of the commission designated as motor carrier inspectors have the same authority as law-enforcement officers generally to enforce the provisions of chapter
seventeen-c of this code with respect to commercial motor vehicles owned or operated by motor carriers, exempt carriers or private commercial carriers where vehicles have a gross vehicle weight rating of ten thousand pounds or more.

(b) The speed of a commercial motor vehicle owned or operated by a motor carrier, exempt carrier or private commercial carrier may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves when the evidence is obtained by employees of the commission designated as motor carrier inspectors. The evidence so obtained is prima facie evidence of the speed of the vehicle.

(c) Motor carrier inspectors shall also perform a north American standard safety inspection of each commercial motor vehicle stopped for enforcement purposes pursuant to this section.

(d) Before exercising the provisions of this section, the motor carrier inspectors shall receive adequate training.

(e) Nothing in this section affects the existing authority of law-enforcement officers not employed by the commission to enforce the provisions of chapter seventeen-c of this code.

CHAPTER 69

(S. B. 384 — By Senators Bailey and Bowman)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to repeal section ten, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the location of the offices of the alcohol beverage control administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§1. Repeal of section relating to the location of the offices of the alcohol beverage control administration.

1 Section ten, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 70

(S. B. 390 — By Senators Ross, Weeks, Dempsey, Rowe, Unger and Caldwell)

[Passed March 4, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a person's social security number appear on a commercial driver's license.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.


1 The commercial driver's license must be marked "commercial driver's license" or "CDL" and must be, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex, height, weight, eye and hair color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive, together with any endorsement(s) or restriction(s);

14 (g) The name of this state; and

15 (h) The dates between which the license is valid.

CHAPTER 71

(S. B. 589 — By Senator Snyder)

[Passed March 8, 2003: in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section one hundred three, article two, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to common interest communities; and providing that the provisions of said section relating to common interest communities and condominiums have no application to restrictive covenants which contain provisions allowing amendment when the provisions for amendment are duly followed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON INTEREST COMMUNITIES.

§36B-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to section 3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

(e) A declaration or the bylaws may not change or alter a restrictive covenant in a deed to any real estate that is or that
becomes subject to the provisions of this chapter. The restrictive covenants that are in effect at the time real estate is purchased that is or that becomes subject to the provisions of this chapter may not be changed or altered as to the purchaser of that real estate or as to any assign, heir or beneficiary of the original purchaser unless that original purchaser, assign, heir or beneficiary agrees in writing to a change of a restrictive covenant. This subdivision does not apply to the change of restrictive covenants of homeowner fees if the fees do not exceed the sum of one hundred dollars a year. The provisions of this section have no application to restrictive covenants which contain provisions authorizing amendment when those provisions for amendment are duly followed.

CHAPTER 72

(Com. Sub. for H. B. 2948 — By Delegates H. White, R. M. Thompson, Perry and Hrutkay)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred fifteen, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expenses of realizing on security interests; allowing recovery of certain expenses when a consumer requests discontinuation of efforts to realize on security interests, and providing notification to consumer of certain charges within a twelve-month period.

Be it enacted by the Legislature of West Virginia:
That section one hundred fifteen, article two, 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 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

(a) Except for reasonable expenses including costs and fees authorized by statute incurred in realizing on a security interest, the agreement with respect to a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter.

(b) A consumer loan secured by real property: (1) Originated by a bank or savings and loan association, or an affiliate, and not solicited by an unaffiliated broker; (2) held by a federal home loan bank, the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, the West Virginia housing development fund; or (3) insured or guaranteed by the farmers home administration, the veteran’s administration, department of housing and urban development, which includes in the loan agreement a reinstatement period beginning with the trustee notice of foreclosure and ending prior to foreclosure sale, may, in addition to those authorized by this chapter, permit the recovery of the following actual reasonable reinstatement period expenses paid or owed to third parties: (i) Publication costs paid to the publisher of the notice; (ii) appraisal fee when required by the circumstances or by a regulatory authority and only after the loan has been referred to a trustee for foreclosure; (iii) title check and lienholder notification fee not to exceed two hundred dollars, as adjusted from time to time by the increase in the consumer price index for all consumers published by the United States Department of Labor; and (iv) certified mailing costs.
(c) All amounts paid to a creditor arising out of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: Provided, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure; and provided further that partial amounts received during the reinstatement period set forth in subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately; those set forth in subsection (b) arising during such a reinstatement period may be added to principal.

(d) At least once every twelve months, the holder or servicer of each consumer loan secured by real property against which the creditor assesses any default charge, and: (1) Not serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a federal home loan bank, the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, the West Virginia housing development fund; or (3) not insured or guaranteed by the farmers home administration, the veteran's administration, department of housing and urban development, shall transmit to the consumer an accounting of every default charge assessed within the previous twelve months, including the date, amount and nature of the cost.

For purposes of this subsection, this notice requirement does not apply to delinquency charges permitted under sections one hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred fourteen, article three of this chapter; collateral protection insurance permitted under section one hundred nine-a, article three of this chapter; and advances to pay taxes.

(e) A provision in violation of this section is unenforceable. The amendments to this section by acts of the Legislature in the regular session of two thousand three are a clarification of
existing law and shall be retroactively applied to all agreements in effect on the date of passage of the amendments, except where controversies arising under those agreements are pending prior to the date of passage of the amendments.

CHAPTER 73

(Com. Sub. for S. B. 440 — By Senators Rowe, White, Chafin and Guills)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to establishing the contractors notice and opportunity to cure act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DEFECTS.

§21-11A-1. Purpose.
§21-11A-3. Suit by contractor; perfecting mechanic’s lien.
§21-11A-4. Applicability of definitions; definitions.
§21-11A-7. Prerequisites to commencing an action.
§21-11A-10. Request for voluntary disclosure of additional information.
§21-11A-1. Purpose.

1 This article is intended to establish procedures for the
2 negotiation of a claim of a construction defect asserted by a
3 claimant against a contractor. The parties to a contract are
4 encouraged to resolve any disagreement concerning the contract
5 short of litigation.


1 This article does not apply to an action:

2 (1) Against a contractor for which a claimant, as a con-
3 sumer, is entitled to a specific remedy pursuant to chapter forty-
4 six-a of this code;

5 (2) Against a contractor who is not licensed under the
6 provisions of article eleven of this chapter;

7 (3) Demanding damages of five thousand dollars or less;

8 (4) Alleging a construction defect that poses an imminent
9 threat of injury to person or property;

10 (5) Alleging a construction defect that causes property not
11 to be habitable;

12 (6) Against a contractor who failed to provide the notice
13 required by section five or six of this article;
14 (7) Against a contractor if the parties to the contract agreed
15 to submit claims to mediation, arbitration or another type of
16 alternative dispute resolution; or
17
18 (8) Alleging claims for personal injury or death.

§21-11A-3. Suit by contractor; perfecting mechanic’s lien.

1 (a) If a contractor, subcontractor, supplier or design
2 professional files suit against a property owner upon whose
3 property they provided goods or services, this article is not
4 applicable, and a claimant alleging a construction defect may
5 counterclaim or file an independent action, as appropriate.

6 (b) Nothing in this article precludes a contractor, subcon-
7 tractor, supplier or design professional from perfecting a lien in
8 accordance with the provisions of article two, chapter thirty-
9 eight of this code.

§21-11A-4. Applicability of definitions; definitions.

1 For the purposes of this article, the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

6 (1) “Action” means any civil action, or any alternative
7 dispute resolution proceeding other than the negotiation
8 required under this article, for damages, asserting a claim for
9 injury or loss to real or personal property caused by an alleged
10 defect arising out of or related to residential improvements.

11 (2) “Claim” means a demand for damages by a claimant
12 based upon an alleged construction defect in residential
13 improvements.
(3) "Claimant" means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor concerning an alleged construction defect in residential improvements.

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, planning, supervision or construction of residential improvements that results from any of the following:

(A) Defective material, products or components used in the construction of residential improvements;

(B) Violation of the applicable codes in effect at the time of construction of residential improvements;

(C) Failure in the design of residential improvements to meet the applicable professional standards of care;

(D) Failure to complete residential improvements in accordance with accepted trade standards for good and workmanlike construction: Provided, That compliance with the applicable codes in effect at the time of construction is prima facie evidence of construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes; or

(E) Failure to properly oversee, supervise and inspect services or goods provided by the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services.

(5) "Contract" means a written contract between a contractor and a claimant by the terms of which the contractor agrees to provide goods or services, by sale or lease, to or for a claimant.
(6) "Contractor" means a contractor, licensed under the provisions of article eleven of this chapter, who has entered into a contract directly with a claimant. The term does not include the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a claimant.

(7) "Day" means a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purposes of this article.

(8) "Goods" means supplies, materials or equipment.

(9) "Parties" means: (A) The claimant; and (B) any contractor, subcontractor, agent or other person furnishing goods or services and upon whom a claim of an alleged construction defect has been served under this article.

(10) "Residential improvements" means: (A) The construction of a residential dwelling or appurtenant facility or utility; (B) an addition to, or alteration, modification or rehabilitation of an existing dwelling or appurtenant facility or utility; or (C) repairs made to an existing dwelling or appurtenant facility or utility. In addition to actual construction or renovation, residential improvements actually added to residential real property include the design, specifications, surveying, planning, goods, services and the supervision of a contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a claimant.

(11) "Services" means the furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof.

(12) "Subcontractor" means a contractor who performs work on behalf of another contractor on residential improvements.
(13) "Supplier" means a person who provides goods for residential improvements.


(a) Upon entering into a contract for residential improvements, the contractor shall provide notice to the owner of the real property of the right of the contractor, or any subcontractor, supplier or design professional to offer to cure construction defects before a claimant may commence litigation against the contractor, or a subcontractor, supplier or design professional. Such notice shall be conspicuous and may be included as part of the underlying contract.

(b) The notice required by subsection (a) of this section shall be in substantially the following form:

WEST VIRGINIA STATE LAW, AS SET FORTH IN CHAPTER 21, ARTICLE 11A OF THE WEST VIRGINIA CODE, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO MADE RESIDENTIAL IMPROVEMENTS TO YOUR PROPERTY. AT LEAST NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGED ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN PROFESSIONALS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN PROFESSIONALS. THERE ARE DEADLINES AND PROCEDURES UNDER STATE LAW AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(a) A contractor who constructs a new residential dwelling shall, at or before the closing of the sale, provide in writing to the initial purchaser of the residence:

1. The name, license number, business address and telephone number of each subcontractor, supplier or design professional who provided goods or services related to the design or construction of the dwelling; and

2. A brief description of the goods or services provided by each subcontractor, supplier or design professional identified pursuant to this section.

(b) At or before the closing of the sale, a notice shall be given to the purchaser that is in substantially the same form as set forth in subsection (b), section five of this article.

§21-11A-7. Prerequisites to commencing an action.

(a) The procedures contained in this article are exclusive and required prerequisites to commencing a civil action under the West Virginia rules of civil procedure.

(b) If a claimant files a civil action alleging a construction defect without first complying with the provisions of this article, then on application by a party to the action, the court shall dismiss the action, without prejudice, and the action may not be refiled until the claimant has complied with the requirements of this article.

(a) A claimant asserting a claim of a construction defect under this article shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

(1) Be in writing and signed by the claimant or the claimant's authorized representative;

(2) Be delivered by hand, certified mail, return receipt requested, or other verifiable delivery service, to the person designated in the contract to receive a notice of claim of a construction defect; if no person is designated in the contract, the notice shall be delivered to the contractor's chief administrative officer; and

(3) State in detail:

(A) The nature of the alleged construction defect and a description of the results of the defect;

(B) A description of damages caused by the alleged construction defect, including the amount and method used to calculate those damages; and

(C) The legal theory of recovery, i.e., a construction defect, including the causal relationship between the alleged construction defect and the damages claimed.

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the claimant may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the claimant's claim.

(d) The notice of claim shall be delivered no later than ninety days prior to filing an action.

Within fourteen days after the initial service of the notice of claim required in subsection (a) of this section, the contractor shall forward a copy of the notice to each subcontractor, supplier and design professional who the contractor reasonably believes is responsible for a defect specified in the notice and include with the notice a description of the specific defect for which the contractor believes the subcontractor, supplier or design professional is responsible.

§21-11A-10. Request for voluntary disclosure of additional information.

(a) Upon the filing of a claim, parties may request to review and copy relevant information in the possession or custody or subject to the control of the other party that pertains to the alleged construction defect, including, without limitation:

(1) Reports of outside consultants or experts; or

(2) Photographs and videotapes.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The claimant and the contractor may seek additional information directly from third parties.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under West Virginia law.

Within thirty days after service of the notice of claim by the claimant, each contractor, subcontractor, supplier or design
professional that has received a notice of claim shall serve a written response on the claimant, delivered by hand, certified mail, return receipt requested, or other verifiable delivery service, directed to the claimant or representative of the claimant who signed the notice of claim of a construction defect. The written response shall:

(1) Offer to compromise and settle the claim by monetary payment without inspection;

(2) Propose to inspect the residential improvement that is the subject of the claim; or

(3) State that the contractor, subcontractor, supplier or design professional disputes the claim and will neither remedy the alleged construction defect nor compromise and settle the claim.

(e) If the contractor, subcontractor, supplier or design professional disputes the claim pursuant to subdivision (3), subsection (d) of this section and will neither remedy the alleged construction defect nor compromise and settle the claim or does not respond to the claimant’s notice of claim within the time stated in said subsection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(f) If the claimant rejects the inspection proposal or the settlement offer made by the contractor, subcontractor, supplier or design professional pursuant to subsection (d) of this section, the claimant shall serve written notice of the claimant’s rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the basis for the claimant’s rejection of the contractor, subcontractor, supplier or design professional’s proposal or offer.
(g) After service of the rejection required by subsection (f) of this section, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(h) If the claimant elects to allow the contractor, subcontractor, supplier or design professional to inspect the residential improvement in accordance with the contractor, subcontractor, supplier or design professional’s proposal pursuant to subdivision (2), subsection (d) of this section, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant’s residence during normal working hours to inspect the premises and the claimed defect to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to remedy the alleged defects.

(i) Within fourteen days following completion of the inspection, the contractor, subcontractor, supplier or design professional shall serve on the claimant:

(1) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional labor and materials necessary to remedy the defect described in the claim and a timetable for the completion of such construction;

(2) A written offer to compromise and settle the claim by monetary payment; or

(3) A written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect.
(j) If a claimant accepts a contractor, subcontractor, supplier or design professional’s offer made pursuant to subdivision (1) or (2), subsection (i) of this section and the contractor, subcontractor, supplier or design professional does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(k) If a claimant receives a written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(l) If the claimant rejects the offer made by the contractor, subcontractor, supplier or design professional to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant’s rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the basis for the claimant’s rejection of the contractor, subcontractor, supplier or design professional’s offer. After service of the rejection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(m) Any claimant accepting the offer of the contractor, subcontractor, supplier or design professional to remedy the construction defects shall do so by serving the contractor, subcontractor, supplier or design professional with a written notice of acceptance within a reasonable period of time after receipt of the offer but no later than thirty days after receipt of the offer.
(n) If a claimant accepts a contractor, subcontractor, supplier or design professional’s offer to repair a defect described in an initial notice of claim, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant’s residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(o) During negotiations under this article, if the running of the applicable statute of limitations would otherwise become a bar to a civil action, service of a claimant’s written notice of claim pursuant to this article tolls the applicable statute of limitations until six months after the termination of negotiations under this article.


The parties shall negotiate in accordance with the times set forth in section twelve of this article (relating to timetable) to attempt to resolve all claims. No party is obligated to settle with the other party as a result of the negotiation.


(a) Following receipt of a claimant’s notice of claim, the contractor or other designated representative shall review the claimant’s claim and initiate negotiations with the claimant to attempt to resolve the claim.

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time not to exceed thirty days following the date the contractor receives the claimant’s notice of claim.
(c) The parties may conduct negotiations according to an agreed schedule, but must begin negotiations no later than the deadline set forth in subsection (b) of this section.

(d) Subject to subsection (e) of this section, the parties shall complete the negotiations that are required by this article within ninety days after the contractor receives the claimant’s notice of claim.

(e) The parties may agree in writing to extend the time for negotiations, on or before the ninetieth day after the contractor receives the claimant’s notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.


Negotiation is a consensual bargaining process in which the parties attempt to resolve the claim. A negotiation under this article may be conducted by any method, technique or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement and settle.


(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.
(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the claimant and the contractor who have authority to bind each respective party.

c) A partial settlement does not waive parties’ rights as to the parts of the claims that are not resolved.


Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney’s fees, consultant’s fees and expert’s fees.


If a claim for a construction defect is not resolved in its entirety through negotiation in accordance with this article on or before the ninetieth day after the contractor receives the notice of claim or after the expiration of any extension agreed to by the parties, the claimant may commence an action.

§21-11A-17. Additional construction defects; additional notice of claim.

A construction defect which is discovered after a claimant has provided a contractor with the original notice of claim is subject to the notice requirements and timetable of this article.
CHAPTER 74

(Com. Sub. for H. B. 3117 — By Mr. Speaker, Mr. Kiss, and Delegates Staton, Amores, Michael, Pino, Kuhn and Cann)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter five 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 two, all relating to bidding on government construction contracts; inclusion of certain valid bid bonds; designation of time and place of opening of certain bids; inability to waive certain bid provisions and requirements; and inability to resubmit certain bids on a project after bid withdrawal.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, chapter 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 two, all to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.
§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

(a) As used in this section, "the state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(b) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions.

(c) Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on said project.

(d) All bids shall be opened in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a, chapter five of this code are exempt from these provisions.

(e) Nothing in this section shall apply to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;
(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when such use is a part of the student’s training program;

(3) Emergency repairs to building components and systems. For the purpose of this subdivision, emergency repairs means repairs that if not made immediately will seriously impair the use of such building components and systems, or cause danger to those persons using such building components and systems;

and

(4) Any situation where the state or a subdivision thereof shall come to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.

(a) The public entity accepting public contract bids shall, in its resolution providing for the contract or purchase and for the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud. No public entity may accept or take any bid, including receiving any hand delivered bid, after the time advertised to take bids. No bid may be opened on days which are recognized as holidays by the United States postal service. No public entity may accept or consider any bids that do not contain a valid bid bond or other surety approved by the state of West Virginia or its subdivisions.

(b) The provisions and requirements of this section, section one, article twenty-two of this chapter, the requirements stated in the advertisement for bids and the requirements on the bid
form may not be waived by any public entity. The public entity may only reject an erroneous bid after the opening if all of the following conditions exist: (1) An error was made; (2) the error materially affected the bid; (3) rejection of the bid would not cause a hardship on the public entity involved, other than losing an opportunity to receive construction projects at a reduced cost; and (4) enforcement of the bid in error would be unconscionable. If a public entity rejects a bid, it shall maintain a file of documented evidence demonstrating that all the conditions set forth in this subdivision existed. If the public entity determines the bid to be erroneous, the public entity shall return the bid security to the contractor.

(c) A contractor who withdraws a bid under the provisions of this section may not resubmit a bid on the same project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

CHAPTER 75

(Com. Sub. for S. B. 354 — By Senators Sprouse, Weeks, Deem, Smith and Boley)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred eleven, relating to creating the offense of operating or attempting to operate a clandestine drug laboratory; defining clandestine drug laboratory; offenses; penalties; and requiring payment for costs of remediation.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than five thousand dollars nor more than twenty-five thousand dollars, or both.

(b) For purposes of this section, a "clandestine drug laboratory" means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(c) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.
AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b; to amend and reenact sections two hundred three, two hundred six, two hundred eleven, article two of said chapter thirty-one-b; to amend and reenact sections one thousand two and one thousand six, article ten of said chapter thirty-one-b; to amend and reenact section three hundred one, article three, chapter thirty-one-e of said code; to amend and reenact section four, article eight, chapter forty-seven of said code; to amend and reenact sections one, thirteen, sixteen and fifty, article nine of said chapter forty-seven; to amend and reenact sections two, three and four, article nine-a of said chapter forty-seven; to amend and reenact section one, article one, chapter forty-seven-b of said code; and to amend and reenact sections one and four, article ten of said chapter forty-seven-b, all relating to making all business entity filing requirements consistent with the corporation requirements under the new corporation laws, including electronic filing, no requirement to have an agent and office in West Virginia, and no requirement to have a street address; requiring county and business class codes to be on the annual tax returns filed with the tax department; and clarifying the use of trade names by limited liability companies.
Be it enacted by the Legislature of West Virginia:

That section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one hundred one, one hundred eight and one hundred nine, article one, chapter thirty-one-b of said code be amended and reenacted; that sections two hundred three, two hundred six, two hundred eleven, article two of said chapter be amended and reenacted; that sections one thousand two and one thousand six, article ten of said chapter be amended and reenacted; that section three hundred one, article three, chapter thirty-one-e of said code be amended and reenacted; that section four, article eight, chapter forty-seven of said code be amended and reenacted; that sections one, thirteen, sixteen and fifty, article nine of said chapter be amended and reenacted; that sections two, three and four, article nine-a of said chapter be amended and reenacted; that section one, article one, chapter forty-seven-b of said code be amended and reenacted; and that sections one and four, article ten of said chapter be amended and reenacted, all to read as follows:

Chapter 11. Taxation.
31E. West Virginia Nonprofit Corporation Act.
47. Regulation of Trade.
47B. Uniform Partnership Act.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. — When application is made to the secretary of state for a certificate of incorporation or authority to do business in this state, the applicant shall pay all taxes and fees due under this article; and the secretary of state shall collect the corporate license tax for the first year
before issuing the certificate. Thereafter, on or before the first
day of the license tax year next following the date of the
certificate, and on or before the first day of each succeeding
license tax year, the corporation shall pay and the tax commis-
sioner shall collect the tax for a full license tax year together
with the statutory attorney fee: Provided, That if the application
is made on or after the first day of the second month preceding
the beginning of the next license tax year, and before the first
day of the license tax year, the secretary of state shall collect
the tax for the full year beginning on the first day of the next
license tax year in addition to the initial tax, together with the
statutory attorney fee.

(b) Deposit of money. — The first year license tax received
by the secretary of state pursuant to the provisions of this article
shall be deposited by the secretary of state as follows: One-half
shall be deposited in the state general revenue fund and one-half
shall be deposited in the services fees and collections account
established by section two, article one, chapter fifty-nine of this
code. The license tax received by the tax commissioner every
year after the initial registration shall be deposited into the state
general revenue fund.

(c) Returns. — Payment of the tax and statutory attorney
fee required under the provisions of this section shall be
accompanied by a return on forms provided by the tax commis-
sioner for that purpose. The tax commissioner shall upon
completion of processing the return, forward it to the secretary
of state, together with a list of all corporations which have paid
the tax. The return shall contain: (1) The address of the corpora-
tion’s principal office; (2) the names and mailing addresses of
its officers and directors; (3) the name and mailing address of
the person on whom notice of process may be served; (4) the
name and address of the corporation’s parent corporation and
of each subsidiary of the corporation licensed to do business in
this state; (5) the county or county code in which the principal
40 office address or mailing address of the company is located in;
41 (6) business class code; and (7) any other information the tax
42 commissioner considers appropriate. Notwithstanding any other
43 provision of law to the contrary, the secretary of state shall,
44 upon request of any person, disclose: (A) The address of the
45 corporation’s principal office; (B) the names and addresses of
46 its officers and directors; (C) the name and mailing address of
47 the person on whom notice of process may be served; (D) the
48 name and address of each subsidiary of the corporation and the
49 corporation’s parent corporation; (E) the county or county code
50 in which the principal office address or mailing address of the
51 company is located; and (F) the business class code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY
COMPANY ACT.

Article
2. Organization.
10. Foreign Limited Liability Companies.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-108. Designated office and agent for service of process.
§31B-1-109. Change of designated office or agent for service of process.


1 In this chapter:

2 (1) “Articles of organization” means initial, amended and
3 restated articles of organization and articles of merger. In the
4 case of a foreign limited liability company, the term includes all
5 records serving a similar function required to be filed in the
6 office of the secretary of state or other official having custody
7 of company records in the state or country under whose law it
8 is organized.
(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession and other lawful purpose, whether or not carried on for profit.

(4) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state or foreign law governing insolvency.

(5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(6) "Distinguishable" means, in relation to the name of a business a difference between names which would allow a person to recognize or perceive the name of the business as being noticeably different including at least a one-word difference between names when the words are common terms and the company is or might appear to be in a similar business and at least a word order difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

(7) "Distribution" means a transfer of money, property or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

(8) "Distributional interest" means all of a member's interest in distributions by the limited liability company.
(9) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(10) "Entity" means a person other than an individual.

(11) "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of this state which afford limited liability to its owners comparable to the liability under section 3-303 and is not required to obtain a certificate of authority to transact business under any law of this state other than this chapter.

(12) "Limited liability company" means a limited liability company organized under this chapter.

(13) "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under section 3-301.

(14) "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

(15) "Member-managed company" means a limited liability company other than a manager-managed company.

(16) "Operating agreement" means the agreement under section 1-103 concerning the relations among the members, managers and limited liability company. The term includes amendments to the agreement.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivi-
(18) "Principal office" means the office, whether or not in this state, where the principal executive office of a domestic or foreign limited liability company is located.

(19) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) "Sign" or "signature" means to identify a record by means of a signature, mark or other symbol, with intent to authenticate it and includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(22) "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.

(23) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance and gift.

§31B-1-108. Designated office and agent for service of process.

(a) A limited liability company and a foreign limited liability company authorized to do business in this state may continuously maintain in this state:

(1) An office, which need not be a place of its business in this state; and
(2) An agent and address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this state, a domestic corporation, another limited liability company or a foreign corporation or foreign company authorized to do business in this state.

(c) Every limited liability company shall pay an annual fee of twenty-five dollars for the services of the secretary of state as attorney-in-fact for the limited liability company, which fee shall be due and payable at the initial registration of the limited liability company and every year thereafter the same time that the annual report required under section two hundred eleven, article two of this chapter is due and one half of each fee shall be deposited in the state fund, general revenue and one half of the fees in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this chapter.

(d) The secretary of state shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.
(1) The name of the company;

(2) The address of its current designated office, if any;

(3) If the current designated office is to be changed, the address of the new designated office;

(4) The name and address of its current agent for service of process, if any;

(5) If the current agent for service of process or address of that agent is to be changed, the new address or the name and address of the new agent for service of process.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

§31B-2-206. Filing in office of secretary of state.

§31B-2-211. Annual report for secretary of state.

§31B-2-203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

(1) The name of the company;

(2) The address of the initial designated office;

(3) The name and address of the initial agent for service of process;

(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

(5) Whether the company is to be a term company and, if so, the term specified;
(6) Whether the company is to be manager-managed and, if so, the name and address of each initial manager; and

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c).

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-206. Filing in office of secretary of state.

(a) Articles of organization or any other record authorized to be filed under this chapter must be in a medium permitted by the secretary of state and must be delivered to the office of the secretary of state. Delivery may be made by electronic transmission if permitted by the secretary of state. Unless the secretary of state determines that a record fails to comply as to form with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the
record and send a receipt for the record and the fees to the
limited liability company or its representative.

(b) Upon request and payment of a fee, the secretary of
state shall send to the requester a certified copy of the requested
record.

(c) Except as otherwise provided in subsection (d) of this
section and section 2-207(c), a record accepted for filing by the
secretary of state is effective:

(1) At the time of filing on the date it is filed, as evidenced
by the secretary of state’s date and time endorsement on the
original record; or

(2) At the time specified in the record as its effective time
on the date it is filed.

(d) A record may specify a delayed effective time and date,
and if it does so the record becomes effective at the time and
date specified. If a delayed effective date but no time is
specified, the record is effective at the close of business on that
date. If a delayed effective date is later than the ninetieth day
after the record is filed, the record is effective on the ninetieth
day.

§31B-2-211. Annual report for secretary of state.

(a) A limited liability company, and a foreign limited
liability company authorized to transact business in this state,
shall deliver to the secretary of state for filing an annual report
that sets forth:

(1) The name of the company and the state or country under
whose law it is organized;

(2) The address of its designated office, if any and the name
and address of its agent for service of process in this state, if any;

(3) The address of its principal office; and

(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the secretary of state between the first day of January and the first day of April of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between the first day of January and the first day of April of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely filed.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.
§31B-10-1006. Revocation and reinstatement of certificate of authority.

§31B-10-1002. Application for certificate of authority.
(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

1. The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;

2. The name of the state or country under whose law it is organized;

3. The street address of its principal office;

4. The name and address of each member having authority to execute instruments on behalf of the limited liability company;

5. The address of its initial designated office in this state, if any;

6. The name and address of its initial agent for service of process in this state, if any;

7. Whether the duration of the company is for a specified term and, if so, the period specified;

8. Whether the company is manager-managed and, if so, the name and address of each initial manager; and

9. Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c).
(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(i) Pay any fees, taxes and penalties owed to this state;

(ii) Deliver its annual report required under section 2-211 to the secretary of state within sixty days after it is due; or

(iii) File a statement of a change in the name or business address of the agent as required by this article; or

(2) A misrepresentation has been made of any material matter in any application, report, affidavit or other record submitted by the company pursuant to this article.

(b) The secretary of state may not revoke a certificate of authority of a foreign limited liability company unless the secretary of state sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.
(c) A foreign limited liability company administratively revoked may apply to the secretary of state for reinstatement within two years after the effective date of revocation. The application must: (1) Recite the name of the company and the effective date of its administrative revocation; (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that the company’s name satisfies the requirements of section 10-1005; and (4) contain a certificate from the tax commissioner reciting that all taxes owed by the company have been paid.

(d) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, the secretary of state shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the company may resume its business as if the administrative revocation had never occurred.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 3. PURPOSES AND POWERS.

§31E-3-301. Purposes.

Corporations may be organized under this chapter for any lawful purpose, including any one or more of the following purposes: Charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, social, fraternal, literary,
5 cultural, athletic, scientific, agricultural, horticultural, animal
6 husbandry, and professional commercial, industrial or trade
7 association.

CHAPTER 47. REGULATION OF TRADE.

Article
8.
9.
9A. Voluntary Associations and Business Trusts.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations, limited partnerships, limited
liability partnerships, and limited liability compa-
nies not to conduct business under assumed name
without certificate of trade name; application;
issuance of certificate of trade name.

(a) No business entity organized as a corporation, limited
partnership, limited liability partnership, limited liability
company, business trust or voluntary association required to
register with the secretary of state in order to conduct business
within the state may conduct or transact any business in this
state under any assumed name, or under any designation, name
or style, corporate or otherwise, other than the name established
by the original certificate establishing the business entity or by
an amendment thereto, unless the business entity files in the
office of the secretary of state an application for registration of
trade name. The application shall set forth:

(1) The name under which the business entity is organized
and registered;

(2) The name under which the business of such business
entity is, or is to be, conducted or transacted upon approval of
the application, which name must be distinguishable from the
name of any other corporation, limited partnership, limited
liability partnership, limited liability company, business trust or voluntary association, and from any name reserved or registered for any of those business entities;

(3) The address of the principal office within the state or, if no office is maintained within the state, the address of the principal office in the state in which the business entity is established; and

(4) The name, title and signature of a person having authority to make the application.

The secretary of state shall grant a certificate of registration to any applicant who has met the requirements of this subsection. A new certificate of registration is to be filed if the business entity desires to conduct or transact any business in this state under any other assumed name not on file in the office of the secretary of state.

(b) One original executed of the application for trade name registration shall be delivered to the secretary of state. Delivery may be made by electronic transmission if permitted by the secretary of state. If the filing officer finds that the application for trade name registration conforms to law, he or she shall, when all fees have been paid as prescribed by law, file it and shall deliver to the entity or its representative a receipt for the record and fee.

(c) Upon discontinuing the use of a registered trade name the certificate of registration of trade name shall be withdrawn by filing a certificate of withdrawal with the office of the secretary of state setting forth the name to be discontinued, the real name, the address of the party transacting business and the date upon which the original certificate of registration of trade name was filed.
(d) Any corporation authorized to transact business in this state shall procure an amended certificate of incorporation in the event it changes its corporate name by filing articles of amendment with the office of the secretary of state as provided in article ten, chapter thirty-one-d, or article ten, chapter thirty-one-e of this code.

(e) Any limited liability company registering a trade name pursuant to the provisions of this section is subject to the limitations set forth in subsections (b), (c) and (d) section one hundred five, article one, chapter thirty-one-b of this code.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section eight of this article and the certificate as amended;

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his or her capacity as a partner;

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission;
(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient;

(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

(7) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

(8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(9) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(10) "Partner" means a limited or general partner;

(11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;
(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company, professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity;

(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature; and

(15) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.


(a) One signed copy of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the secretary of state. Delivery may be made by electronic transmission if permitted by the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he or she shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

(b) Upon the filing of a certificate of amendment, or judicial decree of amendment, in the office of the secretary of state the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the secretary of state, required by section eight of this article, shall determine the validity of the limited partnership.
§47-9-16. Delivery of certificates to limited partners.

Upon the return by the secretary of state pursuant to section thirteen of this article of a receipt for the record and the fees the general partners shall promptly deliver or mail a copy of the receipt for the record and the fees to each limited partner unless the partnership agreement provides otherwise.

§47-9-50. Issuance of registration.

(a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the secretary of state, required by section nine of this article, shall determine the validity of the limited partnership.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.


§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, article or agreement; change of agent for service of process, trustees, and members; dissolution; filing.


(a) For the purposes of this article, a “business trust” is any trust organized for the purpose of conducting business and commonly designated as a Massachusetts trust.

(b) Any business trust organized in this state shall file with
secretary of state: (1) One executed original copy of an application for registration; and (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust.

(c) Any business trust organized outside this state and operating within this state shall file with the secretary of state: (1) One executed original copy of an application for registration; (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust as recorded in the state or country of origin of the business trust; and (3) a statement or certificate from the proper officer of the state or country of origin that the business trust is in good standing.

(d) An application for registration shall set forth:

(1) The name of the business trust;

(2) If organized within the state, a statement that it is a West Virginia business trust, or if organized outside the state, the state in which it was organized and the formation date of the business trust;

(3) The purpose or purposes for which the business trust is organized;

(4) The address of its principal office;

(5) The name and address of the person to whom notice of process may be sent, if any;

(6) The names and addresses of all trustees having authority to act on behalf of the business trust; and

(7) A statement reflecting the business trust's consent to and recognition of the application to the business trust of the law of this state with respect to corporations.
(e) An application for registration may contain the notarized signature of a trustee of the business trust.

(f) If the secretary of state determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the business trust or its representative a receipt for the record and the fees.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

(a) For purposes of this article, a "voluntary association" is any association organized for the purpose of conducting business in this state, but does not include an organization formed as an unincorporated nonprofit association under the provisions of article eleven, chapter thirty-six of this code.

(b) Any voluntary association organized in this state shall file with secretary of state: (1) One executed original copy of an application for registration; and (2) one executed original copy of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).

(c) Any voluntary association organized outside this state and operating within this state shall file with the secretary of state: (1) One executed original copy of an application for registration; (2) one executed original copy of the agreement of association creating the voluntary association; and (3) a statement or certificate from the proper officer of the state or country of origin that the voluntary association is in good standing.

(d) An application for registration shall set forth:
(1) The name of the voluntary association;

(2) The principal office address of the voluntary association;

(3) The mailing address of the voluntary association, if different from the principal office address;

(4) The name and address of the person to whom notice of process may be sent, if any;

(5) Whether the voluntary association is organized for profit or as a nonprofit voluntary association;

(6) The purpose or purposes for which the voluntary association is formed;

(7) The full names and addresses of one or more of the organizers of the voluntary association;

(8) The full names and addresses of no fewer than two officers, owners or members of the voluntary association who have signatory authority for the association;

(9) Any additional statements as may be required for the type of business to be conducted; and

(10) A statement reflecting the voluntary association's consent to and recognition of the application of the law of this state with respect to corporations to the voluntary association.

(e) An application for registration may contain the notarized signature of at least one organizer or member of the voluntary association.

(f) If the secretary of state determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-
nine of this code has been paid, he or she shall file it and deliver
to the voluntary association or its representative a receipt for
the record and the fees.

§47-9A-4. Application of laws relating to corporations; name of
business trust or voluntary association; adoption
and use of trade name and seal; amendment of
declaration, articles or agreement; change of
agent for service of process, trustees, and mem-
bers; dissolution; filing.

(a) Unless otherwise specifically provided in this article,
any business trust or voluntary association conducting business
in this state is subject to the laws of this state with respect to
corporations, including laws relating to license fees and all
other taxes, to the extent such laws are applicable.

(b) The name of any business trust or voluntary association
applying for registration shall meet the requirements for
corporate names set forth in section four hundred one, article
four, chapter thirty-one-d or section four hundred one, chapter
ty thirty-one-e of this code, except that the name shall not contain
the words “incorporated,” “corporation,” “limited,” or any
abbreviation of these terms.

(c) Any business trust or voluntary association may use a
trade name upon complying with the provisions of section four,
article eight, chapter forty-seven of this code. Any business
trust or voluntary association may adopt and use a common
seal.

(d) Upon the adoption of an amendment to the declaration,
articles or agreement of trust of a business trust or the agree-
ment of association of a voluntary association, the business
trust or voluntary association shall file one executed original
copy of the amendment, and may contain the notarized signa-
ture of at least one trustee of the business trust or at least one
organizer or member of the voluntary association, with the office of the secretary of state.

(e) Upon any change of trustees, organizers, members or other persons previously recorded as having authority to act on behalf of the business trust or voluntary association, or upon any change of the agent of the business trust or voluntary association for service of process, a business trust or voluntary association shall file notice of the change with the secretary of state.

(f) Upon the determination of the majority of trustees of a business trust or a majority of members of a voluntary association that the business trust or voluntary association shall be dissolved; and after all debts, liabilities and obligations of the business trust or voluntary association have been paid and discharged, the business trust or voluntary association shall distribute all of the remaining assets of the business trust or voluntary association and file articles of dissolution with the secretary of state in the manner provided for corporations in section one thousand four hundred three, article fourteen, chapter thirty-one-d, or section one thousand three hundred three, article thirteen, chapter thirty-one-e of this code. Upon verification by the appropriate state agencies that the business trust or voluntary association has paid all taxes, assessments and fees due to the state, the secretary of state shall file it and deliver to the voluntary association or business trust or its representative a receipt for the record and the fees.

(g) A business trust or voluntary association organized outside the state and registered to do business within this state may withdraw from the state in the manner provided for corporations in section one thousand five hundred twenty, article fifteen, chapter thirty-one-d or section one thousand four hundred twenty, article fourteen, chapter thirty-one-e of this code.
(h) No document required to be filed by this section shall be filed with the secretary of state unless the trustee of the business trust or the organizer or member of the voluntary association is currently authorized as such.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

Article
10. Limited Liability Partnerships.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) “Business” includes every trade, occupation and profession.

3 (2) “Debtor in bankruptcy” means a person who is the subject of:

4 (i) In order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

5 (ii) A comparable order under federal, state or foreign law governing insolvency.

6 (3) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

7 (4) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.
(5) "Electronic transmission" or "electronically transmitted", means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(6) "Foreign limited liability partnership" means a partnership or association formed under or pursuant to an agreement governed by the laws of any state or jurisdiction other than this state that is denominated as a registered limited liability partnership or limited liability partnership under the laws of such other jurisdiction.

(7) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(8) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, professional limited liability company, association, joint
(12) "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(13) "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under section one, article ten of this chapter.

(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Statement" means a statement of partnership authority under section three, article three of this chapter, a statement of denial under section four of said article, a statement of dissociation under section four, article seven of this chapter, a statement of dissolution under section five, article eight of this chapter, a statement of merger under section seven, article nine of this chapter, a statement of registration and a statement of withdrawal under section one, article ten of this chapter, or an amendment or cancellation of any of the foregoing.

(17) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-1. Registered limited liability partnerships.

§47B-10-4. Applicability of article to foreign and interstate commerce.
(a) To become a registered limited liability partnership, a partnership shall deliver and file with the secretary of state a statement of registration stating the name of the partnership; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby registers as a registered limited liability partnership.

(b) The registration shall be executed by one or more partners authorized to execute a registration.

(c) The registration shall be accompanied by a fee of two hundred fifty dollars.

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee and deliver to the partnership or its representative a receipt for the record and the fees.

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the secretary of state, an annual fee of five hundred dollars. The fee shall be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership’s registration.

(f) Registration is effective:

(1) Immediately after the date a registration is filed; or

(2) On a date specified in the statement of registration, which date shall not be more than sixty days after the date of filing.
(g) Registration remains effective until:

(1) It is voluntarily withdrawn by filing with the secretary of state a statement of withdrawal; or

(2) Thirty days after receipt by the partnership of a notice from the secretary of state, which shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (e) of this section, unless the fee is paid within a thirty-day period.

(h) The status of a partnership as a registered limited liability partnership and the liability of the partners thereof shall not be affected by:

(1) Errors in the information contained in a statement of registration under subsection (a) of this section or notice under subsection (e) of this section; or

(2) Changes after the filing of the statement of registration or notice in the information stated in the registration or notice.

(i) The secretary of state may provide forms for the statement of registration under subsection (a) of this section or a notice under subsection (e) of this section.

(j) All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.
§47B-10-4. Applicability of article to foreign and interstate commerce.

(a) A registered limited liability partnership formed under this article may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States or in any foreign country.

(b) It is the intent of the Legislature that the legal existence of registered limited liability partnerships formed under this article be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships doing business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(c) Notwithstanding section six, article one of this chapter, the internal affairs of registered limited liability partnerships formed under this article, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign registered limited liability partnership shall:

(i) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(ii) File a notice with the secretary of state, stating the name of the partnership; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process; any other matters that the partnership determines to include; and a brief statement of the business in which the partnership engages. Such notice shall
be effective for two years from the date of filing, after which
time the partnership shall file a new notice.

(e) The name of a foreign registered limited liability
partnership doing business in this state shall contain the words
“Registered Limited Liability Partnership” or the abbreviation
“L.L.P.” or “LLP” as the last words or letters of its name.

(f) Notwithstanding section six, article one of this chapter,
the internal affairs of foreign registered limited liability
partnerships, including the liability of partners for debts,
obligations and liabilities of or chargeable to the partnership,
shall be subject to and governed by the laws of the jurisdiction
in which the foreign registered limited liability partnership is
registered.

CHAPTER 77

(Com. Sub. for S. B. 424 — By Senators Love, Dempsey,
Hunter, White, Rowe and Ross)

[Passed March 8, 2003; in effect 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 sixteen-a,
relating to governor’s authority to authorize the commissioner of
corrections to consent to transfers of convicted offenders under a
federal treaty requiring consent of inmate; and requiring inmate
be informed of rights and procedures in a language he or she
understands.

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 sixteen-a, to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-16a. Governor’s authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.

1 If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty and with the consent of the offender, authorize the commissioner of corrections to consent to the transfer or exchange of inmates in his or her custody and take any other action necessary to initiate the participation of this state in the treaty. No transfer may occur pursuant to the provisions of this section until the inmate is informed of his or her rights and the procedures involved in his or her native language unless it is determined that the inmate’s knowledge of English is sufficient.

CHAPTER 78

(Com. Sub. for H. B. 2705 — By Delegates Staton, Amores, Armstead, Fleischauer, R. Thompson, Webb and Webster)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]
AN ACT to amend chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to the supervision of adult offenders; and authorizing and directing the governor to execute a compact for the supervision of adult offenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS.

§28-7-1. Execution of interstate compact for the supervision of adult offenders.

§28-7-2. State council for interstate adult offender supervision.

§28-7-3. Appointment of compact administrator.

§28-7-1. Execution of interstate compact for the supervision of adult offenders.

1 The governor of this state is authorized and directed to execute a compact on behalf of the state of West Virginia with any state or states of the United States legally joining therein, in form substantially as follows:

5 ARTICLE I. PURPOSE.

6 (a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and
encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;
Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no “right” of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) “Adult” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) “Bylaws” means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission’s actions or conduct.

(c) “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate
commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission which shall have the force and effect of law in the compacting states.
(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article III of this compact.

ARTICLE III. THE COMPACT COMMISSION.

(a) The compacting states hereby created the "Interstate Commission for Adult Offender Supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the
compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or an amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV. THE STATE COUNCIL.

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators.
(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the Legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(3) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(4) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(5) To establish and maintain offices;

(6) To purchase and maintain insurance and bonds;
(7) To borrow, accept or contract for services of personnel, including, but not limited to, members and their staffs;

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(13) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(14) To sue and be sued;

(15) To provide for dispute resolution among compacting states;
(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(18) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI. ORGANIZATION AND OPERATION
OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

(a) The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;
(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for “start up” administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

(b)(1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: Provided, That subject to the availability of budgeted funds, the officers shall be
reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

Section C. Corporate Records of the Interstate Commission.

(c) The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense and Indemnification.

(d)(1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission’s representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that
occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant has a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission’s representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII. ACTIVITIES OF THE INTERSTATE COMMISSION.

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on
behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission’s bylaws establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law-enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law-enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principals contained in the “Government in Sunshine Act” 5 U.S.C. § 552(b), as may be amended. The interstate commission and
any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission’s internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law-enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the interstate commission’s issuance of a subpoena or its participation in a civil action or proceeding.
(g) For every meeting closed pursuant to this provision, the interstate commission’s chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call (effective in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII. RULE MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended (hereinafter “APA”). All rules and amendments shall become binding as of the date specified in each rule or amendment.
(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute of resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

1. Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

2. Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

3. Provide an opportunity for an informal hearing; and

4. Promulgate a final rule and its effective date, if appropriate, based on the rule making record.

(e) Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the interstate commission’s principal office is located for judicial review of such rule. If the court finds that the interstate commission’s action is not supported by substantial evidence, (as defined in the APA), in the rule making record, the court shall hold the rule unlawful and set it aside.

(f) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

1. Notice to victims and opportunity to be heard;

2. Offender registration and compliance;
(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) Mediation, arbitration and dispute resolution.

(g) The existing rules governing the operation of the previous compact superceded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(h) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption: Provided, That the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.
(a)(1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

(b)(1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission on the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using
any or all means set forth in article XII, section B, of this compact.

ARTICLE X. FINANCE.

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior in securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.
ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of the first day of July, two thousand one, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII. WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

(a)(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: Provided, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.
(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default

(b)(1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules the interstate commission may impose any or all of the following penalties:

(A) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(B) Remedial training and technical assistance as directed by the interstate commission; and

(C) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the
chief justice or chief judicial officer of the state, the majority
and minority leaders of the defaulting state’s legislature, and
the state council.

(2) The grounds for default include, but are not limited to,
failure of a compacting state to perform such obligations or
responsibilities imposed upon it by the compact, interstate
commission bylaws, or duly promulgated rules. The interstate
commission shall immediately notify the defaulting state in
writing of the penalty imposed by the interstate commission on
the defaulting state pending a cure of the default. The interstate
commission shall stipulate the conditions and the time period
within which the defaulting state must cure its default. If the
defaulting state fails to cure the default within the time period
specified by the interstate commission, in addition to any other
penalties imposed herein, the defaulting state may be termi-
nated from the compact upon an affirmative vote of a majority
of the compacting states and all rights, privileges and benefits
conferred by this compact shall be terminated from the effective
date of suspension. Within sixty days of the effective date of
termination of a defaulting state, the interstate commission shall
notify the governor, the chief justice or chief judicial officer
and the majority and minority leaders of the defaulting state’s
legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments,
obligations and liabilities incurred through the effective date of
termination including any obligations, the performance of
which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs
relating to the defaulting state unless otherwise mutually agreed
upon between the interstate commission and the defaulting
state. Reinstatement following termination of any compacting
state requires both a reenactment of the compact by the default-
(c) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules. The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the Federal District where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

(d)(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting states which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.
(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV. BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other laws.

(a)(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states’ laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

(b)(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commissions may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compact-
ing state, the obligations, duties, powers or jurisdiction sought
to be conferred by such provision upon the interstate commis-
sion shall be ineffective and such obligations, duties, powers or
jurisdiction shall remain in the compacting state and shall be
exercised by the agency thereto to which such obligations,
duties, powers or jurisdiction are delegated by law in effect at
the time this compact becomes effective.

§28-7-2. State council for interstate adult offender supervision.

(a) Within thirty days of the effective date of this article,
there shall be created a state council for interstate adult offender
supervision. Said state council shall be comprised of a total of
nine members, to be selected and designated as follows:

(1) Two members designated by the state Legislature, one
of whom shall be named and appointed by the speaker of the
House, and the other of whom shall be designated by the
president of the Senate;

(2) Two members designated by the judiciary, both of
whom shall be named and appointed by the chief justice of the
supreme court of appeals of West Virginia;

(3) The compact administrator or a designee of the compact
administrator;

(4) Four members to be designated and appointed by the
governor, two of whom must be representatives of state
agencies dealing with adult corrections, parole or probation, and
one of whom must be a representative of a victims' group.

(b) Within sixty days of the effective date of this article, the
state council shall meet and designate a commissioner who
shall represent the state as the compacting state’s voting representative under article III of this compact.

(c) The state council will exercise oversight and advocacy concerning West Virginia’s participation in interstate commission activities and rule makings, and engage in other duties and activities as determined by its members, including, but not limited to, the development of policy concerning the operations and procedures for implementing the compact and interstate commission rules within West Virginia.

§28-7-3. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for adult offender supervision, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like offices of the other party states, shall be responsible for the administration and management of this state’s supervision and transfer of adult offenders subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact. Said compact administrator shall serve subject to the will and pleasure of the governor, and must meet the minimum qualifications for the position of compact administrator, as established by the state council. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

(b) Until such time as the state council has met and established minimum qualifications for the position of compact
administrator, the individual or administrator who has been
designated by the governor to act as the compact administrator
for the supervision of out-of-state parolees and probationers,
pursuant to section one, article six of this chapter, may perform
the duties and responsibilities of compact administrator under
this article.

(c) Until such time as the state council has met and desig-
nated a commissioner to vote on behalf of the state of West
Virginia at the interstate commission, the individual or adminis-
trator who has been designated to act as the compact adminis-
trator for the supervision of out-of-state parolees and probation-
ers, pursuant to section one, article six of this chapter, shall
function as the acting commissioner for the state of West
Virginia before the interstate commission formed under the new
compact.

CHAPTER 79

(S. B. 654 — By Senators Caldwell, Kessler, Jenkins, Hunter, Minard,
Oliverio, Ross, Rowe, White, Deem, Harrison, Smith and Weeks)

[Passed March 8, 2003; 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-six,
relating to community corrections generally; eligibility for
community corrections supervision; extended supervision for
certain sex offenders; supervision where available through
community corrections; fees; procedures; and penalties.
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-six, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter may, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years. The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(b) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by the probation office of the sentencing court or by the community corrections program established in said circuit unless jurisdiction is transferred elsewhere by order of the sentencing court.

(c) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a
person placed upon probation pursuant to the provisions of
section nine, article twelve, chapter sixty-one of this code:

Provided, That any defendant sentenced to a period of super-
vised release pursuant to this section shall be required to
participate in appropriate offender treatment programs or
counseling during the period of supervised release unless the
court deems such to no longer be appropriate or necessary and
makes express findings in support thereof.

(d) The sentencing court may, based upon defendant's
ability to pay, impose a supervision fee to offset the cost of
supervision. Said fee shall not exceed fifty dollars per month.
Said fee may be modified periodically based upon the defen-
dant's ability to pay.

(e) Modification of conditions or revocation. — The court
may:

(1) Terminate a term of supervised release and discharge
the defendant released at any time after the expiration of two
years of supervised release, pursuant to the provisions of the
West Virginia rules of criminal procedure relating to the
modification of probation, if it is satisfied that such action is
warranted by the conduct of the defendant released and the
interests of justice;

(2) Extend a period of supervised release if less than the
maximum authorized period was previously imposed or modify,
reduce or enlarge the conditions of supervised release, at any
time prior to the expiration or termination of the term of
supervised release, consistent with the provisions of the West
Virginia rules of criminal procedure relating to the modification
of probation and the provisions applicable to the initial setting
of the terms and conditions of post-release supervision;
(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia rules of criminal procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release: Provided, That no person may serve a period of incarceration for a violation of supervised release which exceeds the maximum statutory period of confinement for the offense of conviction underlying the period of supervised release;

(4) Order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) Written statement of conditions. — The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Supervised release following revocation. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by
this section less any term of imprisonment that was imposed
upon revocation of supervised release.

(h) Delayed revocation. — The power of the court to revoke
a term of supervised release for violation of a condition of
supervised release and to order the defendant to serve a term of
imprisonment and, subject to the limitations in subsection (f) of
this section, a further term of supervised release extends beyond
the expiration of the term of adjudication of matters arising
before its expiration if, before its expiration, a warrant or
summons has been issued on the basis of an allegation of such
a violation.

CHAPTER 80

(Com. Sub. for H. B. 2001 — By Delegates Stemple, Kominar,
Pino, Pethtel, Mahan, Amores and Craig)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section three-ll, relating
to restricting public access to military discharge forms recorded
in the county clerks office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3ll. Clerk of the county commission duties relating to record keeping of military discharge forms.

(a) The county commission shall order that the clerk of the county commission wherein a person discharged from the armed forces of the United States resides record, upon presentation, free of charge, the original or a properly authenticated copy of either the discharge certificate or the report of separation from active duty (Department of Defense Document DD-214), or both, and maintain the discharge certificate or report, or both, in the clerk’s office in a secure manner, rendering the records unavailable to the public.

(b) Notwithstanding the provisions of article one, chapter twenty-nine-b of this code, discharge certificates and reports of separation from active duty recorded pursuant to this section may be copied or inspected only by the following:

(1) The person of the record;

(2) The duly qualified conservator or guardian of the person of the record;

(3) The duly qualified executor or administrator of the estate of the person of the record, if deceased, or, in the event no executor or administrator has qualified, the next of kin of the deceased person;

(4) An attorney, attorney-in-fact, or other agent or representative of any of the persons described in subdivision (1), (2) or (3), subsection (b) of this section, acting pursuant to a written power of attorney or other written authorization; or

(5) A duly authorized representative of an agency or instrumentality of federal, state, or local government seeking the record in the ordinary course of performing its official duties.
29. (c) Under the circumstances where time is of the essence, including, but not limited to, requests for copies of records attendant to the making of funeral arrangements or arrangements for medical care, the clerk, in ascertaining whether a person seeking access to discharge certificates or reports of separation from active duty is qualified to do so pursuant to subsection (b) of this section, may rely upon the sworn statement of the requestor made in person before the clerk or his deputy.

38. (d) Notwithstanding the provisions of subsection (b) of this section, the clerk may permit access to discharge certificates or reports of separation from active duty of deceased persons for bona fide genealogical or other research purposes.

CHAPTER 81

(Com. Sub. for H. B. 2818 — By Delegates Doyle, Tabb and Manuel)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-mm and three-nn, all relating to authorizing the county commissions of growth counties, by adoption of an ordinance, to establish programs for the transfer of property rights upon approval by a majority of the legal votes cast at a county-wide election; providing for a county-wide election on an ordinance for a program for transfer of development rights; form of ballots or ballot labels; election procedure.
Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-mm and three-nn, all to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3mm. Transfer of development rights in growth counties.

§7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

§7-1-3mm. Transfer of development rights in growth counties.

(a) In addition to all other powers and duties now conferred by law upon county commissions, if a county has been designated as a growth county, as that term is defined in section three, article twenty, chapter seven of this code, those county commissions, upon approval by a majority of the legal votes cast at an election as provided in section three-nn of this article, are hereby authorized to, as part of a county-wide zoning ordinance, which has been in effect for a minimum of five years, establish a program for the transfer of development rights, in order to:

(1) Encourage the preservation of natural resources;

(2) Protect the scenic, recreational and agricultural qualities of open lands; and

(3) Facilitate orderly growth and development in the county.

(b) The program for the transfer of development rights may provide for:

(1) The voluntary transfer of the development rights permitted on any parcel of land to another parcel of land;
(2) Restricting or prohibiting further development of the parcel from which development rights; and

(3) Increasing the density or intensity of development of the parcel to which such rights are transferred.

(c) The program for the transfer of development rights shall:

(1) Designate a universal program for which development rights may be transferred from any parcel of land to any other parcel of land;

(2) Provide that any rights transferred under this section be for ten years; and

(3) Any rights purchased, but not used for development, revert to the original owner after ten years.

(d) The county commission may not set a price for any development rights that are proposed to be transferred or received.

(e) "Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon the transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of these rights and may provide for the granting of easements and reasonable regulations to effect and control transfers and assure compliance with the provisions of the ordinance.
§7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

(a) A county commission which has been designated as a growth county may submit a proposed ordinance to establish a program for the transfer of development rights pursuant to section three-mm of this article to the qualified voters residing within the county for approval or rejection at any regular primary or general election. Notice of the election shall be provided and the ballots shall be printed as set forth in subsection (b) of this section. The ordinance may be adopted if it is approved by a majority of the legal votes cast thereon in that county. If the ordinance is rejected, no election on the issue shall be held thereafter for a period of one hundred four weeks.

(b) On the election ballots shall be printed the following:

Shall the County Commission of (name of county) be authorized to adopt an ordinance to establish a program for the transfer of development rights in accordance with Section three-mm, Article one, Chapter seven of the Code of West Virginia?

//Yes

//No

(c) If a majority of the legal votes cast upon the question be for the ordinance, the provisions of the ordinance become effective upon the date the results of the election are declared. If a majority of the legal votes cast upon the question be against the ordinance, the ordinance shall not take effect.

(d) Subject to the provisions of subsection (c) of this section, an election permitted by this section may be conducted at any regular primary or general election as the county
(e) Notice of an election pursuant to this section shall be given by publication of the order calling for a vote on the question 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 conducted.

(f) Any election permitted by this section shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state applicable to primary or general elections not inconsistent with the provisions of this section shall apply to voting and elections authorized by this section.

CHAPTER 82

(Com. Sub. for S. B. 432 — By Senator Oliverio)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment plans when collecting a portion of a magistrate court fine; and permitting an obligor to accelerate payment of a fine.

Be it enacted by the Legislature of West Virginia:
That section two-a, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.

(a) A magistrate court may accept credit cards in payment of all costs, fines, fees, forfeitures, restitution or penalties in accordance with rules promulgated by the supreme court of appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture or penalty.

(b) Unless otherwise required by law, a magistrate court may collect a portion of any costs, fines, fees, forfeitures, restitution or penalties at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a payment plan which specifies: (1) The number of payments to be made; (2) the dates on which the payments are due; and (3) the amounts due for each payment. The written agreement represents the minimum payments and the last date those payments may be made. The obligor or the obligor’s agent may accelerate the payment schedule at any time by paying any additional portion of any costs, fines, fees, forfeitures, restitution or penalties.

(c) (1) If any costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk shall notify the commissioner of the division of motor vehicles of the failure to pay. Upon notice, the division
of motor vehicles shall suspend any privilege the person
defaulting on payment may have to operate a motor vehicle in
this state, including any driver's license issued to the person by
the division of motor vehicles, until all costs, fines, fees,
forfeitures, restitution or penalties are paid in full. The suspen-
sion shall be imposed in accordance with the provisions of
section six, article three, chapter seventeen-b of this code:
Provided, That any person who has had his or her license to
operate a motor vehicle in this state suspended pursuant to this
subsection and his or her failure to pay is based upon inability
to pay may, if he or she is employed on a full or part-time basis,
petition to the circuit court for an order authorizing him or her
to operate a motor vehicle solely for employment purposes.
Upon a showing satisfactory to the court of inability to pay,
employment and compliance with other applicable motor
vehicle laws, the court shall issue an order granting relief.

(2) In addition to the provisions of subdivision (1) of this
subsection, if any costs, fines, fees, forfeitures, restitution or
penalties imposed or ordered by the magistrate court for a
hunting violation described in chapter twenty of this code are
not paid within one hundred eighty days from the date of
judgment and the expiration of any stay of execution, the
magistrate court clerk or, upon a judgment rendered on appeal,
the circuit clerk shall notify the director of the division of
natural resources of the failure to pay. Upon notice, the director
of the division of natural resources shall suspend any privilege
the person failing to appear or otherwise respond may have to
hunt in this state, including any hunting license issued to the
person by the division of natural resources, until all the costs,
fines, fees, forfeitures, restitution or penalties are paid in full.

(3) In addition to the provisions of subdivision (1) of this
subsection, if any costs, fines, fees, forfeitures, restitution or
penalties imposed or ordered by the magistrate court for a
fishing violation described in chapter twenty of this code are
not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the director of the division of natural resources of the failure to pay. Upon notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the division of natural resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(d) (1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the commissioner of the division of motor vehicles thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the division of motor vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the division of motor vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of natural resources of the failure thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the director of the division of natural resources shall suspend any privilege
the person failing to appear or otherwise respond may have to

hunt in this state, including any hunting license issued to the

person by the division of natural resources, until final judgment

in the case and, if a judgment of guilty, until all costs, fines,

fees, forfeitures, restitution or penalties imposed are paid in

full.

(3) In addition to the provisions of subdivision (1) of this

subsection, if a person charged with any fishing violation

described in chapter twenty of this code fails to appear or

otherwise respond in court, the magistrate court shall notify the

director of the division of natural resources of the failure

thereof within fifteen days of the scheduled date to appear

unless the person sooner appears or otherwise responds in court

to the satisfaction of the magistrate. Upon notice, the director

of the division of natural resources shall suspend any privilege

the person failing to appear or otherwise respond may have to

fish in this state, including any fishing license issued to the

person by the division of natural resources, until final judgment

in the case and, if a judgment of guilty, until all costs, fines,

fees, forfeitures, restitution or penalties imposed are paid in

full.

(e) In every criminal case which involves a misdemeanor

violation, a magistrate may order restitution where appropriate

when rendering judgment.

(f) (1) If all costs, fines, fees, forfeitures, restitution or

penalties imposed by a magistrate court and ordered to be paid

are not paid within one hundred eighty days from the date of

judgment and the expiration of any stay of execution, the clerk

of the magistrate court shall notify the prosecuting attorney of

the county of nonpayment and provide the prosecuting attorney

with an abstract of judgment. The prosecuting attorney shall file

the abstract of judgment in the office of the clerk of the county

commission in the county where the defendant was convicted
and in any county wherein the defendant resides or owns property. The clerks of the county commissions shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

(2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of section one, article twelve, chapter thirty-eight of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.

CHAPTER 83

(Com. Sub. for S. B. 213 — By Senators Kessler, Snyder, Harrison, Sprouse, Oliverio, Caldwell, McKenzie, Love, Fanning, Facemyer, Ross, Plymale, Boley, Sharpe, Minard, Jenkins, Bailey, Prezioso, Minear, Deem, Weeks, Helmick, Guills, Edgell, Smith, Hunter, Unger and Tomblin, Mr. President)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section one, article one, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venue in West Virginia state courts as it applies to nonresidents of the state; providing that a nonresident may not bring an action in this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state; setting forth the conditions under which a nonresident can file an action in this state if the nonresident cannot obtain jurisdiction over a defendant in the state where the action arose; requiring a nonresident to establish that such action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant; providing that in a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue; limiting a nonresident from intervening or joining as a plaintiff unless the person independently establishes proper venue; and requiring the court to dismiss a plaintiff without prejudice if venue is not proper as to any such nonresident plaintiff in any court of this state.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter fifty-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. VENUE.

§56-1-1. Venue generally.

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;
(2) If a corporation be a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

(3) If it be to recover land or subject it to a debt, where the land or any part may be;

(4) If it be against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him or them;

(5) If it be to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) if it be on behalf of the state in the name of the attorney general or otherwise, where the seat of government is; or

(7) If a judge of a circuit be interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.
(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

(c) Effective for actions filed after the effective date of this section, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: Provided, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that such action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the
71 claims of the plaintiff without prejudice to refiling in a court in
72 any other state or jurisdiction.

CHAPTER 84

(Com. Sub. for H. B. 2092 — By Delegates Armstead, Amores, Manuel and Craig)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter fifteen 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 establishing within the governor's committee on crime, delinquency and correction a research component relating to criminal sentencing; and requiring reports.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter fifteen 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 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-4. Criminal sentencing research.

1 The governor's committee on crime, delinquency and correction shall conduct comprehensive research on the state's criminal sanctioning process for adult offenders. The purpose of the research is to promote a fuller understanding of this state's criminal justice system, and shall include the review of issues of sentence length imposed, actual sentence length
served, parole eligibility, parole revocation, determinate or
indeterminate sentences, availability of alternatives to incarcer-
ation for certain offenses, and the respective roles that each of
these and other criminal sanction issues may play in the
increased demand for prison bed space. The committee shall
report to the governor and the Legislature on or before the first
day of January, two thousand four, and at its discretion thereaf-
ter, the findings of its research and make any recommendations
for modifications of criminal sentencing laws or procedures
provided that no such recommendations or modifications shall
become effective without further action of the Legislature.

CHAPTER 85

(Com. Sub. for H. B. 2500 — By Delegates Fleischauer, Amores,
Webster, Brown, Foster, Warner and Faircloth)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six hundred eight, article five,
and section four hundred one, article twenty-seven, chapter forty-
eight of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating to domestic relations generally
and clarifying the authority of the courts to continue protective
orders during certain proceedings.

Be it enacted by the Legislature of West Virginia:

That section six hundred eight, article five and section four
hundred one, article twenty-seven, chapter forty-eight 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. DIVORCE.

§48-5-608. Injunctive relief or protective orders.

1 (a) When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place.

11 (b) Any order entered by the court to protect a party from abuse may grant relief pursuant to the provisions of article twenty-seven of this chapter.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART IV. COORDINATION WITH PENDING COURT ACTIONS.


1 (a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to part 5-501, et seq.

11 (b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the
right to file for and obtain any further relief, so long as no
temporary order has been entered in the action for divorce,
annullment and separate maintenance, pursuant to part 5-501, et
seq.

(c) Except as provided in section 5-509 of this chapter and
section 27-402 of this article for a petition and a temporary
emergency protective order, no person who is a party to a
pending action for divorce, separate maintenance or annulment
in which an order has been entered pursuant to part 5-501, et
seq. of this chapter, shall be entitled to file for or obtain relief
against another party to that action under this article until after
the entry of a final order which grants or dismisses the action
for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section
27-505, any order, issued pursuant to this article where a
subsequent action is filed seeking a divorce, an annulment or
separate maintenance, the allocation of custodial responsibility
or a habeas corpus action to establish custody, the establishment
of paternity, the establishment or enforcement of child support,
or other relief under the provisions of this chapter, shall remain
in full force and effect by operation of this statute until a
temporary or final order is entered pursuant to part 5-501, et
seq. of this chapter, or a final order is entered granting or
dismissing the action.

CHAPTER 86

(Com. Sub. for S. B. 178 — By Senators Oliverio, McKenzie and Rowe)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor;
in Effect Ninety Days from Passage. Approved by the Governor.]
AN ACT to amend and reenact section one hundred one, article twenty-five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two-a, chapter fifty-one of said code, all relating to defining and clarifying the family court's jurisdiction over petitions for a change of name; proceedings for the payment of attorney fees; proceedings for property distribution; and actions or proceedings to obtain spousal support.

_Be it enacted by the Legislature of West Virginia:_

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

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Chapter

48. Domestic Relations.
51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

(a) Any person desiring a change of his or her own name, or that of his or her child or ward, may apply therefor to the circuit court or family court of the county in which he or she resides, by petition setting forth:

(1) That he or she has been a bona fide resident of the county for at least one year prior to the filing of the petition;

(2) The cause for which the change of name is sought; and

(3) The new name desired.
(b) Previous to the filing of the petition the person shall cause a notice of the time and place that the application will be made to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication is the county.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of articles eleven, twelve and fourteen, chapter forty-eight of this code;

(3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;

(5) All actions for the interstate enforcement of family support brought under article sixteen, chapter forty-eight of this code and for the interstate enforcement of child custody brought
under the provisions of article twenty, chapter forty-eight of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the uniform child custody jurisdiction and enforcement act, as provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;
(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under article seven, chapter forty-eight of this code; and

(16) All proceedings to obtain spousal support brought under article eight, chapter forty-eight of this code.

(b) If an action for divorce, annulment or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making
responsible for the child between the parents and defer to the
orders of the circuit court in the abuse or neglect proceedings.

(d) A family court is a court of limited jurisdiction. A
family court is a court of record only for the purpose of
exercising jurisdiction in the matters for which the jurisdiction
of the family court is specifically authorized in this section and
in chapter forty-eight of this code. A family court may not
exercise the powers given courts of record in section one,
article five, chapter fifty-one of this code or exercise any other
powers provided for courts of record in this code unless
specifically authorized by the Legislature. A family court judge
is not a “judge of any court of record” or a “judge of a court of
record” as the terms are defined and used in article nine of this
chapter.

CHAPTER 87

(Com. Sub. for S. B. 453 — By Senators Hunter, Rowe, McCabe,
Unger, Oliverio, Minard, Caldwell, Kessler, Bowman, Fanning,
Bailey, Love, Facemyer, Ross, Weeks, Smith, Sharpe,
Dempsey, Minear, Sprouse, Edgell, Plymale, Prezioso,
Helmick, Chafin, White, Jenkins and
Tomblin, Mr. President)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty-seven-a, relating
to establishing the domestic violence fatality review team.

Be it enacted by the Legislature of West Virginia:
That chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-seven-a, to read as follows:

ARTICLE 27A. DOMESTIC VIOLENCE FATALITY REVIEW TEAM.

§48-27A-1. Domestic violence fatality review team.
§48-27A-2. Other agencies of government required to cooperate.

§48-27A-1. Domestic violence fatality review team.

(a) The domestic violence fatality review team is hereby established under the office of the chief medical examiner. The domestic violence fatality review team is a multidisciplinary team created to review the deaths resulting from suspected domestic violence as defined by the provisions of section two hundred four, article twenty-seven of this chapter.

(b) The domestic violence fatality review team is to consist of the following members, but not limited to, appointed by the governor to serve three-year terms:

1. The chief medical examiner, who is to serve as the chairperson of the domestic violence fatality review team;
2. Four prosecuting attorneys or their designees;
3. The state superintendent of the West Virginia state police or his or her designee;
4. One county law-enforcement official;
5. One local municipality police officer;
6. One physician, resident or nurse practitioner specializing in the practice of family medicine or emergency medicine;
(7) One physician, resident or nurse practitioner specializing in the practice of obstetrics and gynecology;

(8) One adult protective service worker currently employed in investigating reports of adult abuse or neglect;

(9) One social worker who may be employed in medical social work;

(10) The commissioner of the office of behavioral health services or his or her designee;

(11) The director of the office of social services of the department of health and human resources or his or her designee;

(12) One domestic violence advocate from a licensed domestic violence program;

(13) A representative of the West Virginia coalition against domestic violence;

(14) Director of the state division of corrections or his or her designee; and

(15) Director of epidemiology and health promotion or his or her designee.

(c) Members of the domestic violence fatality review team shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

(d) Each appointment of a prosecuting attorney, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West Virginia prosecuting attorneys institute. Each appointment of a county
or local municipality law-enforcement officer, whether for a
full term or to fill a vacancy, is to be made by the governor
from among three nominees selected by the state fraternal order
of police or the West Virginia deputy sheriff's association or
the West Virginia chiefs of police association. Each appoint-
ment of a physician, resident or nurse practitioner, whether for
a full term or to fill a vacancy, is to be made by the governor
from among three nominees selected by the West Virginia state
medical association. Each appointment of an adult protective
services worker and a social worker, whether for a full term or
to fill a vacancy, is to be made by the governor from among
three nominees selected by the West Virginia social work
licensing board. Each appointment of a domestic violence
advocate is to be made by the governor from among three
nominees selected by the West Virginia coalition against
domestic violence. When an appointment is for a full term, the
nomination is to be submitted to the governor not later than
eight months prior to the date on which the appointment is to
become effective. In the case of an appointment to fill a
vacancy, the nominations are to be submitted to the governor
within thirty days after the request for the nomination has been
made by the governor to the chairperson or president of the
organization. When an association fails to submit to the
governor nominations for the appointment in accordance with
the requirements of this section, the governor may make the
appointment from any nomination provided by the chief
medical examiner.

(e) Each member of the domestic violence fatality review
team shall serve without additional compensation and may not
be reimbursed for any expenses incurred in the discharge of his
or her duties under the provisions of this article.

(f) The domestic violence fatality review team shall,
pursuant to the provisions of chapter twenty-nine-a of this code,
promulgate rules applicable to the following:
(1) The standard procedures for the establishment, formation and conduct of the domestic violence fatality review team; and

(2) Recommend protocols for the systematic review of domestic violence fatalities where other than natural causes are suspected.

(g) The domestic violence fatality review team shall:

(1) Review all deaths of victims or suspected victims of domestic violence, including suicides, eighteen years and older, who are residents of this state, in order to identify trends, patterns and risk factors;

(2) Provide statistical analysis regarding the causes of domestic violence fatalities in West Virginia;

(3) Promote public awareness of the incidence and causes of domestic violence fatalities, including recommendations for their reduction; and

(4) Provide training for state agencies.

(h) The domestic violence fatality review team shall submit an annual report to the governor and to the Legislature concerning its activities and the incidents of domestic violence fatalities within the state. The report is due annually in the first day of March. The report is to include statistics setting forth the number of domestic violence fatalities, identifiable trends in domestic violence fatalities in the state, including possible causes, if any, and recommendations to reduce the number of preventable domestic violence fatalities in the state.

(i) The domestic violence fatality review team, in the exercise of its duties as defined in this section, may not:
(1) Call witnesses or take testimony from individuals involved in the investigation of a domestic violence fatality;

(2) Contact a family member of the deceased; any member of the team when involved in the investigation of a death in the course of performing his or her duties outside of the team must so notify the team and will be recused from any analysis or other participation or discussion of that death by the domestic violence fatality review team; and

(3) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding, except if a member of the team is involved in the investigation of the death or resulting prosecution and must participate in a legal proceeding in the course of performing his or her duties outside of the team.

Proceedings, records and opinions of the domestic violence fatality review team are confidential and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. Nothing in this subsection is to be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the domestic violence fatality review team.

Members of the domestic violence fatality review team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. Nothing in this subsection may be construed to prevent a member of the domestic violence fatality review team from testifying to information obtained independently of the team or which is public information.

§48-27A-2. Other agencies of government required to cooperate.
State, county and local agencies, hospitals and other health agencies shall provide the domestic violence fatality review team with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order directing said agencies to release information in its possession relating to the deceased. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential.


The domestic violence fatality review team may not take any action which, in the determination of the prosecuting attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant or any law-enforcement officer to perform his or her statutory duties.
nine-f, article fifteen of said chapter, all relating generally to economic development for public purposes; authorizing counties and certain municipalities to create economic opportunity development districts and to use a special district excise tax to finance economic development within the districts; describing purposes for expenditures; providing for notice and hearing; providing for approval by council for community and economic development; establishing a special revenue account; providing for the Legislature’s authorization to levy a special district excise tax; describing order or ordinance required to establish district; creating a district board to administer district; authorizing imposition of special district excise tax by order or ordinance; modifying district boundaries; procedures for abolition and dissolution of district; authorizing issuance of bonds or notes to finance development expenditures; providing for administration of special district excise tax by tax commissioner; and exempting certain sales and services in district from consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirty-eight; that section eleven-a, article ten, chapter eleven of said code be amended and reenacted; and that section nine-f, article fifteen of said chapter be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.
11. Taxation.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.
§7-22-1. Short title.

1 This article is known and may be cited as the "County Economic Opportunity Development District Act".

§7-22-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many significant business opportunities initiated within the counties of this state face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those counties. Establishment of economic opportunity development districts within counties of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote
the vitality of significant business opportunities within counties while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the counties within which any economic development district is created under this article and will stimulate economic growth and job creation.

§7-22-3. Definitions.

For purposes of this article, the term:

(1) “Council” means the council for community and economic development established in section two, article two, chapter five-b of this code;

(2) “County commission” means the governing body of a county of this state;

(3) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(4) “District” means an economic opportunity development district created pursuant to this article;

(5) “District board” means a district board created pursuant to section ten of this article;

(6) “Eligible property” means any taxable or exempt real property located in a district established pursuant to this article; and
(7) "Gross annual district tax revenue amount" means the total amount of consumers sales and service tax actually remitted to the tax commissioner by retailers maintaining places of business within the district with respect to sales made and services rendered by retailers from a location within the district for the twelve full calendar months immediately preceding the filing of an application pursuant to section seven of this article.

§7-22-4. Authorization to create economic opportunity development districts.

A county commission may, in accordance with the procedures and subject to the limitations set forth in this article:

1. Create one or more economic opportunity development districts within its county;

2. Provide for the administration and financing of development expenditures within the districts; and

3. Provide for the administration and financing of a continuing program of development and redevelopment expenditures within the districts.


Any county commission that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the county, including, but not limited to, expenditures for the following purposes:

1. Beautification of the district by means such as landscaping and construction and erection of fountains, shelters,
benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the county commission for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether physically situate within the district’s boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;
(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities; and

(13) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

§7-22-6. Notice; hearing.

(a) General. — A county commission desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:
(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The proposed property included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.

(d) Application to council. — If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the council for community and economic development for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

§7-22-7. Application to council for community and economic development for approval of an economic opportunity development district project.

(a) General. — The council for community and economic development shall receive and act on applications filed with it by county commissions pursuant to section six of this article.

Each application must include:
(1) A true copy of the notice described in section six of this article;

(2) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district;

(3) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;

(4) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(5) A description of the financial contribution of the county commission to the funding of development expenditures;

(6) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;

(7) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the county commission expects to continue doing business there after the district is created;
A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (6) and (7) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount"; a good faith estimate of the gross annual district tax revenue amount; and the proposed application of any surplus from all funding sources to further the objectives of this article: Provided, however, That the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district shall be not less than fifty million dollars.

Additional criteria. — The council may establish other criteria for consideration when approving the applications: Provided, That the council shall act to approve or not approve any application within thirty days following the receipt of the application.

Certification of project. — If the committee approves a county's economic opportunity district project application, it shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any
relevant information the council requests from the tax commissioner and the tax commissioner provides to the council:

*Provided*, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(d) *Promulgation of rules.* — The council may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§7-22-8. Establishment of the economic opportunity development district fund.

(a) *General.* — There is hereby created a special revenue account in the state treasury designated the "economic opportunity development district fund" which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) *District subaccount.* — A separate and segregated subaccount within the account shall be established for each economic opportunity development district that is approved by the council and authorized by the Legislature pursuant to subdivision (3) of this subsection. Funds paid into the account for the credit of any subaccount may also be derived from the following sources:
(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.


(a) General. -- County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. Because a special district excise tax has the effect of diverting, for a specified period of years, tax dollars that otherwise would go into the general revenue fund of this state, no economic opportunity development district excise tax may be levied by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) Authorizations. -- The Legislature authorizes the following county commission to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

The Ohio County commission may levy a special district excise tax for the benefit of the “Fort Henry” economic opportunity development project district which comprises three hundred contiguous acres of land.

§7-22-10. Ordinance to create district as approved by council and authorized by the Legislature.
(a) General. — If an economic opportunity development district project has been approved by the council and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the county commission may create the district by order entered of record as provided for in article one of this chapter: Provided, That the county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;
(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided for in, and subject to the provisions of any contracts or leases to operate, repair, manage, and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;
(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district’s rights in its subaccount of the downtown district redevelopment fund;

(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.
(b) *Additional contents of order.* — The county commission’s order shall also state the general intention of the county commission to develop and increase services and to make capital improvements within the district.

(c) *Mailing of certified copies of order.* — Upon entry of an order establishing an economic opportunity development district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§7-22-11. *District board; duties.*

(a) *General.* — The county commission of a county that has been authorized by the Legislature to establish an economic opportunity development district, in accordance with this article, shall provide, by order entered of record, for the appointment of a district board to oversee the operations of the district: *Provided,* That the county commission may, by order, in lieu of appointing a separate district board, designate itself to act as the district board.

(b) *Composition of board.* — If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the county within which the district is located.

(c) *Annual report.* — The district board, in addition to the duties prescribed by the order creating the district, shall submit an annual report to the county commission and the council containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;
(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. — Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the county commission may contract to provide specified services within the district.

(e) Compensation of board members. — Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the county commission: Provided, That when a district board is not created for the district but the work of the board is done by the county commission, the county commissioners shall receive no additional compensation.

§7-22-12. Special district excise tax authorized.

(a) General. — The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. — The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That
except for the exemption provided in section nine-f of said article, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax and sales of gasoline and special fuel shall not be subject to special district excise tax but remain subject to the tax levied by said article.

(c) Tax rate. — The rate of a special district excise tax levied pursuant to this section shall be stated in an order entered of record by the county commission and equal to the general rate of tax on each dollar of gross proceeds from sales of tangible personal property and services subject to the tax levied by section three, article fifteen, chapter eleven of this code. The tax on fractional parts of a dollar shall be levied and collected in conformity with the provision of section three of said article.

(d) Collection by tax commissioner. — The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the tax commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(e) Deposit of net tax collected. —

(1) The order of the county commission imposing a special district excise tax shall provide that the tax commissioner deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.
(2) The state treasurer shall withhold from the county commission’s subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) Effective date of special district excise tax. — Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins on or after the date of adoption of an order entered of record imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) Copies of order. — Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.


Sixty days after collection of a special district excise tax begins, the state auditor shall, upon receipt of a monthly requisition from the district board, issue his or her warrant on the state treasurer for the funds requested from the district’s subaccount, which funds are applied for the purposes described in section five of this article and the state treasurer shall pay the warrant out of funds in the subaccount.

§7-22-14. Modification of included area; notice; hearing.

(a) General. — The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by
the council in the same manner as an application to approve the
establishment of the district is acted upon under section seven
of this article and the amendment is authorized by the Legisla-
ture.

(b) Limitations. — Additional property may not be included
in the district unless it is situated within the boundaries of the
county and is contiguous to the then current boundaries of the
district.

(c) Public hearing required. —

(1) The county commission of any county desiring to
amend its order shall designate a time and place for a public
hearing upon the proposal to include additional property. The
notice shall meet the requirements set forth in section six of this
article.

(2) At the time and place set forth in the notice, the county
commission shall afford the opportunity to be heard to any
owners of real property either currently included in or proposed
to be added to the existing district and to any other residents of
the county.

(d) Application to council. — Following the hearing, the
county commission may, by resolution, apply to the council to
approve inclusion of the additional property in the district.

(e) Consideration by council. — Before the council ap-
proves inclusion of the additional property in the district, the
council shall determine the amount of taxes levied by article
fifteen, chapter eleven of this code that were collected by
businesses located in the area the county commission proposes
to add to the district in the same manner as the base amount of
tax was determined when the district was first created. The state
treasurer shall also deposit one twelfth of this additional tax
base amount into the general revenue fund each month, as
provided in section twelve of this article.

(f) Legislative action required. — After the council ap-
proves amending the boundaries of the district, the Legislature
must amend section nine of this article to allow levy of the
special district excise tax on business located in geographic area
to be included in the district. After the Legislature amends said
section, the county commission may then amend its order:
Provided, That the order may not be effective any earlier than
the first day of the calendar month that begins thirty days after
the effective date of the act of the Legislature authorizing the
levy on the special district excise tax on businesses located in
the geographic area to be added to the boundaries of the district
for which the tax is levied or a later date as set forth in the order
of the county commission.

(g) Collection of special district excise tax. — All busi-
nesses included in a district because of the boundary amend-
ment shall on the effective date of the order, determined as
provided in subsection (f) of this section, collect the special
district excise tax on all sales on tangible property or services
made from locations in the district on or after the effective date
of the county commission’s order or a later date as set forth in
the order.

§7-22-15. Abolishment and dissolution of district; notice; hearing.

(a) General. — Except upon the express written consent of
the council and of all the holders or obligees of any indebted-
ness or other instruments the proceeds of which were applied to
any development or redevelopment expenditures or any
indebtedness the payment of which is secured by revenues
payable into the fund provided under section eight of this article
or by any public property, a district may only be abolished by
the county commission when there is no outstanding indebted-
ness, the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

§7-22-16. Bonds issued to finance economic opportunity development district projects.

(a) General. — The county commission that established the economic opportunity development district may issue bonds or notes for the purpose of financing development expenditures, as described in section five of this article, with respect to one or
more projects within the economic opportunity development district.

(b) *Limited obligations.* — All bonds and notes issued by a county commission under the authority of this article are limited obligations of the county.

(c) *Term of obligations.* — No county commission may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

(d) *Debt service.* — The principal and interest on the bonds shall be payable out of the funds on deposit in the subaccount established for the economic opportunity development district pursuant to section eight of this article, including, without limitation, any funds derived from the special district excise tax imposed by section twelve of this article or other revenues derived from the economic opportunity development district to the extent pledged for the purpose by the county commission in the resolution authorizing the bonds.

(e) *Surplus funds.* — To the extent that the average daily amount on deposit in the subaccount established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of: (1) One hundred thousand dollars; plus (2) the amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then the excess shall be used by the district either to redeem the bonds or notes previously issued or remitted to the general fund of this state.

(f) *Debt not general obligation of county.* — Neither the notes or bonds and any interest coupons issued under the authority of this article shall ever constitute an indebtedness of
the county commission issuing the notes or bonds within the
meaning of any constitutional provision or statutory limitation
and shall never constitute or give rise to a pecuniary liability of
the county commission issuing the notes or bonds.

(g) Debt not a charge general credit or taxing powers of
county. — Neither the bonds or notes, nor interest thereon, is a
charge against the general credit or taxing powers of the county
commission and that fact shall be plainly stated on the face of
each bond or note.

(h) Issuance of bonds or notes. —

(1) Bonds or notes allowed under this section may be
executed, issued and delivered at any time and from time to
time, may be in a form and denomination, may be of a tenor,
must be negotiable but may be registered as to the principal
thereof or as to the principal and interest thereof, may be
payable in any amounts and at any time or times, may be
payable at any place or places, may bear interest at any rate or
rates payable at any place or places and evidenced in any
manner and may contain any provisions therein not inconsistent
herewith, all as provided in the order or orders of the county
commission whereunder the bonds or notes are authorized to be
issued.

(2) The bonds may be sold by the county commission at
public or private sale at, above or below par as the county
commission authorizes.

(3) Bonds and notes issued pursuant to this article shall be
signed by the president of the county commission, or other
chief officer thereof, and attested by the county clerk and be
under the seal of the county.

(4) Any coupons attached to the bonds shall bear the
facsimile signature of the president of the commission or other
chief officer thereof. In case any of the officials whose signatures appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the delivery.

(i) Additional bonds or notes. — If the proceeds of the bonds or notes, by error of calculation or otherwise, are less than the cost of the economic opportunity development district project, or if additional real or personal property is to be added to the district project or if it is determined that financing is needed for additional development or redevelopment expenditures, additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency or to defray the cost of acquiring or financing any additional real or personal property or development or redevelopment expenditures and, unless otherwise provided for in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.


(a) General. — Unless the county commission shall otherwise determine in the resolution authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. — The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax
revenues derived from the economic opportunity development
district project by the county commission issuing the bonds or
notes to the extent provided in the resolution adopted by the
county commission authorizing the issuance of the bonds or
notes.

(c) Trust indenture. —

(1) In the discretion and at the option of the county com-
misson, the bonds and notes may also be secured by a trust
indenture by and between the county commission and a
corporate trustee, which may be a trust company or bank having
trust powers, within or without the state of West Virginia.

(2) The resolution authorizing the bonds or notes and fixing
the details thereof may provide that the trust indenture may
contain provisions for the protection and enforcing the rights
and remedies of the bondholders as are reasonable and proper,
not in violation of law, including covenants setting forth the
duties of the county commission in relation to the construction,
acquisition or financing of an economic opportunity develop-
dment district project, or part thereof or an addition thereto, and
the improvement, repair, maintenance and insurance thereof
and for the custody, safeguarding and application of all moneys
and may provide that the economic opportunity development
district project shall be constructed and paid for under the
supervision and approval of the consulting engineers or
architects employed and designated by the county commission
or, if directed by the county commission in the resolution, by
the district board, and satisfactory to the purchasers of the
bonds or notes, their successors, assigns or nominees who may
require the security given by any contractor or any depository
of the proceeds of the bonds or notes or the revenues received
from the district project be satisfactory to the purchasers, their
successors, assigns or nominees.
(3) The indenture may set forth the rights and remedies of the bondholders, the county commission or trustee and the indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the county commission issuing the bonds, upon default in the payment of the amounts due under the bonds.

(4) The county commission may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale of the bonds or notes and the revenues from the economic opportunity development district project to any depository it determines, for the custody and investment thereof and for the method of distribution thereof, with safeguards and restrictions it determines to be necessary or advisable for the protection thereof and upon the filing of a certified copy of the resolution or of the indenture for record in the office of the clerk of the county commission of the county in which the economic opportunity development project is located, the resolution has the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.

(5) In the event that more than one certified resolution or indenture is recorded, the security interest granted by the first recorded resolution or indenture has priority in the same manner as an earlier filed deed of trust except to the extent the earlier recorded resolution or indenture provides otherwise.

(d) Mortgage or deed of trust. —

(1) In addition to or in lieu of the indenture provided for in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an
assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the county commission and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the downtown redevelopment district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the county commission, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the county commission body considers advisable and shall not be in conflict with the provisions of this article or any existing law:

Provided, That in making any agreements or provisions, a county commission shall not have the power to incur original indebtedness by indenture, ordinance, resolution, mortgage or deed of trust except with respect to the economic opportunity development district project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers unless approved by the voters in accordance with article one, chapter thirteen of this code or as otherwise permitted by the constitution of this state.
(e) Enforcement of obligations. —

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the proceedings, indenture, mortgage or deed of trust, payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the economic opportunity development district project in accordance with the proceedings or the provisions of the agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor.

(f) No pecuniary liability. — No breach of any agreement, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.


The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the county commission and at the redemption prices or premiums, which terms shall be stated in the bond.

(a) Any bonds issued under this article and at any time outstanding may at any time, and from time to time, be refunded by a county commission by the issuance of its refunding bonds in amount as the county commission considers necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the downtown redevelopment district project; and any premiums and commissions necessary to be paid in connection therewith.

(b) Any refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.

(c) Any refunding bonds issued under the authority of this article is subject to the provisions contained in section sixteen of this article and shall be secured in accordance with the provisions of section seventeen of this article.

§7-22-20. Use of proceeds from sale of bonds.

(a) General. — The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest received in any sale shall be applied to the payment of the interest on the bonds sold: Provided, however, That if for any reason any portion of the proceeds may not be needed for the purpose for which the bonds were issued, then
the unneeded portion of the proceeds may be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) Payment of costs. — The costs that may be paid with the proceeds of the bonds include all development and redevelopment costs described in section five of this article and may also include, but not be limited to, the following:

(1) The cost of acquiring any real estate determined necessary;

(2) The actual cost of the construction of any part of an economic opportunity development district project which may be constructed, including architects’, engineers’, financial or other consultants’ and legal fees;

(3) The purchase price or rental of any part of an economic opportunity development district project that may be acquired by purchase or lease;

(4) All expenses incurred in connection with the authorization, sale and issuance of the bonds to finance the acquisition and the interest on the bonds for a reasonable time prior to construction during construction and for not exceeding twelve months after completion of construction; and

(5) Any other costs and expenses reasonably necessary in the establishment and acquisition of an economic opportunity development district project and the financing thereof.


Bonds issued under the provisions of this article are legal investments for banks, building and loan associations and insurance companies organized under the laws of this state and
4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§7-22-22. Exemption from taxation.

1 The revenue bonds and notes issued pursuant to this article
2 and the income therefrom are exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and personal
4 property which a county commission or district board acquires
5 pursuant to the provisions of this article are exempt from
6 taxation by the state, or any county, municipality or other
7 levying body, as public property so long as the property is
8 owned by the county commission or district board.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT
DISTRICTS.

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projects.
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§8-38-1. Short title.

This article is known and may be cited as the “Municipal Economic Opportunity Development District Act”.

§8-38-2. Legislative findings and declaration of purpose.

The Legislature finds that many significant business opportunities initiated within municipalities of this state face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of economic opportunity development districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of significant business opportunities within those municipalities while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the municipalities within which any economic development district is created under this article and will stimulate economic growth and job creation.


For purposes of this article, the term:

(1) “Council” means the council for community and economic development established in section two, article two, chapter five-b of this code;

(2) “County commission” means the governing body of a county of this state:
(3) "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(4) "District" means an economic opportunity development district created pursuant to this article;

(5) "District board" means a district board created pursuant to section ten of this article;

(6) "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article;

(7) "Gross annual district tax revenue amount" means the total amount of consumers sales and service tax actually remitted to the tax commissioner by retailers maintaining places of business within the district with respect to sales made and services rendered by retailers from a location within the district for the twelve full calendar months immediately preceding the filing of an application pursuant to section seven of this article; and

(8) "Municipality" is a word of art and shall mean, for the purposes of this article, only Class I and Class II cities as classified in article one, section three of this chapter.

§8-38-4. Authorization to create economic opportunity development districts.

A municipality may, in accordance with the procedures and subject to the limitations set forth in this article:

(1) Create one or more economic opportunity development districts within its limits;
(2) Provide for the administration and financing of development expenditures within the districts; and

(3) Provide for the administration and financing of a continuing program of development and redevelopment expenditures within the districts.


Any municipality that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the municipality for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether
physically situate within the district’s boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the municipality or district board is authorized to perform and which the municipality does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;
(12) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities; and

(13) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

§8-38-6. Notice; hearing.

(a) General. — A municipality desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The proposed property included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set forth in the notice, the municipality shall afford the opportunity
to be heard to any owner of real property situated in the
proposed district and any residents of the municipality.

(d) Application to council. — If the municipality, following
the public hearing, determines it advisable and in the public
interest to establish an economic opportunity development
district, it shall apply to the council for community and eco-

nomic development for approval of the economic opportunity
development district project pursuant to the procedures pro-
vided in section seven of this article.

§8-38-7. Application to council for community and economic
development for approval of an economic opportu-
nity development district project.

(a) General. — The council for community and economic
development shall receive and act on applications filed with it
by municipalities pursuant to section six of this article. Each
application must include:

(1) A true copy of the notice described in section six of this
article;

(2) A general description of the capital improvements,
additional or extended services and other proposed develop-
ment expenditures to be made in the district;

(3) A description of the proposed method of financing the
development expenditures, together with a description of the
reserves to be established for financing ongoing development
or redevelopment expenditures necessary to permanently
maintain the optimum economic viability of the district
following its inception: Provided, That the amounts of the
reserves shall not exceed the amounts that would be required by
ordinary commercial capital market considerations;
18 (4) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

23 (5) A description of the financial contribution of the municipality to the funding of development expenditures;

25 (6) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated "relocated entities";

31 (7) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

35 (8) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (6) and (7) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount"; a good faith estimate of the gross annual district tax revenue amount; and the proposed application of any surplus from all funding sources to further the objectives of this article: Provided, however, That the amount of all development expenditures proposed to be made
in the first twenty-four months following the creation of the district shall be not less than fifty million dollars.

(b) Additional criteria. — The council may establish other criteria for consideration when approving the applications: Provided, That the council shall act to approve or not approve any application within thirty days following the receipt of the application.

(c) Certification of project. — If the committee approves a municipality’s economic opportunity district project application, it shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council requests from the tax commissioner and the tax commissioner provides to the council: Provided. That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(d) Promulgation of rules. — The council may promulgate rules to implement the economic opportunity development district project application approval process and to describe the
criteria and procedures it has established in connection there-
with. These rules are not subject to the provisions of chapter
twenty-nine-a of this code but shall be filed with the secretary
of state.

§8-38-8. Establishment of the economic opportunity development
district fund.

(a) General. — There is hereby created a special revenue
account in the state treasury designated the “economic opportu-
nity development district fund” which is an interest-bearing
account and shall be invested in the manner described in section
nine-c, article six, chapter twelve of this code with the interest
income a proper credit to the fund.

(b) District subaccount. — A separate and segregated
subaccount within the account shall be established for each
economic opportunity development district that is approved by
the council and authorized by the Legislature pursuant to
subdivision (3) of this subsection. Funds paid into the account
for the credit of any subaccount may also be derived from the
following sources:

(1) All interest or return on the investment accruing to the
subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or
donations which are received from any governmental entity or
unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made
for this purpose.


(a) General. — Municipalities have no inherent authority to
levy taxes and have only that authority expressly granted to
them by the Legislature. Because a special district excise tax has the effect of diverting, for a specified period of years, tax dollars that otherwise would go into the general revenue fund of this state, no economic opportunity development district excise tax may be levied by a municipality until after the Legislature expressly authorizes the municipality to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the following municipalities to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts.

§8-38-10. Ordinance to create district as approved by council and authorized by the Legislature.

(a) General. — If an economic opportunity development district project has been approved by the council and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the municipality may create the district by order entered of record as provided for in article one of this chapter: Provided, that the municipality may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;
(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;
(E) To, unless otherwise provided for in, and subject to the provisions of any contracts or leases to operate, repair, manage, and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor
as is requisite, including, without limitation, a pledge of the
district's rights in its subaccount of the downtown district
redevelopment fund;

(K) To acquire (either directly or on behalf of the munici-
pality) an interest in any entity or entities that own any real
property situate in the district, to contribute capital to any entity
or entities and to exercise the rights of an owner with respect
thereto; and

(L) To expend its funds in the execution of the powers and
authority given in this section, which expenditures, by the
means authorized in this section, are hereby determined and
declared as a matter of legislative finding to be for a public
purpose and use, in the public interest and for the general
welfare of the people of West Virginia, to alleviate and prevent
economic deterioration and to relieve the existing critical
condition of unemployment existing within the state.

(b) Additional contents of order. — The municipality's
order shall also state the general intention of the municipality
to develop and increase services and to make capital improve-
ments within the district.

(c) Mailing of certified copies of order. — Upon entry of an
order establishing an economic opportunity development
district excise tax, a certified copy of the order shall be mailed
to the state auditor, as ex officio the chief inspector and
supervisor of public offices, the state treasurer and the tax
commissioner.

§8-38-11. District board; duties.

(a) General. — The council of a municipality that has been
authorized by the Legislature to establish an economic opportu-
nity development district, in accordance with this article, shall
provide, by order entered of record, for the appointment of a
district board to oversee the operations of the district: Provided,
That the municipality may, by order, in lieu of appointing a
separate district board, designate itself to act as the district
board.

(b) Composition of board. — If a separate district board is
to be appointed, it shall be made up of at least seven members,
two of which shall be owners, or representatives of owners, of
real property situated in the economic opportunity development
district and the other five shall be residents of the municipality
within which the district is located.

(c) Annual report. — The district board, in addition to the
duties prescribed by the order creating the district, shall submit
an annual report to the municipality and the council containing:

(1) An itemized statement of its receipts and disbursements
for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal
year;

(3) A recommended program of services to be performed
and capital improvements to be made within the district for the
coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. — Nothing in this article
prohibits any member of the district board from also serving on
the board of directors of a nonprofit corporation with which the
municipality may contract to provide specified services within
the district.

(e) Compensation of board members. — Each member of
the district board may receive reasonable compensation for
services on the board in the amount determined by the munici-
pality: Provided, That when a district board is not created for
the district but the work of the board is done by the municipal-
ity, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.

(a) General. — The council of a municipality, authorized by
the Legislature to levy a special district excise tax for the
benefit of an economic opportunity development district, may,
by order entered of record, impose that tax on the privilege of
selling tangible personal property and rendering select services
in the district in accordance with this section.

(b) Tax base. — The base of a special district excise tax
imposed pursuant to this section shall be identical to the base of
the consumers sales and service tax imposed pursuant to article
fifteen, chapter eleven of this code on sales made and services
rendered within the boundaries of the district: Provided, That
except for the exemption provided in section nine-f of said
article, all exemptions and exceptions from the consumers sales
and service tax also apply to the special district excise tax and
sales of gasoline and special fuel shall not be subject to special
district excise tax but remain subject to the tax levied by said
article.

(c) Tax rate. — The rate of a special district excise tax
levied pursuant to this section shall be stated in an order entered
of record by the municipality and equal to the general rate of
tax on each dollar of gross proceeds from sales of tangible
personal property and services subject to the tax levied by
section three, article fifteen, chapter eleven of this code. The tax
on fractional parts of a dollar shall be levied and collected in
conformity with the provision of section three of said article.

(d) Collection by tax commissioner. — The order of the
municipality imposing a special district excise tax shall provide
for the tax to be collected by the tax commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(e) Deposit of net tax collected. —

(1) The order of the municipality imposing a special district excise tax shall provide that the tax commissioner deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the municipality’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The state treasurer shall withhold from the municipality’s subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) Effective date of special district excise tax. — Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins on or after the date of adoption of an order entered of record imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) Copies of order. — Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

Sixty days after collection of a special district excise tax begins, the state auditor shall, upon receipt of a monthly requisition from the district board, issue his or her warrant on the state treasurer for the funds requested from the district’s subaccount, which funds are applied for the purposes described in section five of this article and the state treasurer shall pay the warrant out of funds in the subaccount.

§8-38-14. Modification of included area; notice; hearing.

(a) General. — The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the council in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature.

(b) Limitations. — Additional property may not be included in the district unless it is situated within the boundaries of the municipality and is contiguous to the then current boundaries of the district.

(c) Public hearing required. —

(1) The council of any municipality desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.
(d) Application to council. — Following the hearing, the municipality may, by resolution, apply to the council to approve inclusion of the additional property in the district.

(e) Consideration by council. — Before the council approves inclusion of the additional property in the district, the council shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the municipality proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) Legislative action required. — After the council approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the municipality may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins thirty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the municipality.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date
§8-38-15. Abolishment and dissolution of district; notice; hearing.

(a) General. — Except upon the express written consent of the council and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness, the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.
(d) *Reinstatement of district.* — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

§8-38-16. **Bonds issued to finance economic opportunity development district projects.**

(a) *General.* — The municipality that established the economic opportunity development district may issue bonds or notes for the purpose of financing development expenditures, as described in section five of this article, with respect to one or more projects within the economic opportunity development district.

(b) *Limited obligations.* — All bonds and notes issued by a municipality under the authority of this article are limited obligations of the municipality.

(c) *Term of obligations.* — No municipality may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

(d) *Debt service.* — The principal and interest on the bonds shall be payable out of the funds on deposit in the subaccount established for the economic opportunity development district pursuant to section eight of this article, including, without limitation, any funds derived from the special district excise tax imposed by section twelve of this article or other revenues derived from the economic opportunity development district to the extent pledged for the purpose by the municipality in the resolution authorizing the bonds.

(e) *Surplus funds.* — To the extent that the average daily amount on deposit in the subaccount established for a district
pursuant to section eight of this article exceeds, for more than
six consecutive calendar months, the sum of: (1) One hundred
thousand dollars; plus (2) the amount required to be kept on
deposit pursuant to the documents authorizing, securing or
otherwise relating to the bonds or notes issued under this
section, then the excess shall be used by the district either to
redeem the bonds or notes previously issued or remitted to the
general fund of this state.

(f) Debt not general obligation of municipality. — Neither
the notes or bonds and any interest coupons issued under the
authority of this article shall ever constitute an indebtedness of
the municipality issuing the notes or bonds within the meaning
of any constitutional provision or statutory limitation and shall
never constitute or give rise to a pecuniary liability of the
municipality issuing the notes or bonds.

(g) Debt not a charge general credit or taxing powers of
municipality. — Neither the bonds or notes, nor interest thereon,
is a charge against the general credit or taxing powers of the
municipality and that fact shall be plainly stated on the face of
each bond or note.

(h) Issuance of bonds or notes. —

(1) Bonds or notes allowed under this section may be
executed, issued and delivered at any time and from time to
time, may be in a form and denomination, may be of a tenor,
must be negotiable but may be registered as to the principal
thereof or as to the principal and interest thereof, may be
payable in any amounts and at any time or times, may be
payable at any place or places, may bear interest at any rate or
rates payable at any place or places and evidenced in any
manner and may contain any provisions therein not inconsistent
herewith, all as provided in the order or orders of the municipal-
ity whereunder the bonds or notes are authorized to be issued.
(2) The bonds may be sold by the municipality at public or private sale at, above or below par as the municipality authorizes.

(3) Bonds and notes issued pursuant to this article shall be signed by the authorized representative of the municipality and attested by the municipal clerk and be under the seal of the municipality.

(4) Any coupons attached to the bonds shall bear the facsimile signature of the authorized representative of the municipality. In case any of the officials whose signatures appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the delivery.

(i) Additional bonds or notes. — If the proceeds of the bonds or notes, by error of calculation or otherwise, are less than the cost of the economic opportunity development district project, or if additional real or personal property is to be added to the district project or if it is determined that financing is needed for additional development or redevelopment expenditures, additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency or to defray the cost of acquiring or financing any additional real or personal property or development or redevelopment expenditures and, unless otherwise provided for in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.


(a) General. — Unless the municipality shall otherwise determine in the resolution authorizing the issuance of the
bonds or notes under the authority of this article, there is hereby
created a statutory lien upon the subaccount created pursuant to
section eight of this article and all special district excise tax
revenues collected for the benefit of the district pursuant to
section eleven-a, article ten, chapter eleven of this code for the
purpose of securing the principal of the bonds or notes and the
interest thereon.

(b) Security for debt service. -- The principal of and interest
on any bonds or notes issued under the authority of this article
shall be secured by a pledge of the special district excise tax
revenues derived from the economic opportunity development
district project by the municipality issuing the bonds or notes to
the extent provided in the resolution adopted by the municipali-
ity authorizing the issuance of the bonds or notes.

(c) Trust indenture. —

(1) In the discretion and at the option of the municipality,
the bonds and notes may also be secured by a trust indenture by
and between the municipality and a corporate trustee, which
may be a trust company or bank having trust powers, within or
without the state of West Virginia.

(2) The resolution authorizing the bonds or notes and fixing
the details thereof may provide that the trust indenture may
contain provisions for the protection and enforcing the rights
and remedies of the bondholders as are reasonable and proper,
not in violation of law, including covenants setting forth the
duties of the municipality in relation to the construction,
acquisition or financing of an economic opportunity develop-
ment district project, or part thereof or an addition thereto, and
the improvement, repair, maintenance and insurance thereof
and for the custody, safeguarding and application of all moneys
and may provide that the economic opportunity development
district project shall be constructed and paid for under the
supervision and approval of the consulting engineers or
architects employed and designated by the municipality or, if
directed by the municipality in the resolution, by the district
board, and satisfactory to the purchasers of the bonds or notes,
their successors, assigns or nominees who may require the
security given by any contractor or any depository of the
proceeds of the bonds or notes or the revenues received from
the district project be satisfactory to the purchasers, their
successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies of
the bondholders, the municipality or trustee and the indenture
may provide for accelerating the maturity of the revenue bonds,
at the option of the bondholders or the municipality issuing the
bonds, upon default in the payment of the amounts due under
the bonds.

(4) The municipality may also provide by resolution and in
the trust indenture for the payment of the proceeds of the sale
of the bonds or notes and the revenues from the economic
opportunity development district project to any depository it
determines, for the custody and investment thereof and for the
method of distribution thereof, with safeguards and restrictions
it determines to be necessary or advisable for the protection
thereof and upon the filing of a certified copy of the resolution
or of the indenture for record with the clerk of the municipality
in which the economic opportunity development project is
located, the resolution has the same effect, as to notice, as the
recordation of a deed of trust or other recordable instrument.

(5) In the event that more than one certified resolution or
indenture is recorded, the security interest granted by the first
recorded resolution or indenture has priority in the same
manner as an earlier filed deed of trust except to the extent the
earlier recorded resolution or indenture provides otherwise.
(d) Mortgage or deed of trust. —

(1) In addition to or in lieu of the indenture provided for in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the municipality and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the downtown redevelopment district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the municipality, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the municipality considers advisable and shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any agreements or provisions, a municipality shall not have the power to incur original indebtedness by indenture, ordinance, resolution, mortgage or deed of trust.
except with respect to the economic opportunity development
district project and the application of the revenues therefrom
and shall not have the power to incur a pecuniary liability or a
charge upon its general credit or against its taxing powers
unless approved by the voters in accordance with article one,
chapter thirteen of this code or as otherwise permitted by the
constitution of this state.

(e) Enforcement of obligations. —

(1) The proceedings authorizing any bonds and any
indenture, mortgage or deed of trust securing the bonds may
provide that, in the event of default in payment of the principal
of or the interest on the bonds, or notes, or in the performance
of any agreement contained in the proceedings, indenture,
mortgage or deed of trust, payment and performance may be
enforced by the appointment of a receiver in equity with power
to charge and collect rents or other amounts and to apply the
revenues from the economic opportunity development district
project in accordance with the proceedings or the provisions of
the agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust
may provide also that, in the event of default in payment or the
violation of any agreement contained in the mortgage or deed
of trust, the agreement, indenture, mortgage or deed of trust
may be foreclosed either by sale at public outcry or by proceed-
ings in equity and may provide that the holder or holders of any
of the bonds secured thereby may become the purchaser at any
foreclosure sale, if the highest bidder therefor.

(f) No pecuniary liability. — No breach of any agreement,
indenture, mortgage or deed of trust shall impose any pecuniary
liability upon a municipality or any charge upon its general
credit or against its taxing powers.

The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the municipality and at the redemption prices or premiums, which terms shall be stated in the bond.


(a) Any bonds issued under this article and at any time outstanding may at any time, and from time to time, be refunded by a municipality by the issuance of its refunding bonds in amount as the municipality considers necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the downtown redevelopment district project; and any premiums and commissions necessary to be paid in connection therewith.

(b) Any refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.

(c) Any refunding bonds issued under the authority of this article is subject to the provisions contained in section sixteen of this article and shall be secured in accordance with the provisions of section seventeen of this article.

§8-38-20. Use of proceeds from sale of bonds.
(a) General. — The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest received in any sale shall be applied to the payment of the interest on the bonds sold: Provided, however, That if for any reason any portion of the proceeds may not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds may be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) Payment of costs. — The costs that may be paid with the proceeds of the bonds include all development and redevelopment costs described in section five of this article and may also include, but not be limited to, the following:

1. The cost of acquiring any real estate determined necessary;

2. The actual cost of the construction of any part of an economic opportunity development district project which may be constructed, including architects', engineers', financial or other consultants' and legal fees;

3. The purchase price or rental of any part of an economic opportunity development district project that may be acquired by purchase or lease;

4. All expenses incurred in connection with the authorization, sale and issuance of the bonds to finance the acquisition and the interest on the bonds for a reasonable time prior to construction during construction and for not exceeding twelve months after completion of construction; and
(5) Any other costs and expenses reasonably necessary in
the establishment and acquisition of an economic opportunity
development district project and the financing thereof.


1 Bonds issued under the provisions of this article are legal
2 investments for banks, building and loan associations and
3 insurance companies organized under the laws of this state and
4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§8-38-22. Exemption from taxation.

1 The revenue bonds and notes issued pursuant to this article
2 and the income therefrom are exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and personal
4 property which a municipality or district board acquires
5 pursuant to the provisions of this article are exempt from
6 taxation by the state, or any county, municipality or other
7 levying body, as public property so long as the property is
8 owned by the municipality or district board.

CHAPTER 11. TAXATION.

Article
10. Procedure and Administration.
11. Consumers Sales and Service Tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-11a. Administration of special district excise tax; commis-
1 sion authorized.

1 (a) Any municipality or county commission which, pursu-
2 ant to section twelve, article twenty-two, chapter seven of this
3 code, section eleven, article thirteen-b, chapter eight of this
4 code, or section twelve, article thirty-eight, chapter eight of this
code imposes a special district excise tax shall, by express provision in the order imposing that tax, authorize the state tax commissioner to administer, assess, collect and enforce that tax on behalf of and as its agent.

(1) The county commission shall make such authorization by the adoption of a provision in its order levying a special district excise tax stating its purpose and referring to this section and providing that the order shall be effective on the first day of a month at least sixty days after its adoption.

(2) A certified copy of the order shall be forwarded to the state auditor, the state treasurer and the tax commissioner so that it will be received within five days after its adoption.

(b) Any special district excise tax administered under this section shall be administered and collected by the tax commissioner in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the tax commissioner under this section shall be paid into the state treasury to the credit of each county commission's subaccount in the economic opportunity development district fund created pursuant to section nine, article twenty-two, chapter seven of this code for the particular economic opportunity development district. The special district excise tax moneys shall be credited to the subaccount of each particular county commission levying a special district excise tax being administered under this section. The credit shall be made to the subaccount of the county commission for the economic opportunity development district in which the taxable sales were made and services rendered as shown by the records of the tax commissioner and certified by him or her monthly to the state treasurer, namely, the location of each place of business of every vendor collecting
and paying the tax to the tax commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the state treasury in any month for the preceding reporting period, the district board may issue a requisition to the auditor requesting issuance of a state warrant for the proper amount in favor of each county commission entitled to the monthly remittance of its special district excise tax moneys.

(1) Upon receipt of the requisition, the auditor shall issue his or her warrant on the state treasurer for the funds requested and the state treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the county commission and not previously remitted during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the state treasury, as provided in subsection (c) of this section, one
ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

*§11-15-9f. Exemption for sales and services subject to special district excise tax.

Notwithstanding any provision of this article to the contrary, any sale or service upon which a special district excise tax is paid, pursuant to the provisions of section twelve, article twenty-two, chapter seven of this code, section eleven, article thirteen-b, chapter eight of this code, or section twelve, article thirty-eight, chapter eight of this code is exempt from the tax imposed by this article: Provided, That the special district excise tax does not apply to sales of gasoline and special fuel.

CHAPTER 89
(S. B. 443 — By Senators Chafin, Helmick and Bailey)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
That section three-e, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

1 (a) The Legislature hereby finds and declares the following:

(1) That some mining operations in this state process coal to create a saleable clean coal product;

(2) That the by-product, waste or residue created from processing coal is commonly deposited in what are known as refuse or gob piles;

(3) That, as a result of technological developments and other factors, the material contained in some refuse or gob piles located in this state can be recovered and further processed to produce saleable clean coal; and

(4) That, under the existing laws of this state, coal produced from processing material contained in refuse, gob piles, slurry ponds, pond fines or other sources of waste coal would be subject to the annual privilege tax imposed on the severance of coal pursuant to section three of this article and the minimum severance tax imposed by section three, article twelve-b of this chapter.

Based on the findings in this subsection, the Legislature concludes that an incentive to extracting and recovering material contained in refuse, gob piles and other sources of waste coal located in this state and subsequently processing, washing and preparing this material to produce coal should be
implemented to encourage the production of this coal from refuse or gob piles located in this state.

(b) Imposition of tax. — In lieu of: (i) The annual privilege tax imposed on the severance of coal imposed by section three of this article; (ii) the additional tax on severance, extraction and production of coal imposed by section six of this article; and (iii) the minimum severance tax imposed by section three, article twelve-b of this chapter for the privilege of engaging or continuing within this state in the business of extracting and recovering material from a refuse, gob pile or other sources of waste coal and subsequently processing, washing and preparing this extracted or recovered material to produce coal for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising that privilege an annual privilege tax.

(c) Rate and measure of tax. — The tax imposed in subsection (b) of this section is two and one-half percent of the gross value of the coal produced, as shown by the gross proceeds derived from the sale of the coal by the producer, except as otherwise provided in this article.

(d) Tax in addition to other taxes. — The tax imposed by this section applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state and subsequently processing, washing and preparing this extracted and recovered material to produce coal for sale, profit or commercial use and shall be in addition to all other taxes imposed by law: Provided, That the tax imposed by this section is in lieu of the tax imposed by sections three and six of this article and section three, article twelve-b of this chapter.

(e) Exemption. — The tax imposed in subsection (b) of this section shall not apply to any electrical power cogeneration
(f) Dedication of taxes collected, creation of fund. —

(1) There is continued in the state treasury a fund entitled the "waste coal-producing counties fund" which shall be a revolving fund that shall carry over each fiscal year. The taxes collected under the provisions of this section shall be deposited in the waste coal-producing counties fund and are dedicated to the county commissions of the counties in which the refuse, gob piles or other sources of waste coal are located from which taxable waste coal production has occurred during the year for use in economic development and infrastructure improvements. The economic and infrastructure projects are to be in accordance with the rules promulgated under the synthetic fuel-producing counties grant fund program, as determined by the director of the West Virginia development office: Provided, That the county shall use ninety percent of the funds for infrastructure improvement and ten percent of the funds for economic development.

(2) Moneys in the waste coal-producing counties fund shall be distributed by the state treasurer annually to the counties in which the refuse, gob piles or other sources of waste coal are located, from which taxable waste coal production has occurred during the year, in an amount prorated to the number of tons of taxable waste coal produced in each county during the preceding year. The distribution shall be paid separate from any other payment of moneys to the county by the treasurer. For purposes of this subdivision, the term "ton" means two thousand pounds.

(3) The office of chief inspector shall annually determine that counties' expenditures of moneys distributed under this section is in compliance with the requirements of this section.
CHAPTER 90

(H. B. 2961 — By Delegates Perry, Shaver, Beach and Fleischauer)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school buses generally; and requiring the state board of education develop a policy concerning idling of school buses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways; limitation on idling.

(a) The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in section eight of this article, and the driver shall not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no
This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road or driveway: Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway. Any driver acting in violation of this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. If the identity of the driver cannot be ascertained, then any owner or lessee of the vehicle in violation of this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five nor more than one hundred dollars. The conviction shall not subject the owner or lessee to further administrative or other penalties for the offense, notwithstanding other provisions of this code to the contrary.

(b) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words “school bus” in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings on the contract school bus indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.

(c) The state board of education shall write a policy governing the idling of school buses.
CHAPTER 91

(Com. Sub. for S. B. 522 — By Senators Oliverio, Prezioso, Plymale, Edgell, Hunter, Guills, Bowman, Rowe and Love)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to further amend said article by adding thereto a new section, designated section five-g; to amend and reenact section seven, article two-e of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact sections one and two, article four of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections ten and eleven of said article; to amend and reenact sections one-a, one-c, four, seven, thirteen, fourteen, twenty-five and forty-five, article five of said chapter; to amend and reenact sections two and five, article five-a of said chapter; and to amend and reenact section four, article eight of said chapter, all relating to public education generally; definitions; allowing state board president to serve an unlimited number of terms, but no more than two consecutive terms; requiring county boards to provide certain policies, summaries of any modifications to those policies and copies of annual reports to state board; requiring state board to submit copies of summaries and annual reports to the legislative oversight commission on education accountability; allowing, with state board approval, certain appropriations to be expended directly or through contractual agreements with county boards and regional education service agencies for materials and other
costs associated with installation, set-up, internet hook-up and wiring of the computer hardware and software; clarifying that state superintendent serves at the will and pleasure of the state board; requiring the state board to annually evaluate the performance of the state superintendent and publicly announce the results of the evaluation; clarifying appointment of county superintendents; modifying authorization for county superintendent to transfer to a teaching position at the end of his or her term; extending the date before which the county superintendent is required to be appointed; requiring county superintendent to be a resident of the county, or of a contiguous county in this state, in which he or she serves; modifying requirements for permanent administrative certificate and county superintendent license; requiring state board to define three years of experience in management or supervision in rule; modifying health-related conditions of employment for county superintendents; providing for discontinuing or suspending employment of county superintendent under certain circumstances; requiring that county superintendents be evaluated at least annually; providing criteria for evaluation; providing for evaluation to take place in executive session; directing county board to release general statement to the public and provide additional information only by mutual consent of county board and county superintendent; delineating authorized uses of evaluation results; allowing contract or written agreement to delineate a county superintendent acting as chief executive officer; removing county superintendent duty to organize and attend district institutes and organize and direct reading circles and boys' and girls' clubs; requiring county superintendent to report promptly to the county board whenever any school in the district appears to be failing to meet the standards for improving education; requiring county superintendent to keep county board apprised of certain issues in the district; removing requirement for county superintendent to direct the taking of school census; allowing county board members to serve on certain boards; allowing request of ethics commission for an
advisory opinion; requiring ethics commission to issue advisory opinion within thirty days; entitling county board member who relies on opinion to reimbursement for attorney's fees and court costs incurred in certain proceedings; prohibiting vote cast from being invalidated due to subsequent finding that holding particular office or committee is a bar to membership on the board; providing that good faith reliance on a written advisory opinion is an absolute defense to certain civil suits or criminal prosecutions; requiring county board member training to include school performance issues; allowing feasible and practicable extension of training time; requiring annual county board self-assessment; specifying focus of evaluation instrument; requiring summary of evaluation to be made public; allowing county boards to meet in facilities within the county other than the county board office; authorizing lease of school property subject to certain requirements; clarifying county board authority to employ, contract with or otherwise engage legal counsel; including service personnel in job-sharing arrangements; adding requirements for job sharing; limiting cost to retirement system; requiring filing of policies and summaries of policies that promote school board effectiveness; requiring annual meeting with a quorum of members from each local school improvement council; providing for meeting with less than a quorum under certain circumstances; allowing county board to schedule additional meeting for any low performing school in the district; requiring county board to develop agenda for required annual meeting with local school improvement council; requiring certain items to be addressed; requiring county boards to make written requests for information from local school improvement councils throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; modifying time requirements for reporting to state board on meetings with local school improvement councils; authorizing county board to request assistance from local school improvement council members to facilitate development of report; requiring county boards to
review the policies to promote school board effectiveness each year; eliminating duty of county superintendent to make a tabular report to the county board annually; eliminating requirement that certain percentage of students be in attendance for a day to be considered instructional; including five instructional support and enhancement days within the instructional term that include instructional activities, professional activities and time for faculty senate meetings; requiring instructional activities for students to be scheduled by appointment; requiring school policy relating to use of time designated for instructional activities; providing that the presence of any certain number of students and the transportation of students is not required on instructional support and enhancement days; declaring instructional support and enhancement days a regular work day for all service personnel; providing that for one school year only, statewide assessment may not be prior to the fifteenth day of April; requiring professional development days to be used last when making up instructional days; allowing use of additional minutes of instruction each day for making up lost instructional days under certain circumstances; prohibiting more than one parent member of a local school improvement council from being employed at the school; requiring chair to appoint replacement of elected member of local school improvement council if position becomes vacant; requiring principal to appoint replacement if appointed position becomes vacant; requiring principal to provide certain information at the organizational meeting of the local school improvement council; requiring local school improvement council chair, or designee, to be prepared to address certain matters at annual meeting and in writing; allowing state board to enter into contracts to provide orientation training for local school improvement council members; requiring that any training meet guidelines established by the state board; requiring emergency meetings of faculty senates to be held during noninstructional time; requiring a two-hour block of time be scheduled for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning
of the instructional term; requiring that a two-hour block of time be scheduled for a faculty senate meeting on each instructional support and enhancement day; and requiring state board rule excluding certain absences for accountability purposes.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Definitions; Limitations of Chapter; Goals for Education.
2. State Board of Education.
2E. High Quality Educational Programs.
4. County Superintendent of Schools.
5. County Board of Education.
5A. Local School Involvement.
8. Compulsory School Attendance.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.
The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) “School” means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

(b) “District” means county school district;

(c) “State board” means the West Virginia board of education;

(d) “County board” or “board” means the county board of education;

(e) “State superintendent” means the state superintendent of free schools;

(f) “County superintendent” or “superintendent” means the county superintendent of schools;

(g) “Teacher” means teacher, supervisor, principal, superintendent or public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) “Service personnel” means all nonteaching school employees not included in the above definition of “teacher”;

(i) “Social worker” means a nonteaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional social work services,
activities or methods as defined by the state board for the
benefit of students;

(j) "Regular full-time employee" means any person
employed by a county board of education who has a regular
position or job throughout his or her employment term, without
regard to hours or method of pay;

(k) "Career clusters" means broad groupings of related
occupations;

(l) "Work-based learning" means a structured activity that
correlates with and is mutually supportive of the school-based
learning of the student and includes specific objectives to be
learned by the student as a result of the activity;

(m) "School-age juvenile" means any individual who is
entitled to attend or who, if not placed in a residential facility,
would be entitled to attend public schools in accordance with:
(1) Section five, article two of this chapter; (2) sections fifteen
and eighteen, article five of this chapter; or (3) section one,
article twenty of this chapter;

(n) "Student with a disability" means an exceptional child,
other than gifted, pursuant to section one, article twenty of this
chapter;

(o) "Low-density county" means a county whose ratio of
student population to square miles is less than or equal to the
state average ratio as computed by the state department of
education;

(p) "High-density county" means a county whose ratio of
student population to square miles is greater than the state
average ratio as computed by the state department of education;
(q) "Casual deficit" means a deficit of not more than three percent of the approved levy estimate or a deficit that is nonrecurring from year to year.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-4. Organization; appointment, compensation and duties of secretary.

§18-2-5g. Duty to receive and submit summary of policy modifications and annual reports.

§18-2-4. Organization; appointment, compensation and duties of secretary.

At its first regular meeting in every year the state board shall elect one of its members as president, who may serve an unlimited number of terms, but no more than two consecutive terms, and one as vice president of the board. The state superintendent shall be the chief executive officer of the state board and, subject to its direction, shall execute its policies.

The state board shall appoint a secretary and fix the secretary's salary to be paid out of the general school fund upon warrants drawn by the state superintendent. The secretary shall keep a record of the proceedings of the state board and shall perform such other duties as it may prescribe.

§18-2-5g. Duty to receive and submit summary of policy modifications and annual reports.

In addition to filing each policy as required by section fourteen, article five of this chapter, the state board shall require each county board to provide a summary of any modifications to the policies and copies of annual reports developed pursuant to section fourteen, article five of this chapter. The state board shall submit copies of these summaries of modifications to the policies and annual reports, together with any comments and recommendations, to the legislative oversight commission on
education accountability, no later than the thirty-first day of
December of each year.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

(a) The Legislature finds that teachers must be provided the support, assistance and teaching tools necessary to meet individual student instructional needs on a daily basis in a classroom of students who differ in learning styles, learning rates and in motivation to learn. The Legislature further finds that attaining a solid foundation in the basic skills of reading, composition and arithmetic is essential for advancement in higher education, occupational and avocational pursuits and that computers are an effective tool for the teacher in corrective, remedial and enrichment activities. Therefore, the state board shall develop a plan which specifies the resources to be used to provide services to students in the earliest grade level and moving upward as resources become available based on a plan developed by each individual school team.

This plan must provide for standardization of computer hardware and software and for technology upgrade and replacement for the purposes of achieving economies of scale, facilitating teacher training, permitting the comparison of achievement of students in schools and counties utilizing the hardware and software and facilitating the repair of equipment and ensuring appropriate utilization of the hardware and software purchased for remediation and basic skills development.

The state board shall determine the computer hardware and software specifications after input from practicing teachers at the appropriate grade levels and with the assistance of education computer experts and the curriculum technology resource center.
Computer hardware and software shall be purchased either
directly or through a lease-purchase arrangement pursuant to
the provisions of article three, chapter five-a of this code in the
amount equal to anticipated revenues being appropriated:
Provided, That, with the approval of the state board, the
revenues appropriated may be expended directly or through
contractual agreements with county boards and regional
education service agencies for materials and other costs
associated with installation, set-up, internet hook-up and wiring
of the computer hardware and software: Provided, however,
That nothing in this section shall be construed to require any
specific level of funding by the Legislature.

The state board shall develop and provide through the state
curriculum technology resource center a program to ensure
adequate teacher training, continuous teacher support and
updates.

To the extent practicable, such technology shall be utilized
to enhance student access to learning tools and resources
outside of the normal school day, such as: Before and after
school; in the evenings, on weekends and during vacations; and
for student use for homework, remedial work, independent
learning, career planning and adult basic education.

(b) The Legislature finds that the continued implementation
of computer utilization under this section for high quality basic
skills development and remediation in the middle schools,
junior high schools and high schools is necessary to meet the
goal that high school graduates will be prepared fully for
college, other post-secondary education or gainful employment.
Further, such implementation should provide a technology
infrastructure at the middle schools, junior high schools and
high schools that has multiple applications in enabling students
to achieve at higher academic levels. The technology infrastruc-
ture should facilitate student development in the following areas:

(1) Attaining basic computer skills such as word processing, spreadsheets, data bases, internet usage, telecommunications and graphic presentations;

(2) Learning critical thinking and decision-making skills;

(3) Applying academic knowledge in real life situations through simulated workplace programs;

(4) Understanding the modern workplace environment, particularly in remote areas of the state, by bringing the workplace to the school;

(5) Making informed career decisions based upon information on labor markets and the skills required for success in various occupations;

(6) Gaining access to labor markets and job placement;

(7) Obtaining information and assistance about college and other post-secondary education opportunities and financial aid; and

(8) Other uses for acquiring the necessary skills and information to make a smooth transition from high school to college, other post-secondary education or gainful employment.

Therefore, the state board shall extend the plan as set forth in subsection (a) of this section, and consistent with the terms and conditions in said subsection, to address the findings of this subsection regarding the continued implementation of computer hardware and software and technical planning support in the middle schools, junior high schools and high schools of the state.
ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

There shall be appointed by the state board a state superintendent of schools who shall serve at the will and pleasure of the state board. He or she shall be a person of good moral character, of recognized ability as a school administrator, holding at least a master's degree in educational administration, and shall have had not less than five years of experience in public school work. He or she shall receive an annual salary set by the state board, to be paid monthly: Provided, That the annual salary may not exceed one hundred forty-six thousand one hundred dollars. The state superintendent also shall receive necessary traveling expenses incident to the performance of his or her duties to be paid out of the general school fund upon warrants of the state auditor. The state superintendent shall have his or her office at the state capitol. The state board shall report to the legislative oversight commission on education accountability upon request concerning its progress during any hiring process for a state superintendent.

The state board annually shall evaluate the performance of the state superintendent and publicly announce the results of the evaluation.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.
§18-4-2. Qualifications; health certificate; disability; acting superintendent.
§18-4-6. Evaluation of county superintendent.
§18-4-10. Duties of county superintendent.
§18-4-11. Other powers and duties.

§18-4-1. Election and term; interim superintendent.

(a) The county superintendent shall be appointed by the board upon a majority vote of the members thereof to serve for
a term of not less than one, nor more than four years. At the expiration of the term or terms for which he or she shall have been appointed, each county superintendent shall be eligible for reappointment for additional terms of not less than one, nor more than four years: Provided, That at the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons. The appointment of the county superintendent shall be made on or before the first day of June for a term beginning on the first day of July following the appointment.

(b) A county superintendent who fills a vacancy caused by an incomplete term shall be appointed to serve until the following first day of July: Provided, however, That the board may appoint an interim county superintendent to serve for a period not to exceed one hundred twenty days from the occurrence of the vacancy.

(c) The president of the county board, immediately upon the appointment of the county superintendent, or the appointment of an interim county superintendent, shall certify the appointment to the state superintendent.

(d) During his or her term of appointment, the county superintendent shall be a resident of the county, or of a contiguous county in this state, which he or she serves. The county superintendent in office on the effective date of this section shall continue in office until the expiration of his or her term.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

(a) Each county superintendent shall hold a professional administrative certificate endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the following:
A superintendent who holds a first class permit may be appointed for one year only, and may be reappointed two times for an additional year each upon an annual evaluation by the county board and a determination of satisfactory performance and reasonable progress toward completion of the requirements for a professional administrative certificate endorsed for superintendent;

Any candidate for superintendent who possesses an earned doctorate from an accredited institution of higher education and either has completed three successful years of teaching in public education or has the equivalent of three years of experience in management or supervision as defined by state board rule, after employment by the county board shall be granted a permanent administrative certificate and shall be a licensed county superintendent;

The state board shall promulgate a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, to address those cases where a county board finds that course work needed by the county superintendent who holds a first class permit is not available or is not scheduled at state institutions of higher education in a manner which will enable the county superintendent to complete normal requirements for a professional administrative certificate within the three-year period allowed under the permit; and

Any person employed as assistant superintendent or educational administrator prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously employed as superintendent is not required to hold the professional administrative certificate endorsed for superintendent.
(b) In addition to other requirements set forth in this section, a county superintendent shall meet the following health-related conditions of employment:

(1) Before entering upon the discharge of his or her duties, file with the president of the county board a certificate from a licensed physician certifying the following:

   (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the director of the department of health, has been made within four months prior to the beginning of the term of the county superintendent; and

   (B) The county superintendent does not have tuberculosis in a communicable state based upon the test results and any further study;

(2) After completion of the initial test, the county superintendent shall have an approved tuberculin skin test once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be referred immediately to a physician for evaluation and indicated treatment or further studies;

(3) A county superintendent who is certified by a licensed physician to have tuberculosis in a communicable stage shall have his or her employment discontinued or suspended until the disease has been arrested and is no longer communicable; and

(4) A county superintendent who fails to complete required follow-up examinations as set forth in this subsection shall be suspended from employment until a report of examination is confirmed.

§18-4-6. Evaluation of county superintendent.
(a) At least annually, the county board shall evaluate the performance of the county superintendent. The evaluation process to be used shall be one authorized by the state board. The West Virginia school board association shall maintain a catalog of evaluation instruments which comply with this section and shall make them available to county boards.

(b) At a minimum, the evaluation process shall require the county superintendent and county board to establish written goals or objectives for the county superintendent to accomplish within a given period of time. Additionally, the county board shall evaluate the county superintendent on his or her success in improving student achievement generally across the county and specifically as it relates to the management and administration of low performing schools.

(c) The evaluation also may cover the performance of a county superintendent in the areas of community relations, school finance, personnel relations, curricular standards and programs and overall leadership of the school district as indicated primarily by improvements in student achievement, testing and assessment.

(d) The evaluation of a county superintendent shall occur in executive session. At the conclusion of the evaluation, the county board shall make available to the public a general statement about the evaluation process and the overall result. Additional information about the evaluation may be released only by mutual consent of the county superintendent and the county board. The county board may use the evaluation results to determine:

(1) Whether to extend the contract of the county superintendent;
31 (2) Whether to offer the county superintendent a new contract; and
32 (3) The level of compensation or benefits to offer the county superintendent in any new or extended contract.

§18-4-10. Duties of county superintendent.

1 The county superintendent shall:

2 (1) Act as the chief executive officer of the county board as may be delineated in his or her contract or other written agreement with the county board, and, under the direction of the state board, execute all its education policies;

3 (2) Nominate all personnel to be employed; in case the county board refuses to employ any or all of the persons nominated, the county superintendent shall nominate others and submit the same to the county board at a time the county board may direct. No person or persons shall be employed except on the nomination of the county superintendent;

4 (3) Assign, transfer, suspend or promote teachers and all other school employees of the district, subject only to the approval of the county board, and to recommend to the county board their dismissal pursuant to the provisions of this chapter;

5 (4) Report promptly to the county board in such manner as it directs whenever any school in the district appears to be failing to meet the standards for improving education established pursuant to section five, article two-e of this chapter;

6 (5) Close a school temporarily when conditions are detrimental to the health, safety or welfare of the pupils;

7 (6) Certify all expenditures and monthly payrolls of teachers and employees;
(7) Serve as the secretary of the county board and attend all meetings of the county board or its committees, except when the tenure, salary or administration of the county superintendent is under consideration;

(8) Administer oaths and examine witnesses under oath in any proceedings pertaining to the schools of the district, and have the testimony reduced to writing;

(9) Keep the county board apprised continuously of any issues that affect the county board or its schools, programs and initiatives. The county superintendent shall report to the county board on these issues using any appropriate means agreeable to both parties. When practicable, the reports shall be fashioned to include a broad array of data and information that the county board may consult to aid in making decisions;

(10) Exercise all other authority granted by this chapter or required by the county board or state board; and

(11) In case of emergency, act as the best interests of the school demand. An emergency, as contemplated in this section, is limited to an unforeseeable, catastrophic event including natural disaster or act of war and nothing in this section may be construed as granting the county superintendent authority to override any statutory or constitutional provision in the exercise of his or her emergency power except where such authority is specifically granted in the particular code section.

§18-4-11. Other powers and duties.

The county superintendent shall:

(1) Visit the schools as often as practicable; observe and make suggestions concerning the instruction and classroom management of the schools and their sanitary conditions;
(2) Report to the county board cases of incompetence, neglect of duty, immorality or misconduct in office of any teacher or employee;

(3) Recommend for condemnation buildings unfit for school use;

(4) Call, at his or her discretion, conferences of principals and teachers to discuss the work of the schools of the district;

(5) Report to the county board the progress and general condition of the schools;

(6) Make reports as required by the state superintendent. In case the county superintendent fails to report as required, the state superintendent may direct that the salary of the county superintendent be withheld until an acceptable report is received; and

(7) Perform all other duties prescribed in this chapter or required by the county board or the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.
§18-5-1c. Organization of board; evaluation.
§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.
§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds; lease of school property.
§18-5-14. Policies to promote school board effectiveness.
§18-5-25. Duties of superintendent as secretary of board.
§18-5-45. School calendar.

§18-5-1a. Eligibility of members; training requirements.
(a) No person shall be eligible for membership on any county board who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

(b) No member or member-elect of any board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee: Provided, That "office" or "committee", as used in this subsection and subsection (a) of this section, does not include service on any board, elected or appointed, profit or nonprofit, for which the person does not receive compensation and whose primary scope is not related to the public schools.

(c) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia ethics commission for an advisory opinion on whether another elected or appointed position held or sought by the person is an office or public office which would bar serving on the board pursuant to subsections (a) and (b) of this section. Within thirty days of receipt of the request, the ethics commission shall issue a written advisory opinion in response to the request and shall also publish such opinion in a manner which to the fullest extent possible does not reveal the identity of the person making the request. Any county board member who relied in good faith upon an advisory opinion issued by the West Virginia ethics commission that holding a particular office or
public office is not a bar from membership on a county board of education and against whom proceedings are subsequently brought for removal from the county board on the basis of holding such office or offices shall be entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against such proceedings, regardless of the outcome of the proceedings. Further, no vote cast by the member at a meeting of the board shall be invalidated due to a subsequent finding that holding the particular office or public is a bar to membership on the county board. Good faith reliance on a written advisory opinion of the West Virginia ethics commission that a particular office or public office is not a bar to membership on a county board of education is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the board, becoming a member-elect of the board or seeking election to the board.

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

(e) No person elected to a county board after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office: Provided, That a portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office: Provided, however,
That attendance at the session of orientation given between the date of election and the beginning of the member's term of office shall permit such member or members to assume the duties of board member, as specified in this section. Members appointed to the board shall attend and complete the next such course offered following their appointment: *Provided further,*

That the provisions of this section relating to orientation shall not apply to members who have taken office prior to the first day of July, one thousand nine hundred eighty-eight, and who serve continuously therefrom.

(f) Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardsmanship, governance effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in section five, article two-e of this chapter and the "No Child Left Behind Act" and their respective administrative rules. Such orientation and training shall be approved by the state board and conducted by the West Virginia school board association or other organization or organizations approved by the state board: *Provided,* That the state board may exclude time spent in training on school performance issues from the requisite seven hours herein required: *Provided, however,* That if the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, such training shall be limited by the state board to a feasible and practicable amount of time.

Failure to attend and complete such an approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by legislative rules of the state board shall constitute neglect of duty.

(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before the
first day of January. The state board shall petition the circuit
court of Kanawha County to remove any county board member
who has failed to or who refuses to attend and complete the
approved course of orientation and training. If the county board
member fails to show good cause for not attending the approved
course of orientation and training, the court shall remove the
member from office.

§18-5-1c. Organization of board; evaluation.

(a) On the first Monday of July, following each biennial
primary election, each respective county board shall organize
and shall elect a president from its own membership for a two-
year term. The county board shall report promptly to the state
superintendent the name of the member elected as county board
president.

(b) Annually, each county board shall assess its own
performance using an instrument approved by the state board.
In developing or making determinations on approving evalua-
tion instruments, the state board may consult with the West
Virginia school board association or other appropriate organiza-
tions. The evaluation instrument selected shall focus on the
effectiveness of the county board in the following areas:

(1) Dealing with its various constituency groups and with
the general public;

(2) Providing a proper framework and the governance
strategies necessary to monitor and approve student achieve-
ment on a continuing basis; and

(3) Enhancing the effective utilization of the policy
approach to governance.

At the conclusion of the evaluation, the county board shall
make available to the public a summary of the evaluation,
§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet on the first Monday in July, and upon the dates provided by law for the laying of levies, and at any other times the county board fixes upon its records. Subject to adequate public notice, nothing herein shall prohibit the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of article four of this chapter, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the county board, on or before the first Monday in May, the county superintendent shall furnish in writing to the county board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers not listed are considered as reassigned to the positions held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record and the teachers listed shall be notified in writing. The notice shall be delivered in writing, by certified mail, return receipt requested, to the teachers' last known addresses within ten days following the board meeting, of their having been recommended for transfer and subsequent assignment.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.
(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(d) A majority of the members of the county board constitutes the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed one hundred sixty dollars per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board. Meetings of the council are not counted as board meetings for purposes of determining the limit on compensable board meetings.

(f) Members also shall 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 county board.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board may join the West Virginia school board association and the national school board association and may pay the dues prescribed by the associations and approved by action of the
respective county boards. Membership dues and actual traveling
expenses incurred by 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 may be made
except upon sworn itemized statements.

§18-5-7. Sale of school property at public auction; rights of
grantor of lands in rural communities; oil and gas
leases; disposition of proceeds; lease of school prop-
erty.

(a) Except as set forth in subsection (b) of this section, if at
any time a county board determines that any building or any
land is no longer needed for school purposes, the county board
may sell, dismantle, remove or relocate the building and sell the
land on which it is located at public auction, after proper notice
and on such terms as it orders, to the highest responsible bidder.

(b) Notwithstanding the provisions of subsection (a) of this
section, in rural communities, the grantor of the lands or his or
her heirs or assigns has the right to purchase at the sale, the
land, exclusive of the buildings on the land and the mineral
rights, at the same price for which it was originally sold:
Provided, That the sale to the board was not a voluntary arms
length transaction for valuable consideration approximating the
fair market value of the property at the time of the sale to the
board: Provided, however, That the provisions of this section
may not operate to invalidate any provision of the deed to the
contrary.

(c) The county board, by the same method set forth in
subsection (a) of this section for the sale of school buildings
and lands, may, in lieu of offering the property for sale, enter
into a lease for oil or gas or other minerals any lands or school
sites owned in fee by it. The proceeds of the sales and rentals
shall be placed to the credit of the fund or funds of the district as the county board may direct.

(d) The county board may make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. In any sale by the county board of improved property in which the actual consideration is less than ten thousand dollars or in any sale of unimproved property in which the actual consideration is less than one thousand dollars, the county board shall make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. The county board shall inform any prospective purchaser of known or suspected hazards associated with the property.

(e) Except as provided by the provisions of subsection (b) of this section, where a county board determines that any school property is no longer needed for school purposes, the county board may, upon determining that it will serve the best interests of the school system and the community, offer the property for lease. The procedure set forth in subsection (a) of this section relating to sale of school buildings and lands shall apply to leasing the school property. Any lease authorized by the provisions of this subsection shall be in writing. The writing shall include a recitation of all known or reasonably suspected hazards associated with the property, an assumption by the lessee of all liability related to all hazards, whether disclosed or not, and provisions wherein the lessee assumes all liability for any actions arising from the property during the term of the lease.

(f) Notwithstanding any provision of this section to the contrary, the provisions of this section concerning sale or lease at public auction may not apply to a county board selling, leasing or otherwise disposing of its property for a public use to
the state of West Virginia, or its political subdivisions, including county commissions, for an adequate consideration without considering alone the present commercial or market value of the property.

*§18-5-13. Authority of boards generally.*

1 Each county board, subject to the provisions of this chapter and the rules of the state board, has the authority:

3 (a) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasipublic moneys, including securing surety bonds by expenditure of board moneys;

15 (b) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools, programs or both, for post-high school instruction, subject to approval of the state board;

19 (c) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the closing shall be officially acted upon, and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this

*CLERK's NOTE: This section was also amended by HB 2083 (Chapter 92), which passed prior to this act.*
article, except in an emergency, subject to the approval of the
state superintendent, or under subdivision (e) of this section;

(d) To consolidate schools;

(e) To close any elementary school whose average daily
attendance falls below twenty pupils for two months in succes-
sion and send the pupils to other schools in the district or to
schools in adjoining districts. If the teachers in the closed
school are not transferred or reassigned to other schools, they
shall receive one month's salary;

(f) (1) To provide at public expense adequate means of
transportation, including transportation across county lines for
students whose transfer from one district to another is agreed to
by both county boards as reflected in the minutes of their
respective meetings, for all children of school age who live
more than two miles distance from school by the nearest
available road; to provide at public expense, according to such
rules as the board may establish, adequate means of transporta-
tion for school children participating in county board-approved
curricular and extracurricular activities; to provide at public
expense, by rules and within the available revenues, transporta-
tion for those within two miles distance; and to provide, at no
cost to the county board and according to rules established by
the board, transportation for participants in projects operated,
financed, sponsored or approved by the commission on aging,
all subject to the following:

(A) All costs and expenses incident in any way to transpor-
tation for projects connected with the commission on aging
shall be borne by the commission or the local or county chapter
of the commission;
(B) In all cases, the school buses owned by the county board shall be driven or operated only by drivers regularly employed by the county board;

(C) The county board may provide, under rules established by the state board, for the certification of professional employees as drivers of county board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home. The use of the vehicles shall be limited to one for each school-sponsored activity; and

(D) Buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

(2) To enter into agreements with one another as reflected in the minutes of their respective meetings to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of this subsection and subsection (h) of this section;

(g) (1) To lease school buses operated only by drivers regularly employed by the county board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the county board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee;

(2) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this section.
The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;

(h) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(i) To provide solely from county board funds for all regular full-time employees of the county board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(j) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training in areas specifically related to the education of exceptional children;

(k) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach in the high school or post high school program;

(l) At the board’s discretion, to employ, contract with or otherwise engage legal counsel in lieu of utilizing the prosecuting attorney to advise, attend to, bring, prosecute or defend, as
the case may be, any matters, actions, suits and proceedings in which the board is interested;

(m) To provide appropriate uniforms for school service personnel;

(n) To provide at public expense and under rules as established by any county board for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board;

(o) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the county board and is directly connected with and required by the nature and in the performance of the employee's duties and responsibilities;

(p) To provide, at public expense, adequate public liability insurance, including professional liability insurance for county board employees;

(q) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, for the academic study. The agreements are subject to approval by the state board;

(r) To provide information about vocational or higher education opportunities to students with handicapping conditions. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state funded institutions of higher education. The information may include sources of available funding, including grants,
mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) To enter into agreements with one another, with the approval of the state board, for the transfer and receipt of any and all funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence; and

(t) To enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this code;

(2) Notwithstanding any provisions of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code to the contrary, a county board which enters into a job-sharing arrangement in which two or more employees voluntarily share an authorized full-time position shall provide the mutually agreed upon employee coverage but shall not offer insurance coverage to more than one of the job-sharing employees, including any group plan or group plans available under the state public employees insurance act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not so designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;
(4) All employees involved in the job-sharing agreement meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

(5) When entering into a job-sharing agreement, the county board and the employees involved in the job-sharing agreement shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties to the agreement consider appropriate. Any provision in the agreement relating to retirement benefits shall not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position.

"Quasipublic funds" as used in this section means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

Each county board shall expend under rules it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

§18-5-14. Policies to promote school board effectiveness.

(a) No later than the first day of August, two thousand three, each county board shall adopt and file with the state board copies of policies and summaries of policies that promote school board effectiveness. These policies may be modified by the county board as necessary, but shall be refiled with the state board following each modification. The policies shall address the following objectives:

(1) Establishing direct links between the county board and its local school improvement councils and between the county
board and its faculty senates for the purpose of enabling the county board to receive information, comments and suggestions directly from the councils and faculty senates regarding the broad guidelines for oversight procedures, standards of accountability and planning for future needs as required by this section. To further development of these linkages, each county board shall:

(A) Meet at least annually with a quorum of members from each local school improvement council in the district, at a time and in a manner to be determined by the county board, except, in order to facilitate scheduling, the county board may adopt an alternate procedure allowing it to conduct the required annual meeting with each council in the absence of a quorum of council members if the alternate procedure has received prior approval from the state board and if the school district serves more than twenty thousand students or has more than twelve public schools.

Nothing in this section prohibits a county board from meeting with representatives of a local school improvement council, but at least one annual meeting shall be held, as specified in this section.

At any time and with reasonable advance notice, county boards may schedule additional meetings with the council for any low performing school in the district;

(B) At least thirty days before an annual meeting with each local school improvement council, develop and submit to the council an agenda for the annual meeting which requires the council chair or a member designated by the chair, to address items designated by the county board from the report created pursuant to this section, and one or more of the following issues:
(i) School performance;

(ii) Curriculum;

(iii) Status of the school in meeting the unified school improvement plan established pursuant to section five, article two-e of this chapter; and

(iv) Status of the school in meeting the county plan established pursuant to section five, article two-e of this chapter;

(C) Make written requests for information from the local school improvement council throughout the year or hold community forums to receive input from the affected community as the county board considers necessary; and

(D) Report details to the state board concerning the meeting or meetings held with councils, as specified in this section. The information shall be provided to the state board at the conclusion of the school year, but no later than the first day of September of each year, and shall become an indicator in the performance accreditation process for each county. In order to facilitate development of this report, a county board may consult with and request assistance from members of the councils.

(2) Providing for the development of direct links between the county board and the community at large allowing for community involvement at regular county board meetings and specifying how the county board will communicate regularly with the public regarding important issues;

(3) Providing for the periodic review of personnel policies of the district in order to determine their effectiveness;
(4) Setting broad guidelines for the school district, including the establishment of specific oversight procedures, development and implementation of standards of accountability and development of long-range plans to meet future needs as required by this section; and

(5) Using school-based accreditation and performance data provided by the state board and other available data in county board decisionmaking to meet the education goals of the state and other goals as the county board may establish.

(b) On or before the first day of August of each year, county school boards shall review the policies listed in subsection (a) of this section and may modify these policies as necessary.

§18-5-25. Duties of superintendent as secretary of board.

The county superintendent as secretary of the board shall:

(1) Take the oath prescribed in the constitution before performing any of the duties of his office;

(2) Attend all board meetings and record its official proceedings in a book kept for that purpose;

(3) Record the number of each order issued, the name of the payee, the purpose for which the order was issued and the amount thereof. Every order shall be signed by the secretary and the president of the board;

(4) Care for and keep all papers belonging to the board, including evidences of title, contracts and obligations. They shall be kept in the secretary's office, accessibly arranged for reference;
(5) Record and keep on file all papers and documents pertaining to the business of the board;

(6) Keep the accounts and certify the reports required by law or requested by the board;

(7) Administer oaths to school officers, teachers and others making reports;

(8) Deliver in proper condition to his successor all records and property pertaining to his office; and

(9) Exercise such other duties as are prescribed by law.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) “Instructional day” means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for the amounts of time provided by state board rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and pursuant to the provisions of subdivision (12), subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the state board determines appropriate.

(2) “Bank time” means time added beyond the required instructional day which may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities, as further defined by the state board.
“Extracurricular activities” are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities, as further defined by the state board.

“Cocurricular activities” are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) Findings. –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:
(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days.

(d) The instructional term for students shall include, one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits. The instructional activities for students shall be determined and scheduled at the local school level. The first two hours of the instructional day shall be used for instructional activities for students which require the direct supervision or involvement by teachers, and such activities shall be limited to two hours. To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school. The school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students. The professional activities for teachers shall include a two-hour block of time immediately following the first two hours of instructional activities for students during which the faculty senate shall have the opportunity to meet. Any time not used by the faculty senate and the remainder of the school day, not including the duty free lunch
period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level. Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required. Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required.

(e) The instructional term shall commence no earlier than the twenty-sixth day of August and terminate no later than the eighth day of June.

(f) Noninstructional days shall total twenty and shall be comprised of the following:

(1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;

(2) Election day as specified in section two, article five, chapter eighteen-a of this code;

(3) Six days to be designated by the county board to be used by the employees outside the school environment; and

(4) Six days to be designated by the county board for any of the following purposes:

(A) Curriculum development;
(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled but not conducted.

(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the twenty-sixth day of August for the purposes of preparing for the opening of school and staff development.

(h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the eighth day of June for the purpose of preparing for the closing of school. If one hundred eighty separate instruction days occur prior to the eighth day of June, this day may be scheduled on or before the eighth day of June.

(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after the first day of March.

(j) At least two of the days described in subdivision (4), subsection (f) of this section, will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two, chapter eighteen of this code.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the eighth day of June.
Except as otherwise provided in this subsection, the state board may not schedule the primary statewide assessment program prior to the fifteenth day of May of the instructional year, unless the state board determines that the nature of the test mandates an earlier testing date. For the school year beginning two thousand three only, the state board may not schedule the primary statewide assessment program prior to the fifteenth day of April of the instructional year.

If, on or after the first day of March, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction: Provided, That the noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days: Provided, however, That on or after the first day of March, the county board also may require additional minutes of instruction in the school day to make up for lost instructional days in excess of the days available through rescheduling and, if in its judgment it is reasonable and necessary to improve student performance, to avoid scheduling instruction on noninstructional days previously scheduled for professional development. The provisions of this subsection do not apply to: (1) Holidays; and (2) election day.

The following applies to bank time:

(1) Except as provided in subsection (m) of this section, bank time may not be used to avoid one hundred eighty separate days of instruction;

(2) Bank time may not be used to lengthen the time provided in law for faculty senates;
(3) The use of bank time for extracurricular activities will be limited by the state board; and

(4) Such other requirements or restrictions as the state board may provide in the rule required to be promulgated by this section.

(o) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Such other requirements or restrictions as the state board may provide in the rule required to be promulgated by this section.

(p) The following applies to extracurricular activities:

(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;

(2) The use of bank time for extracurricular activities will be limited by the state board; and

(3) The state board shall provide for the attendance by students of certain activities sanctioned by the secondary schools activities commission when those activities are related to statewide tournaments or playoffs or are programs required for secondary schools activities commission approval.

(q) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.
(r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.

(s) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(t) The county board may contract with all or part of the personnel for a longer term.

(u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

(w) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.
§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

§18-5A-2. Local school improvement councils; election.
(a) A local school improvement council shall be established at every school consisting of the following:

(1) The principal, who shall serve as an ex officio member of the council and be entitled to vote;

(2) Three teachers elected by the faculty senate of the school;

(3) Two school service personnel elected by the school service personnel employed at the school;

(4) Three parent(s), guardian(s) or custodian(s) of students enrolled at the school elected by the parent(s), guardian(s) or custodian(s) members of the school’s parent teacher organization: Provided, That if there is no parent teacher organization, the parent(s), guardian(s) or custodian(s) members shall be elected by the parent(s), guardian(s) or custodian(s) of students enrolled at the school in such manner as may be determined by the principal;

(5) Two at-large members appointed by the principal, one of whom resides in the school’s attendance area and one of whom represents business or industry, neither of whom is eligible for membership under any of the other elected classes of members;

(6) In the case of vocational-technical schools, the vocational director: Provided, That if there is no vocational director, then the principal may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry;

(7) In the case of a school with students in grade seven or higher, the student body president or other student in grade seven or higher elected by the student body in those grades.
(b) Under no circumstances may more than one parent member of the council be then employed at that school in any capacity.

(c) The principal shall arrange for such elections to be held prior to the fifteenth day of September of each school year to elect a council and shall give notice of the elections at least one week prior to the elections being held. To the extent practicable, all elections to select council members shall be held within the same week.

(d) Parent(s), guardian(s) or custodian(s), teachers and service personnel elected to the council shall serve a two-year term and elections shall be arranged in such a manner that no more than two teachers, no more than two parent(s), guardian(s) or custodian(s) and no more than one service person are elected in a given year. All other non-ex officio members shall serve one-year terms.

(e) Council members may only be replaced upon death, resignation, failure to appear at three consecutive meetings of the council for which notice was given, or a change in personal circumstances so that the person is no longer representative of the class of members from which appointed. In the case of a vacancy in an elected membership, the chair of the council shall appoint another qualified person to serve the unexpired term of the person being replaced or, in the case of an appointed member of the council, the principal shall appoint a replacement as soon as practicable.

(f) As soon as practicable after the election of council members, and no later than the first day of October of each school year, the principal shall convene an organizational meeting of the school improvement council. The principal shall notify each member in writing at least two employment days in
advance of the organizational meeting. At this meeting, the principal shall provide each member with the following:

(1) A copy of the current applicable sections of this code;

(2) Any state board rule or regulation promulgated pursuant to the operation of these councils; and

(3) Any information as may be developed by the department of education on the operation and powers of local school improvement councils and their important role in improving student and school performance and progress.

(g) The council shall elect from its membership a chair and two members to assist the chair in setting the agenda for each council meeting. The chair shall serve a term of one year and no person may serve as chair for more than two consecutive terms. If the chair’s position becomes vacant for any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term. Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

(h) School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members.

(i) The local school improvement council shall meet at least annually with the county board, in accordance with the provisions in section fourteen, article five of this chapter. At this annual meeting, the local school improvement council chair, or another member designated by the chair, shall be prepared to address any matters as may be requested by the county board as specified in the meeting agenda provided to the council and may further provide any other information, comments or suggestions the local school improvement council wishes to
bring to the county board's attention. Anything presented under this subsection shall be submitted to the county board in writing.

(j) School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter and may receive and expend such grants for the purposes provided in such section. In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams shall be deemed to have jurisdiction. In order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

(1) Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's educational process and in the school;

(2) Encourage businesses to provide time for their employees who are parent(s), guardian(s) or custodian(s) to meet with teachers concerning their child's education;

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

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

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

(k) On or before the eighth day of June, one thousand nine hundred ninety-five, each local school improvement council
shall develop and deliver a report to the countywide council on productive and safe schools. The report shall include guidelines for the instruction and rehabilitation of pupils who have been excluded from the classroom, suspended from the school or expelled from the school, the description and recommendation of in-school suspension programs, a description of possible alternative settings, schedules for instruction and alternative education programs and an implementation schedule for such guidelines. The guidelines shall include the following:

(1) A system to provide for effective communication and coordination between school and local emergency services agencies;

(2) A preventive discipline program which may include the responsible students program devised by the West Virginia board of education as adopted by the county board of education, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

(3) A student involvement program, which may include the peer mediation program or programs devised by the West Virginia board of education as adopted by the county board of education, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code.

(l) The council may include in its report to the county-wide board on productive and safe schools provisions of the state board of education policy 4373, student code of conduct, or any expansion of such policy which increases the safety of students in schools in this state and is consistent with the policies and other laws of this state.

(m) Councils may adopt their own guidelines established under this section. In addition, the councils may adopt all or any part of the guidelines proposed by other local school improve-
ment councils, as developed under this section, which are not inconsistent with the laws of this state, the policies of West Virginia board of education or the policies of the county board of education.

(n) The state board of education shall provide assistance to a local school improvement council upon receipt of a reasonable request for that assistance. The state board also may solicit proposals from other parties or entities to provide orientation training for local school improvement council members and may enter into contracts or agreements for that purpose. Any training for members shall meet the guidelines established by the state board.

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

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators, as used in this section, means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to
be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

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

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: Provided, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty
senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

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

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

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

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.
(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

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

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

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

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

(12) A local board shall provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning of the instructional term, and a two-hour block of time on each instructional support and enhancement day scheduled by the board for instructional activities for students and professional activities for teachers pursuant to section forty-five, article five of this chapter. A faculty senate may meet for an unlimited block of time per month during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be utilized and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board of education periodically pursuant to guidelines developed by the state department of education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in
integrated classrooms; (G) guidelines for implementation of
collaborative planning and instruction; and (H) training for all
regular classroom teachers who serve students with exceptional
needs in integrated classrooms.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors;
complaints, warrants and hearings.

(a) The county attendance director and the assistants shall
diligently promote regular school attendance. They shall
ascertain reasons for inexcusable absences from school of
pupils of compulsory school age and students who remain
enrolled beyond the sixteenth birthday as defined under this
article and shall take such steps as are, in their discretion, best
calculated to correct attitudes of parents and pupils which result
in absences from school even though not clearly in violation of
law.

(b) In the case of five consecutive or ten total unexcused
absences of a child during a school year, the attendance director
or assistant shall serve written notice to the parent, guardian or
custodian of such child that the attendance of such child at
school is required and that within ten days of receipt of the
notice the parent, guardian or custodian, accompanied by the
child, shall report in person to the school the child attends for
a conference with the principal or other designated representa-
tive of the school in order to discuss and correct the circum-
stances causing the inexcusable absences of the child; and if the
parent, guardian or custodian does not comply with the provi-
sions of this article, then the attendance director or assistant
shall make complaint against the parent, guardian or custodian
before a magistrate of the county. If it appears from the
complaint that there is probable cause to believe that an offense
has been committed and that the accused has committed it, a
summons or a warrant for the arrest of the accused shall issue
to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one summons or warrant may be issued on the same complaint. The summons or warrant shall be executed within ten days of its issuance.

(c) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days’ advance notice of the date, time and place of the hearing.

(d) When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of the child. The county attendance director or assistant shall, in the performance of his or her duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

(e) The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director shall be responsible under direction of the county superintendent for the efficient administration of school attendance in the county.
(f) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;

(4) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that shall be excluded for accountability purposes. The absences that shall be excluded by the rule shall include, but not be limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers’ conferences with parents and students;
(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

CHAPTER 92

(Com. Sub. for H. B. 2083 — By Delegates Mezzatesta, Stemple and Williams)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to county boards of education generally and expanding job-sharing arrangements to include employees who are not professional employees; requiring written agreements for job-sharing arrangements; requiring agreements to specify which employee is eligible for insurance coverage; requiring certain issues be considered when entering into a job-sharing agreement; and limiting cost to retirement system.

Be it enacted by the Legislature of West Virginia:

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

Chapter 18. Education.
  18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


Each county board, subject to the provisions of this chapter and the rules of the state board, has the authority:

(a) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(b) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools, programs or both, for post high school instruction, subject to approval of the state board;

(c) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the

*CLERK'S NOTE: This section was also amended by SB 522 (Chapter 91), which passed subsequent to this act.
(d) To consolidate schools;

(e) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f) (1) To provide at public expense adequate means of transportation, including transportation across county lines for students whose transfer from one district to another is agreed to by both county boards as reflected in the minutes of their respective meetings, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense, according to such rules as the board may establish, adequate means of transportation for school children participating in county board-approved curricular and extracurricular activities; to provide at public expense, by rules and within the available revenues, transportation for those within two miles distance; and to provide, at no cost to the county board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging, all subject to the following:

(A) All costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission, or the local or county chapter of the commission;
(B) In all cases, the school buses owned by the county board shall be driven or operated only by drivers regularly employed by the county board;

(C) The county board may provide, under rules established by the state board, for the certification of professional employees as drivers of county board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home. The use of the vehicles shall be limited to one for each school-sponsored activity; and

(D) Buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect.

(2) To enter into agreements with one another as reflected in the minutes of their respective meetings to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of this subsection and subsection (h) of this section;

(g) (1) To lease school buses operated only by drivers regularly employed by the county board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the county board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee;

(2) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this section.
The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;

(h) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(i) To provide solely from county board funds for all regular full-time employees of the county board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(j) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training in areas specifically related to the education of exceptional children;

(k) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach in the high school or post high school program;

(l) To employ legal counsel;

(m) To provide appropriate uniforms for school service personnel;
(n) To provide at public expense and under rules as established by any county board for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board;

(o) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the county board and is directly connected with and required by the nature and in the performance of the employee's duties and responsibilities;

(p) To provide, at public expense, adequate public liability insurance, including professional liability insurance for county board employees;

(q) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, for the academic study. The agreements are subject to approval by the state board;

(r) To provide information about vocational or higher education opportunities to students with handicapping conditions. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state funded institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) To enter into agreements with one another, with the approval of the state board, for the transfer and receipt of any
and all funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence; and

(t) To enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this code;

(2) Notwithstanding any provisions of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code to the contrary, a county board which enters into a job-sharing arrangement in which two or more employees voluntarily share an authorized full-time position shall provide the mutually agreed upon employee coverage but shall not offer insurance coverage to more than one of the job-sharing employees, including any group plan or group plans available under the state public employees insurance act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not so designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

(5) When entering into a job-sharing agreement, the county board and the employees involved in the job-sharing agreement shall consider issues such as retirement benefits, termination of
the job-sharing agreement and any other issue the parties to the
agreement consider appropriate. Any provision in the agree-
ment relating to retirement benefits shall not cause any cost to
be incurred by the retirement system that is more than the cost
that would be incurred if a single employee were filling the
position.

"Quasi-public funds" as used in this section means any
money received by any principal, teacher, student or other
person for the benefit of the school system as a result of
curricular or noncurricular activities.

Each county board shall expend under rules it establishes
for each child an amount not to exceed the proportion of all
school funds of the district that each child would be entitled to
receive if all the funds were distributed equally among all the
children of school age in the district upon a per capita basis.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one,
chapter eighteen of this code apply to this chapter. In addition,
the following words used in this chapter and in any proceedings
pursuant to this chapter shall, unless the context clearly
indicates a different meaning, be construed as follows:

(a) "School personnel" means all personnel employed by a
county board whether employed on a regular full-time basis, an
hourly basis or otherwise. School personnel shall be comprised
of two categories: Professional personnel and service personnel;

(b) "Professional personnel" means persons who meet the
certification requirements of the state, licensing requirements
of the state or both and includes the professional educator and
other professional employees;

(c) "Professional educator" has the same meaning as
"teacher" as defined in section one, article one, chapter eighteen
of this code. Professional educators shall be classified as:

(1) "Classroom teacher" means a professional educator
who has direct instructional or counseling relationship with
pupils, spending the majority of his or her time in this capacity;

(2) "Principal" means a professional educator who, as
agent of the county board, has responsibility for the supervi-
sion, management and control of a school or schools within the
guidelines established by the county board. The major area of
the responsibility shall be the general supervision of all the
schools and all school activities involving pupils, teachers and
other school personnel;

(3) "Supervisor" means a professional educator who,
whether by this or other appropriate title, is responsible for
working primarily in the field with professional and other
personnel in instructional and other school improvement; and

(4) "Central office administrator" means a superintendent,
associate superintendent, assistant superintendent and other
professional educators, whether by these or other appropriate
titles, who are charged with the administering and supervising
of the whole or some assigned part of the total program of the
countywide school system;

(d) "Other professional employee" means that person from
another profession who is properly licensed and is employed to
serve the public schools and includes a registered professional
nurse, licensed by the West Virginia board of examiners for
registered professional nurses and employed by a county board,
who has completed either a two-year (sixty-four semester
hours) or a three-year (ninety-six semester hours) nursing
program;

(e) "Service personnel" means those who serve the school
or schools as a whole, in a nonprofessional capacity, including
such areas as secretarial, custodial, maintenance, transportation,
school lunch and as aides;

(f) "Principals academy" or "academy" means the academy
created pursuant to section two-b, article three-a of this chapter;

(g) "Center for professional development" means the center
created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written
agreement voluntarily entered into by a county board with two
or more of its employees who wish to divide between them the
duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional personnel" means
certified professional educators who:

(1) Have been recruited on a reserve list of a county board;

(2) Have been recruited at a job fair or as a result of contact
made at a job fair;

(3) Have not obtained regular employee status through the
job posting process provided for in section seven-a, article four
of this chapter; and

(4) Have obtained a baccalaureate degree from an accred-
ited institution of higher education within the past year;

(j) "Dangerous student" means a pupil who is substantially
likely to cause serious bodily injury to himself, herself or
another individual within that pupil's educational environment,
which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the pupil, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense; and

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.

CHAPTER 93

(Com. Sub. for S. B. 206 — By Senators Caldwell and Rowe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article five, chapter eighteen-a of said code, all relating to compulsory school attendance; technical amendments; home school exemption; amending requirements to qualify for home school exemption; amending assessment requirements of home school exemption; eliminating exemption relating to residence more than two miles from school or school bus route; driver's license privilege; conditions for obtaining license; denial and revocation; limitation on reinstatement; and authorizing aides to supervise students who are undergoing in-school suspension.
Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

(a) Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday. Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section shall be subject to confirmation by the attendance authority of the county.

(b) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to instruction in a private, parochial or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in section
forty-five, article five of this chapter. In all private, parochial or other schools approved pursuant to this subsection it shall be the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years.

(c) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of either subdivision (1) of this subsection or the requirements of subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in section forty-five, article five of this chapter. If the request for home instruction is denied by the county board, good and reasonable justification for the denial shall be furnished in writing to the applicant by the county board. The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board information and records as may be required, from time to time, with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving the instruction. The state board shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(2) The child meets the requirements set forth in this subdivision: Provided, That the county superintendent may seek
from the circuit court of the county an order denying home
instruction of the child. The order may be granted upon a
showing of clear and convincing evidence that the child will
suffer neglect in the child’s education or that there are other
compelling reasons to deny home instruction.

(A) Annually, the person or persons providing home
instruction present to the county superintendent or county board
a notice of intent to provide home instruction and the name,
address, age and grade level of any child of compulsory school
age to be instructed: Provided, That if a child is enrolled in a
public school, notice of intent to provide home instruction shall
be given at least two weeks prior to withdrawing such child
from public school;

(B) The person or persons providing home instruction
submit satisfactory evidence of a high school diploma or
equivalent;

(C) The person or persons providing home instruction
outline a plan of instruction for the ensuing school year; and

(D) On or before the thirtieth day of June of each year the
person or persons providing home instruction shall obtain an
academic assessment of the child for the previous school year
and submit the results to the county superintendent. When the
academic assessment takes place outside of a public school, the
parent or legal guardian shall pay the cost. The requirement of
an academic assessment shall be satisfied in one of the follow-

(i) The child receiving home instruction takes a nationally
normed standardized achievement test to be administered under
standardized conditions as set forth by the published instruc-
tions of the selected test in the subjects of reading, language,
mathematics, science and social studies: Provided, That in no
event may the child’s parent or legal guardian administer the
test. The publication date of the chosen test shall not be more
than ten years from the date of the administration of the test.
The child shall be considered to have made acceptable progress
when the mean of the child’s test results in the required subject
areas for any single year meets or exceeds the fiftieth percentile
or, if below the fiftieth percentile, shows improvement from the
previous year’s results;

(ii) The child participates in the testing program currently
in use in the state’s public schools. The test shall be adminis-
tered to the child at a public school in the county of residence.
Determination of acceptable progress will be based on current
guidelines of the state testing program;

(iii) The county superintendent is provided with a written
narrative indicating that a portfolio of samples of the child’s
work has been reviewed and that the child’s academic progress
for the year is in accordance with the child’s abilities. If the
narrative indicates that the child’s academic progress for the
year is in accordance with the child’s abilities, the child shall be
considered to have made acceptable progress. This narrative
shall be prepared by a certified teacher whose certification
number shall be provided. The narrative shall include a state-
ment about the child’s progress in the areas of reading, lan-
guage, mathematics, science and social studies and shall note
any areas which, in the professional opinion of the reviewer,
show need for improvement or remediation; or

(iv) The child completes an alternative academic assess-
ment of proficiency that is mutually agreed upon by the parent
or legal guardian and the county superintendent. Criteria for
acceptable progress shall be mutually agreed upon by the same
parties; and
(E) When the annual assessment fails to show acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress and the county board shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child’s eligibility for special education services: Provided, That the identification of a disability shall not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse
shall be required under the provisions of this article: *Provided*,
That in all cases, incapacity shall be narrowly defined and in no
case shall the provisions of this article allow for the exclusion
of the mentally, physically, emotionally or behaviorally
handicapped child otherwise entitled to a free appropriate
education.

(e) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if conditions rendering school attendance impossible or
hazardous to the life, health or safety of the child exist.

(f) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
upon regular graduation from a standard senior high school.

(g) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if the child is granted a work permit pursuant to this subsection.
The county superintendent may, after due investigation, grant
work permits to youths under sixteen years of age, subject to
state and federal labor laws and regulations: *Provided*, That a
work permit may not be granted on behalf of any youth who has
not completed the eighth grade of school.

(h) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if a serious illness or death in the immediate family of the pupil
has occurred. It is expected that the county attendance director
will ascertain the facts in all cases of such absences about
which information is inadequate and report the facts to the
county superintendent.

(i) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if the requirements of this subsection, relating to destitution in
the home, are met. Exemption based on a condition of extreme
destitution in the home may be granted only upon the written
recommendation of the county attendance director to the county
superintendent following careful investigation of the case. A
copy of the report confirming the condition and school exemp-
tion shall be placed with the county director of public assis-
tance. This enactment contemplates every reasonable effort that
may properly be taken on the part of both school and public
assistance authorities for the relief of home conditions officially
recognized as being so destitute as to deprive children of the
privilege of school attendance. Exemption for this cause shall
not be allowed when the destitution is relieved through public
or private means.

(j) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if the requirements of this subsection, relating to church
ordinances and observances of regular church ordinances, are
met. The county board may approve exemption for religious
instruction upon written request of the person having legal or
actual charge of a child or children: Provided, That the exemp-
tion shall be subject to the rules prescribed by the county
superintendent and approved by the county board.

(k) A child shall be exempt from the compulsory school
attendance requirement set forth in subsection (a) of this section
if the requirements of this subsection, relating to alternative
private, parochial, church or religious school instruction, are
met. Exemption shall be made for any child attending any
private school, parochial school, church school, school operated
by a religious order or other nonpublic school which elects to
comply with the provisions of article twenty-eight of this
chapter.
The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections three and five, article two, chapter seventeen-b of this code, the division of motor vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall provide documentation of enrollment status on a form approved by the department of education to any student at least fifteen but less than eighteen years of age upon request who is properly enrolled in a school under the jurisdiction of the official for presentation to the division of motor vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle. Whenever a student at least fifteen but less than eighteen years of age withdraws from school, except as provided in subsection (d) of this section, the attendance director or chief administrator shall notify the division of motor vehicles of the withdrawal not later than five days from the
withdrawal date. Within five days of receipt of the notice, the
division of motor vehicles shall send notice to the licensee that
the license will be suspended under the provisions of section
three, article two, chapter seventeen-b of this code on the
thirtieth day following the date the notice was sent unless
documentation of compliance with the provisions of this section
is received by the division of motor vehicles before that time.
If suspended, the division may not reinstate a license before the
end of the semester following that in which the withdrawal
occurred.

(c) For the purposes of this section:

(1) Withdrawal is defined as more than ten consecutive or
fifteen total days unexcused absences during a school year;

(2) Suspension or expulsion from school or imprisonment
in a jail or a West Virginia correctional facility is not a circum-
stance beyond the control of the person.

(d) Whenever the withdrawal from school of the student, or
the student’s failure to enroll in a course leading to or to obtain
a GED or high school diploma, is beyond the control of the
student, or is for the purpose of transfer to another school as
confirmed in writing by the student’s parent or guardian, no
notice shall be sent to the division of motor vehicles to suspend
the student’s motor vehicle operator’s license and if the student
is applying for a license, the attendance director or chief
administrator shall provide the student with documentation to
present to the division of motor vehicles to excuse the student
from the provisions of this section. The school district superint-
tendent (or the appropriate school official of any private
secondary school) with the assistance of the county attendance
director and any other staff or school personnel shall be the sole
judge of whether withdrawal is due to circumstances beyond the
control of the person.
§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section may not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority shall extend to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension may not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the employee under section eight-a, article four of this chapter and any county salary schedule in excess of the minimum requirements of this article.

(d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time
which exceeds that required under the aide's contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval. The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits. The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school. Aides shall have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

(f) An aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval: Provided, That during the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term of employment unless mutually agreed upon by the aide and county superintendent, subject to board approval.

(g) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsec-
AN ACT to amend and reenact sections three, six, fifteen, sixteen and nineteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article ten-h of said chapter, all relating to public education; authorizing school building authority to require flood insurance for certain facilities; authorizing authority to accept gift, grant, contribution, bequest or endowment for authority or projects, including equipment; authorizing authority to encourage work-based learning opportunities for students on funded projects and outlining conditions; authorizing use of certain authority funds to finance construction and improvements on a cash basis when certain conditions are met; allowing authority to reserve certain funds for priority use for certain multiuse vocational-technical educational facilities; authorizing use of reserved funds for equipment and updates; specifying bodies that may propose projects; authorizing reserve of certain project funds for certain period to complete budget; requiring approved comprehensive educational facility plan as prior condition for distribution of funds; prohibiting distribution of funds to county not prepared to commence expenditure during fiscal year; requiring up-to-date enrollment projections in facility plans and updates; authorizing inclusion of facilities for community and technical college education in plans to construct compre-
prehensive vocational facilities at existing high schools; providing that counties served by a multicounty vocational-technical facility are not required to include the construction of a comprehensive vocational facility in the plan for construction of a new high school; requiring board to include multicounty vocational-technical facility director and board in planning programs; prohibiting programs at the vocational facility from replacing the programs at the multicounty vocational-technical facility without the consent of the center board; authorizes a county served by a comprehensive vocational center to eliminate any vocational offering from a new comprehensive high school under certain circumstances; and including introductory vocational-technical courses in middle school grades as part of effective schools for vocational-technical education.

Be it enacted by the Legislature of West Virginia:

That sections three, six, fifteen, sixteen and nineteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section six, article ten-h of said chapter be amended and reenacted, all to read as follows:

Article
9D. School Building Authority.
10H. Albert Yanni Programs of Excellence in Vocational-Technical Education.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on cash basis.
§18-9D-15. Legislative intent; distribution of money.
§18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

5 (4) To acquire, hold and dispose of real and personal property for its corporate purposes;

6 (5) To make bylaws for the management and rule of its affairs;

7 (6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: Provided, That contracts entered into by the school building authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: Provided, however, that notwithstanding any other provisions of this code, any authority of the attorney general of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited
to the form of the contract and document: *Provided further,*
that the attorney general of this state shall complete all reviews
of contracts and documents relating to the issuance of bonds
under this article within ten calendar days of receipt of the
contract and document for review;

(7) To make contracts and to execute all instruments
necessary or convenient to effectuate the intent of and to
exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever,
due to a change in situation, it appears to the authority that its
interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise
all real property or interests in the property necessary or
convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any
project authorized under this section, including flood insurance
for any facility within the one hundred year flood plain at which
authority funds are expended;

(11) To charge rent for the use of all or any part of a project
or buildings at any time financed, constructed, acquired or
improved, in whole or in part, with the revenues of the author-
ity;

(12) To assist any county board of education that chooses
to acquire land, buildings and capital improvements to existing
school buildings and property for use as public school facilities,
by lease from a private or public lessor for a term not to exceed
twenty-five years with an option to purchase pursuant to an
investment contract with the lessor on such terms and condi-
tions as may be determined to be in the best interests of the
authority, the state board of education and the county board of
education, consistent with the purposes of this article, by
transferring funds to the state board of education as provided in
subsection (d), section fifteen of this article for the use of the
county board of education;

(13) To accept and expend any gift, grant, contribution,
bequest or endowment of money and equipment to, or for the
benefit of, the authority or any project under this article, from
the state of West Virginia or any other source for any or all of
the purposes specified in this article or for any one or more of
such purposes as may be specified in connection with the gift,
grant, contribution, bequest or endowment;

(14) To enter on any lands and premises for the purpose of
making surveys, soundings and examinations;

(15) To contract for architectural, engineering or other
professional services considered necessary or economical by
the authority to provide consultative or other services to the
authority or to any regional educational service agency or
county board requesting professional services offered by the
authority, to evaluate any facilities plan or any project encom-
passed in the plan, to inspect existing facilities or any project
that has received or may receive funding from the authority or
to perform any other service considered by the authority to be
necessary or economical. Assistance to the region or district
may include the development of pre-approved systems, plans,
designs, models or documents; advice or oversight on any plan
or project; or any other service that may be efficiently provided
to regional educational service agencies or county boards by the
authority;

(16) To provide funds on an emergency basis to repair or
replace property damaged by fire, flood, wind, storm, earth-
quake or other natural occurrence, the funds to be made
available in accordance with guidelines of the school building
authority;
(17) To transfer moneys to custodial accounts maintained by the school building authority with a state financial institution from the school construction fund and the school improvement fund created in the state treasury pursuant to the provisions of section six of this article, as necessary to the performance of any contracts executed by the school building authority in accordance with the provisions of this article;

(18) To enter into agreements with county boards and persons, firms or corporations to facilitate the development of county board projects and county board facilities plans. The county board participating in an agreement shall pay at least twenty-five percent of the cost of the agreement. Nothing in this section shall be construed to supersede, limit or impair the authority of county boards to develop and prepare their projects or plans;

(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student’s program of study approved by the county board. The work-based learning experience must be conducted in accordance with a formal training plan approved by the instructor, the employer and the student and which sets forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and
(20) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the state treasury a school building capital improvements fund to be expended by the authority as provided in this article. The school building capital improvements fund shall be an interest-bearing account with interest credited to and deposited in the school building capital improvements fund and expended in accordance with the provisions of this article.

The school building authority may pledge all or any part of the revenues paid into the school building capital improvements fund that are needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal, interest and redemption premium, including any additional protective pledge of revenues that the authority in its discretion has provided by resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bond issue. Additionally, the authority may provide in the
resolution and in the trust agreement for priorities on the
revenues paid into the school building capital improvements
fund that are necessary for the protection of the prior rights of
the holders of bonds issued at different times under the provi-
sions of this article.

Any balance remaining in the school building capital
improvements fund after the authority has issued bonds
authorized by this article and after the requirements of all funds
including reserve funds established in connection with the
bonds issued prior to the twentieth day of July, one thousand
nine hundred ninety-three, pursuant to this article have been
satisfied may be used for the redemption of any of the outstand-
ing bonds issued under this article which by their terms are then
redeemable, or for the purchase of the bonds at the market
price, but not exceeding the price, if any, at which the bonds are
in the same year redeemable and all bonds redeemed or
purchased shall immediately be canceled and shall not again be
issued.

The school building authority, in its discretion, may use the
moneys in the school building capital improvements fund to
finance the cost of projects on a cash basis. Any pledge of
moneys in the fund for revenue bonds issued prior to the
twentieth day of July, one thousand nine hundred ninety-three,
is a prior and superior charge on the fund over the use of any of
the moneys in the fund to pay for the cost of any project on a
cash basis: Provided, That any expenditures from the fund,
other than for the retirement of revenue bonds, may only be
made by the authority in accordance with the provisions of this
article.

(b) There is continued in the state treasury a special revenue
fund named the school building debt service fund into which
shall be deposited the amounts specified in section eighteen,
article twenty-two, chapter twenty-nine of this code. All
amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued under this article which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: Provided, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, includ-
ing coverage and reserve funds established in connection with
the bonds issued pursuant to this article, any remaining balance
in the school building debt service fund may be transferred to
the school construction fund created in subsection (c) of this
section and used by the school building authority in its discre-
tion to finance the cost of school construction or improvement
projects on a cash basis.

(c) There is continued in the state treasury a special revenue
fund named the school construction fund into which shall be
deposited the amounts specified in section thirty, article fifteen,
chapter eleven of this code, together with any moneys appropri-
ated to the fund by the Legislature. Expenditures from the
school construction fund shall be for the purposes set forth in
this article, including lease-purchase payments under agree-
ments made pursuant to subsection (e), section fifteen of this
article and section nine, article five of this chapter and are
authorized from collections in accordance with the provisions
of article three, chapter twelve of this code and from other
revenues annually appropriated by the Legislature from lottery
revenues as authorized by section eighteen, article twenty-two,
chapter twenty-nine of this code pursuant to the provisions set
forth in article two, chapter five-a of this code. Amounts
collected which are found, from time to time, to exceed the
funds needed for purposes set forth in this article may be
transferred to other accounts or funds and redesignated for other
purposes by appropriation of the Legislature. The school
construction fund shall be an interest-bearing account, with the
interest credited to and deposited in the school construction
fund and expended in accordance with the provisions of this
article. Deposits to and expenditures from the school construc-
tion fund are subject to the provisions of subsection (i), section
fifteen of this article.

(d) There is continued in the state treasury a special revenue
fund named the school major improvement fund into which
shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the school major improvement fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The school major improvement fund shall be an interest-bearing account, with interest being credited to and deposited in the school major improvement fund and expended in accordance with the provisions of this article.

(e) The Legislature finds and declares that the supreme court of appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article X of the constitution of West Virginia, but that revenue bonds issued under this article prior to the twentieth day of July, one thousand nine hundred ninety-three, are not invalid. The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county’s bonding capacity (local property wealth), voter willingness to pass bond issues and the county’s ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the school building authority created in this article to issue bonds that comply with the holding of the West Virginia supreme
court of appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, have been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-four in an attempt to comply with the holding of the supreme court of appeals of West Virginia.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the school building authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen,
196 article twenty-two, chapter twenty-nine of this code, to comply
197 with the provisions of sections four and six, article X of the
198 constitution of West Virginia; and section one, article XII of
199 said constitution.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school
building authority to facilitate and provide state funds and to
administer all federal funds provided for the construction and
major improvement of school facilities so as to meet the
educational needs of the people of this state in an efficient and
economical manner. The authority shall make funding determin-
ations in accordance with the provisions of this article and
shall assess existing school facilities and each facility’s school
major improvement plan in relation to the needs of the individ-
ual student, the general school population, the communities
served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum
of moneys that are determined by the authority to be available
for distribution during the then current fiscal year from: (1)
Moneys paid into the school building capital improvements
fund pursuant to section ten, article nine-a of this chapter; (2)
the issuance of revenue bonds for which moneys in the school
building debt service fund are pledged as security; (3) moneys
paid into the school construction fund pursuant to section six of
this article; and (4) any other moneys received by the authority,
except moneys paid into the school major improvement fund
pursuant to section six of this article, may be allocated and may
be expended by the authority for projects that service the
educational community statewide or, upon application by the
state board, for educational programs that are under the
jurisdiction of the state board. In addition, upon application by
the state board or the administrative council of an area voca-
tional educational center established pursuant to article two-b
of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is no more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school
building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, may be reserved by the authority for multiuse vocational-technical education facilities that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities and for equipment and equipment updates at the facilities. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: Provided, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.
(f) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: Provided, however, That if
a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this subsection, any county board failing to expend money within three years of the allocation to the county board shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this subsection until the county board is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds
available in the school construction fund of the authority for
future allocation and distribution. Funds may not be distributed
to any county board that does not have a comprehensive
educational facility plan approved by the state board and the
school building authority or to any county board that is not
prepared to commence expenditure of the funds during the
fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the
authority to be available for distribution during the then current
fiscal year from moneys paid into the school major improve-
ment fund pursuant to section six of this article shall be
allocated and distributed on the basis of need and efficient use
of resources, the basis to be determined by the authority in
accordance with the provisions of section sixteen of this article:
Provided, That the moneys may not be distributed to any county
board that does not have an approved school major improve-
ment plan or to any county board that is not prepared to
commence expenditures of the funds during the fiscal year in
which the moneys are distributed: Provided, however, That any
moneys allocated to a county board and not distributed to that
county board shall be deposited in an account to the credit of
that county board, the principal amount to remain to the credit
of and available to the county board for a period of two years.
Any moneys which are unexpended after a two-year period
shall be redistributed on the basis of need from the school major
improvement fund in that fiscal year.

(i) No local matching funds may be required under the
provisions of this section. However, the responsibilities of the
county boards of education to maintain school facilities are not
negated by the provisions of this article. To be eligible to
receive an allocation of school major improvement funds from
the authority, a county board must have expended in the
previous fiscal year an amount of county moneys equal to or
exceeding the lowest average amount of money included in the
county board’s maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board of education shall promulgate rules relating to county boards’ maintenance budgets, including items which shall be included in the budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the school construction fund shall first be transferred and expended as follows:

Any funds deposited in the school construction fund shall be expended first in accordance with an appropriation by the Legislature. To the extent that funds are available in the school construction fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all
available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the school building authority for review and approval prior to preparation of final bid documents: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

1. The authority may not approve the funding of a school construction project for more than three years;

2. The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over more than one year; and

3. In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed five hundred thousand dollars, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any such funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county
commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

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

(a) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds for construction projects as described in subsection (d) of said section, each county board of education shall submit a countywide comprehensive educational facilities plan that addresses the facilities and major improvement needs of the county and includes up-to-date projections of student enrollments pursuant to such guidelines as shall be adopted by the authority in accordance with this section and in accordance with each county’s facilities plan approved by the state board of education. Any project receiving funding must be in furtherance of the approved countywide facilities plan.

(1) To assure efficiency and productivity in the project approval process, the countywide facilities plan may be submitted only after a preliminary plan, a plan outline or a proposal for a plan has been submitted to the authority. Selected members of the authority, which selection shall include citizen members, shall then meet promptly with those persons designated by the county board to attend the facilities plan consultation. The purpose of the consultation is to assure understanding of the general goals of the school building authority and the specific goals encompassed in the following criteria and to discuss ways the plan may be structured to meet those goals.
(2) The guidelines for the development of a facilities plan must state the manner, timeline and process for submission of any plan to the authority; project specifications considered appropriate by the authority; and those matters which are considered by the authority to be important reflections of how the project will further the overall goals of the authority.

(b) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds derived from the school major improvement fund, each county board of education shall submit to the authority a ten-year countywide school major improvement plan that addresses the major improvement needs of each school within the county. If the state board of education or the administrative council of an area vocational educational center chooses to seek funding for a major improvement project from the authority pursuant to subsection (f) of said section, the state board or the administrative council shall submit a ten-year school major improvement plan that addresses the major improvement needs of the school or area vocational educational center for which funding is sought. Each ten-year school major improvement plan must be prepared pursuant to guidelines adopted by the authority in accordance with this section and must be updated annually to reflect projects completed, current enrollment projections and new or continuing needs. Any school major improvement project funded by the authority must be in furtherance of the approved school major improvement plan.

The guidelines for the development and annual updates of a ten-year school major improvement plan must state the manner, timeline and process for submission of any plan, including a repair and replacement schedule for school facilities, to the authority; the maintenance specifications considered appropriate by the authority; and those matters which are considered by the authority to be important reflections of how
the major improvement project or projects will further the overall goals of the authority.

(c) The guidelines regarding submission of the facilities plans and school major improvement plans must include requirements for public hearings, comments or other means of providing broad-based input within a reasonable time period as the authority may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan.

The guidelines regarding project specifications may include such matters as energy efficiency, preferred siting, construction materials, maintenance plan or any other matter related to how the project is to proceed. If a county board of education proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (e), section fifteen of this article, the specifications for the project must include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract.

(d) The guidelines pertaining to quality educational facilities must require that a facilities plan address how the current facilities do not meet and how the proposed plan and any project thereunder does meet the following goals:

(1) Student health and safety;

(2) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility utilization and pupil-teacher ratios;
(3) Reasonable travel time and practical means of addressing other demographic considerations;

(4) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;

(5) Curriculum improvement and diversification, including computerization and technology and advanced senior courses in science, mathematics, language arts and social studies;

(6) Innovations in education;

(7) Adequate space for projected student enrollments; and

(8) To the extent constitutionally permissible, each facilities plan must address the history of efforts taken by the county board to propose or adopt local school bond issues or special levies.

If the project is to benefit more than one county in the region, the facilities plan must state the manner in which the cost and funding of the project will be apportioned among the counties.

(e) The guidelines pertaining to quality educational facilities must require that a school major improvement plan address how the proposed plan and any project thereunder meet the following goals:

(1) Student health and safety, including, but not limited to, critical health and safety needs; and

(2) Economies of scale, including regularly scheduled preventive maintenance: Provided, That each county board’s school maintenance plan must address regularly scheduled maintenance for all facilities within the county.
(f) Each county board’s facilities plan and school major improvement plan must prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center must prioritize all the school improvement projects contained in the plan. The priority list is one of the criteria to be considered by the authority in determining how available funds must be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the school building authority.

(g) Each facilities plan and school major improvement plan must include the objective means to be used in evaluating implementation of the overall plan and each project included therein. The evaluation must measure each project’s furtherance of each applicable goal stated in this section and any guidelines adopted hereunder, as well as the overall success of any project as it relates to the facilities plan or school major improvement plan and the overall goals of the authority.

(h) The state department of education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board’s facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities: Provided, That the state board shall submit reports regarding its on-site inspections of facilities to the authority within thirty days of completion of the on-site inspections: Provided, however, That the state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the authority, as soon as practical and shall
submit proposed rules for legislative review no later than the first day of December, one thousand nine hundred ninety-four.

(i) The authority may adopt guidelines for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved county board facilities plan or school major improvement plan. The authority shall provide reasonable notification and sufficient time for the change or addition as delineated in guidelines developed by the authority.

(j) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a county's board facilities plan or school major improvement plan required by the authority have not been implemented within the time period prescribed by the authority, the state board shall 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.


(a) The Legislature finds the following:

(1) The decline in student enrollment over the last twenty years has necessitated consolidation of schools in many counties;

(2) It is projected that the decline in student enrollment during the period two thousand two through two thousand twelve may be as great as eighteen percent and will continue the necessity to consolidate schools;
(3) The new consolidated school buildings now being built across the state provide an opportunity for communities to have comprehensive high schools that include space for vocational-technical courses, community college courses and other workforce-related courses for the students and the public at large;

(4) Requiring students to be bused to remote vocational centers has sometimes deterred student participation in vocational courses and has sometimes been considered a stigma upon those students attending vocational courses;

(5) Offering vocational, community college and workforce programs in close proximity to each other compliment the high school and the programs; and

(6) The change in the season for girls' basketball to coincide with boys' basketball has placed significant pressures on the availability of gymnasium space and often has caused practices to be scheduled late in the evenings and on weekends, interfering with time needed for studying and rest.

(b) When planning the construction of a high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for comprehensive vocational facilities to be located, when feasible, on the same site as the high school and may, in cooperation with the higher education policy commission, established in section one, article one-b, chapter eighteen-b of this code, provide funding for facilities for community and technical college education. When building in conjunction with the higher education policy commission, an educational specification must be developed for the proposed new facility by the appropriate institutional governing board as defined in section two, article one of said chapter. The county board is the fiscal agent for construction. All planning, design, bidding and
construction must be completed with authority guidelines and under the supervision of the authority.

(c) When planning the construction of a high school which has been approved by the authority and meets the required authority efficiencies, the authority shall provide funding sufficient for the construction of at least one auxiliary gymnasium. The authority may establish standards for the auxiliary gymnasium.

(d) Upon application of a county board to construct comprehensive vocational facilities at an existing high school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive vocational facility. The facility may, in cooperation with the higher education policy commission in accordance with the provisions of subsection (b) of this section, include facilities for community and technical college education. Upon development of the plan, the authority shall consider funding based on the following criteria:

(1) The distance of any existing vocational facilities from the high schools it serves;

(2) The time required to travel to and from the vocational facility to the high schools it serves;

(3) The ability of the county board to provide local funds for the construction of new comprehensive vocational facilities;

(4) The size of the existing high schools and the demand for vocational technical courses;

(5) The age and physical condition of the existing vocational facilities; and
(6) Such other criteria as the authority shall consider appropriate.

(e) When planning the construction of a high school in a county which is served by a multicounty vocational technical facility, the county may not be required to include the construction of a comprehensive vocational facility in the plan. If the county board elects to construct a comprehensive vocational facility pursuant to this section, the board shall include the multicounty center director and board in planning programs to be offered at the vocational facility which complement the programs offered at the multicounty center and may as part of the plan include facilities for community and technical college education at the multicounty center. The programs offered at the vocational facility may not replace the programs offered at the multicounty vocational technical center without the consent of the center board.

(f) Notwithstanding any other provisions of this section to the contrary, the county board in which there is an existing comprehensive vocational center may eliminate any vocational offering from a new comprehensive high school if the county board:

(1) Completes a comprehensive vocational curriculum study, as required by the authority, including an evaluation of both the programmatic and physical facilities of the existing center and coordinates the county’s vocational curriculum; and

(2) Submits the plan to the authority for review and obtains the authority’s approval.

ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN VOCATIONAL-TECHNICAL EDUCATION.

§18-10H-6. Effective schools program in vocational-technical education.
The state board of education shall establish and operate an effective schools program for vocational-technical education, including introductory vocational-technical courses in middle school grades as appropriate. The purpose of the program is to provide vocational-technical education personnel with resources and staff development for school program improvement based on application of the effective schools research, including components such as instructional leadership, school climate, high student expectations, emphasis on academic and occupational achievement and community and parental involvement. The program shall be coordinated by the bureau of vocational, technical and adult education with the advisement from a committee composed of two vocational administrators, two vocational teachers, one vocational guidance counselor, one educator of vocational teachers, one county school superintendent, one comprehensive high school principal, one academic teacher, two business/industry representatives, one labor representative and one vocational education program completer.

CHAPTER 95

(H. B. 2555 — By Delegates Beane, Kuhn, Ferrell, Yeager, Iaquinta, Leggett and Azinger)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued.

1 West Virginia’s membership in the southern regional
2 education compact shall continue, pursuant to the provisions of
3 article ten, chapter four of this code, until the first day of July,
4 two thousand nine, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of that article.

CHAPTER 96

(H. B. 2224 — By Delegates Williams, Shaver, Tabb,
Canterbury, Hamilton, Sobonya and Howard)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]
three, four and eight, article three-c of said chapter; to amend and reenact sections three, four, five, six and seven, article five of said chapter; to further amend said article by adding thereto a new section, designated section nine; to amend article six of said chapter by adding thereto a new section, designated section four-b; to amend and reenact sections four and six, article seven of said chapter; to amend and reenact section three, article eight of said chapter; to amend and reenact sections five and ten, article nine of said chapter; to amend and reenact sections one and fourteen, article ten of said chapter; and to amend article fourteen of said chapter by adding thereto a new section, designated section eleven, all relating to higher education; higher education policy commission; governing, advisory and visitor boards; administrative heads; faculty; staff; students; administrative and programmatic efficiencies; definitions; clarifying certain student rights; providing for Potomac state college to become a fully-integrated division of West Virginia university; limiting certain operational costs; incorporation of certain auxiliary enterprises; auxiliary service and product rates; establishing areas of academic emphasis at the Potomac campus; institutional missions; program and service contracts and collaboration; reports to the policy commission, legislative oversight commission on education accountability and Legislature; draft legislation submission requirements; peers; peer approval; appointment and evaluation of administrative heads; directing Concord college and Bluefield state college to make a joint study on progress toward meeting goals; altering sponsoring institutions for certain community and technical college components; implementation of certain institutional changes; monitoring institutional progress toward meeting goals; clarifying reporting relationships of certain provosts; establishing and redesignating certain community and technical college responsibility districts; transfer of certain property, obligations and staff; deleting references to Bluefield community and technical college and the center for higher education and workforce development at Beckley; creating New River community
and technical college of Bluefield state college from existing components and entities; transfer and retention of certain academic programs; findings and intent; governance and program offerings; expenditures; contractual arrangements; responsibilities and duties of certain executive agencies and officials; expanding certain purchasing authority; eliminating bid preference for institutional print shops; modifying attorney general lease purchase agreement and contract approval; authorizing certain leasing authority for the policy commission and the governing boards; requiring prior review of lease agreements; lease cancellation and renewal; authorized signatures on approved leases; requirements and authorizations for promulgating policies, rules and emergency rules; adjusting purchasing threshold for requiring vendor registration; vendor eligibility; clarifying provisions relating to purchasing; disposal of obsolete or unusable equipment, surplus supplies; application of proceeds; ensuring the fiscal integrity of certain institutional procedures; providing for expanded electronic transfers; expanding purchasing authority on purchase cards; authorizing certain emergency expenditures; consolidating certain financial and administrative operations; authorizing fee charges for services provided; limiting certain fee charges; authorizing certain services to be provided by higher education institutions; reduction of low-enrollment sections of certain courses; directing utilization of certain natural resources and alternative fuel resources; retention of cost savings; establishing staff councils; election of members and chair; meetings; notice to probationary faculty of retention status; consideration of need for flexibility at community and technical colleges when reviewing institutional policies; deleting obsolete language referencing faculty salary schedule; modifying certain salary provisions; competitive faculty salary schedule requirement; removing obsolete references to annual experience increment; providing means for funding certain salary increases; participation in catastrophic leave banks; authorizing certain mandatory auxiliary fee increases; limiting certain tuition and fee increases;
increase approval; use of fees; reduction of certain state subsidies; return of funds to general revenue; certification of fee revenues; expanding use of bookstore revenues; and public employees insurance agency benefit option expansion study.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18B. Higher Education.
ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

For the purposes of this article:

(a) "Eligible employee" means either of the following:

(1) Any regular full-time employee of the state or any spending unit of the state who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article shall not apply to any faculty employee at state institutions of higher education, or any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of the code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state; or

(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education or of the higher education policy commission;
(b) "Years of service" means full years of totaled service as an employee of the state of West Virginia; and

(c) "Spending unit" means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.
1A. Compact with Higher Education for the Future of West Virginia.
1B. Higher Education Policy Commission.
3C. Community and Technical College System.
5. Higher Education Budgets and Expenditures.
6. Advisory Councils.
8. Higher Education Full-Time Faculty Salaries.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

§18B-1-8. Student rights when institutions merge or become administratively linked.

§18B-1-10. Potomac branch of West Virginia university.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) Effective the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg, and West Virginia university institute of technology.
(b) "Governing boards" or "boards" means the institutional boards of governors created pursuant to subsection (b), section one, article two-a of this chapter;

(c) "Freestanding community and technical colleges" means southern West Virginia community and technical college, West Virginia northern community and technical college, eastern West Virginia community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which have defined community and technical college responsibility districts and programs in accordance with the provisions of sections four and six, article three-c of this chapter;

(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c of this chapter;

(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(h) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;
(i) “Higher education policy commission”, “policy commission” or “commission” means the commission created pursuant to section one, article one-b of this chapter;

(j) “Chancellor” means the chief executive officer of the higher education policy commission employed pursuant to section five, article one-b of this chapter;

(k) “Institutional operating budget” or “operating budget” for any fiscal year means an institution’s total unrestricted education and general funding from all sources in a prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(l) “Post-secondary vocational education programs” means any college-level course or program beyond the high school level provided through an institution of higher education under the jurisdiction of a governing board which results in or may result in the awarding of a two-year associate degree;

(m) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(n) For the purposes of this chapter and chapter eighteen-c of this code, “senior administrator” means the vice chancellor for administration employed by the chancellor in accordance with section two, article four of this chapter. The vice chancellor for administration shall assume all the powers and duties that are assigned by law to the senior administrator;

(o) “State college” means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;
(p) “State institution of higher education” means any university, college or community and technical college under the direct or indirect jurisdiction of a governing board as that term is defined in this section;

(q) “Regional campus” means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia university institute of technology;

(r) The advisory board previously appointed for the West Virginia graduate college shall be known as the “board of visitors” and shall provide guidance to the Marshall university graduate college;

(s) “Institutional compact” means a compact between a state institution of higher education and the commission, as described in section two, article one-a of this chapter;

(t) “Peer institutions”, “peer group” or “peers” means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(u) “Administratively linked community and technical college” means a community and technical college created pursuant to section eight, article three-c of this chapter;

(v) “Sponsoring institution” means the state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

(w) “Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality, or efficiency of education services;
(x) "Broker" or the act of "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered by a sponsoring institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state; and

(y) "Joint commission for vocational-technical-occupational education" or "joint commission" means the commission established pursuant to article three-a of this chapter.

§18B-1-8. Student rights when institutions merge or become administratively linked.

(a) Commencing with the effective date of this section, when a conflict exists between academic program requirements at an institution to be consolidated, merged or administratively linked to another state institution of higher education, the requirements of the institution at which the student initially enrolled prevail. A student may not be required to earn additional credits toward the degree pursued, or to take additional courses, that were not included in the program of study at the time the student declared that major at the enrolling institution.

(b) A student enrolled in an institution to be consolidated, merged or administratively linked to another state institution of higher education shall continue to receive any state-funded student financial aid for which he or she would otherwise be eligible.

§18B-1-10. Potomac branch of West Virginia university.

(a) Notwithstanding any other provision of this code to the contrary, by the first day of July, two thousand five, Potomac state college shall merge and consolidate with West Virginia university, and become a fully integrated division of the
university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia university. The advisory board previously appointed for Potomac state college shall be known as the board of visitors and shall provide guidance to the division in carrying out its mission.

(b) Operational costs for the Potomac campus may not exceed by more than ten percent the average cost per full-time equivalent student for freestanding community and technical colleges or the southern regional education-board average expenditures for two-year institutions. West Virginia university shall reduce these costs to the mandated level within four years.

(c) Auxiliary enterprises shall be incorporated into the West Virginia university auxiliary enterprise system. The West Virginia university board of governors shall determine if operations at the Potomac campus can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(d) Potomac state college has a strong reputation in agriculture and forestry instruction, pre-professional programs in business, computer science and education, and basic liberal arts instruction. These programs shall be further cultivated and emphasized as the sustaining mission of the Potomac campus over the next decade, except that the higher education policy commission may change the mission of the Potomac campus at any time the commission determines appropriate. In order to focus its resources on these programs, the campus shall contract through eastern West Virginia community and technical college to provide work force development training, literacy education and technical education programs which are most efficiently offered within a flexible community and technical college curriculum. This collaborative relationship shall serve to strengthen both institutions and generate a model relationship
between traditional and community and technical college education for institutions throughout the state.

(e) Beginning the first day of November, two thousand three, and annually thereafter, Potomac state college and eastern West Virginia community and technical college shall report to the higher education policy commission on plans, accomplishments and recommendations in implementing the cooperative relationship authorized in subsection (d) of this section. The commission shall report to the legislative oversight commission on education accountability on the cooperative activities, results and recommendations for changes by the fifteenth day of December, two thousand three, and annually thereafter.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-3. Peer institutions.

(a) The commission shall select not fewer than ten peer institutions for each state institution of higher education in West Virginia, including, but not limited to, independently accredited community and technical colleges.

(b) The peer institutions shall be selected from among institutions throughout the United States and not solely from the states that are members of the southern regional education board.

(c) The peer institutions, as selected by the commission, shall be used as benchmarks for comparison purposes only and are not intended to reflect funding goals for West Virginia institutions of higher education. Such a use is inappropriate since institutions selected as peers for a state institution may be located in an area of high per capita income or have their funding subject to other factors that make its use unrealistic for
setting funding goals in West Virginia. The peer institutions shall be used for comparison in the following areas:

(1) To determine adjustments to base operating budgets as described in section five of this article;

(2) To determine comparable levels of tuition;

(3) To determine comparable faculty and staff teaching requirements and other workloads; and

(4) For such other purposes as the law may require or the commission may find useful or necessary.

(d) The commission shall contract with a national, independent education consulting firm to assist in the unbiased selection of peer institutions for each West Virginia institution. The commission shall select peer institutions for each institution through an open, deliberative, objective process and in consultation with the institutional boards of governors, intended to achieve broad understanding of the basis for this selection in the higher education community and the Legislature. Final peer selection is subject to the approval of the legislative oversight commission on education accountability. In selecting peer institutions, the commission shall use criteria such as, but not limited to:

(1) Institutional mission;

(2) Institutional size related to full-time equivalent students;

(3) The proportions of full-time and part-time students;

(4) The level of academic programs, including, but not limited to, number of degrees granted at the associate, baccalaureate, masters, doctoral and first-professional level;
(5) The characteristics of academic programs such as health sciences, professional, technical or liberal arts and sciences; and

(6) The level of research funding from federal competitive funding sources.

(e) Subject to the approval of the legislative oversight commission on education accountability, the commission shall review and make necessary adjustments to peer institutions at least every six years or as necessary based on changes in institutional missions as approved in institutional compacts or in changes at peer institutions.

(f) Nothing herein may be construed to prevent the commission from using the same peers or peer groups for more than one institution of higher education.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-6. Appointment of institutional presidents; provosts; evaluation.

§18B-1B-10. Goals of efficiency and effectiveness; findings; reports to commission and legislative oversight commission on education accountability.

§18B-1B-6. Appointment of institutional presidents, provosts; evaluation.

(a) Appointment of institutional presidents. — Appointment of presidents of the public institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the appropriate governing board of the institution shall appoint a president for Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern
community and technical college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university;

(2) Subject to the approval of the appropriate governing board and to the provisions of article three-c of this chapter, the president of the appropriate institution shall appoint the president of the regional campuses of West Virginia university and of the community and technical colleges which remain linked administratively to a sponsoring institution. The presidents of such regional campuses and community and technical colleges shall serve at the will and pleasure of the institutional president. The president of the sponsoring institution shall appoint a president for the administratively linked community and technical college at the appropriate time as outlined in the institutional compact and approved by the commission.

(3) Subject to the approval of the commission and to the provisions of article three-c of this chapter, the president of the appropriate institution shall appoint the provost in those cases where the community and technical college remains as a component of another institution. The provost shall serve at the will and pleasure of the president of the employing institution.

(b) Other appointments. — Appointments of administrative heads of state institutions of higher education shall be made in accordance with the provisions of subsection (a) of this section except in the following instances:

(1) Effective the first day of July, two thousand three, the institutional president shall appoint a provost to be the administrative head of New River community and technical college; and

(2) Effective the first day of July, two thousand five, the institutional president shall appoint a provost to be the adminis-
(c) Evaluation of administrative heads. — The governing boards shall conduct written performance evaluations of each institution's president except the presidents of regional campuses shall be evaluated by the president of West Virginia university. The provosts of administratively linked community and technical colleges and other consolidated, merged or administratively linked units shall be evaluated by the president of the employing institution. Evaluations shall be done in every fourth year of employment as administrative head, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact.

§18B-1B-10. Goals of efficiency and effectiveness; findings; reports to commission and legislative oversight commission on education accountability.

(a) The Legislature finds that it is in the best interests of the citizens of West Virginia for state institutions of higher education to work diligently toward achieving the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts. One way these goals may be achieved is through collaborative agreements between or among two or more institutions to enhance the scope, quality, or efficiency of education services.

(b) To further these goals of cooperation and coordination, to avoid unnecessary duplication of program development and delivery, and to ensure that programs and services address the
public policy agenda established by the Legislature and the commission, compact elements and goals for post-secondary education, by the first day of September, two thousand three, Concord college and Bluefield state college jointly shall complete a comprehensive study of the degree to which these institutions are making progress toward meeting the goals for post-secondary education, their institutional compacts and the public policy agenda and shall report their finding to the commission. The report shall address specific examples of collaboration, cooperation or brokering in academic programs, administrative services or any joint efforts which aim to avoid unnecessary duplication and to ensure delivery of high quality education services.

(c) The commission shall analyze the report prepared by Concord college and Bluefield state college, together with any other relevant data, and report to the legislative oversight commission on education accountability by the first day of November, two thousand three. The report shall contain findings and recommendations to address at least the following areas relevant to the two institutions:

(1) The fiscal status;

(2) The progress in meeting the goals for post-secondary education, the institutional compact, and the public policy agenda;

(3) Possible academic and fiscal advantages that might be derived from an administrative link between the two institutions; and

(4) Any changes to the programs or services of either institution required by the commission based on their findings or those of the institutions.
(d) If the commission determines that either institution has made insufficient progress toward the goals established in this chapter, in the institutional compacts, in the public policy agenda established by the commission, or has not complied with the changes required by the commission pursuant to subsection (c) of this section, the commission immediately shall take any action necessary to further the goals and requirements of this section.

(e) The commission shall continue to monitor and review each institution’s compliance with this section.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-3. Essential conditions for community and technical college programs and services.

The Legislature hereby establishes the following essential conditions for community and technical college programs and services:

(a) Independent accreditation by the commission on institutions of higher education of the north central association of colleges and schools (NCA) reflecting external validation that academic programs, services, faculty, governance, financing and other policies are aligned with the community and technical college mission of the institution;

(b) A full range of community and technical college services offered as specified in section six of this article;

(c) Programmatic approval consistent with the provisions of section nine of this article;
(d) A fee structure competitive with its peer institutions;

(e) Basic services, some of which may be obtained under contract with existing institutions in the region. These basic services shall include, but are not limited to, the following:

(1) Student services, including, but not limited to, advising, academic counseling, financial aid and provision of the first line of academic mentoring and mediation;

(2) Instructional support services;

(3) Access to information and library services;

(4) Physical space in which courses can be offered;

(5) Access to necessary technology for students, faculty and mentors;

(6) Monitoring and assessment; and

(7) Administrative services, including, but not limited to, registration, fee collection and bookstore and other services for the distribution of learning materials;

(f) A provost who is the chief academic and administrative officer of the community and technical college appointed and serving pursuant to the terms of section six, article one-b of this chapter. The provost shall report directly to the president of the institution and shall have appropriate direct contact with the institutional board of governors. It is the responsibility of the board of governors to provide sufficient time on its agenda for each provost of a component community and technical college to discuss issues relevant to the mission of the component;

(g) An institutional board of governors or an institutional board of advisors appointed and serving as required by law;
(h) A full-time core faculty, complemented by persons engaged through contract or other arrangements, including college and university faculty, to teach community college courses and qualified business, industry and labor persons engaged as adjunct faculty in technical areas;

(i) A faculty personnel policy, formally established to be separate and distinct from that of other institutions, which includes, but is not limited to, appointment, promotion, work-load and, if appropriate, tenure pursuant to section nine of this article. These policies shall be appropriate for the community and technical college mission and may not be linked to the policies of any other institution;

(j) Community and technical colleges designed and operating as open-provider centers with the authority and flexibility to draw on the resources of the best and most appropriate provider to ensure that community and technical college services are available and delivered in the region in a highly responsive manner. A community and technical college may contract with other institutions and providers as necessary to obtain the academic programs and resources to complement those available through a sponsoring college, where applicable, in order to meet the region’s needs;

(k) Separately identified state funding allocations for each of the community and technical colleges. The provost of the community and technical college has full budgetary authority for the entity, subject to accountability to its governing board, including authority to retain all tuition and fees generated by the community and technical college for use to carry out its mission.

§18B-3C-4. Responsibility districts.
(a) Each community and technical college is hereby assigned a responsibility district within which it is responsible for providing the full array of community and technical college programs and services as defined in section six of this article. The programs and services shall address the public policy agenda, compact elements and goals for post-secondary education established in section one-a, article one of this chapter as they relate to community and technical colleges, and other goals which may be established by the commission. The responsibility districts shall be comprised of contiguous areas of the state which have similar economic, industrial, educational, community and employment characteristics to facilitate specialization in mission and programming. For the purposes of initial implementation and organization, the districts shall be comprised as follows and assigned to the designated community and technical colleges:

1. West Virginia northern community and technical college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel counties;

2. West Virginia university at Parkersburg - Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

3. Southern West Virginia community and technical college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh and Wyoming counties;

4. Bluefield state community and technical college - Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh and Summers counties;

5. Glenville state community and technical college - Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas, Roane, Upshur and Webster counties;
(6) Fairmont state community and technical college - Marion, Doddridge, Harrison, Monongalia, Preston, Randolph, Taylor and Barbour counties;

(7) Shepherd community and technical college - Jefferson, Berkeley and Morgan counties;

(8) Eastern West Virginia community and technical college - Mineral, Grant, Hampshire, Hardy, Tucker and Pendleton counties;

(9) West Virginia state community and technical college - Kanawha, Putnam and Clay counties;

(10) West Virginia university institute of technology community and technical college - Fayette, Clay, Kanawha, Raleigh and Nicholas counties;

(11) Marshall university community and technical college - Cabell, Kanawha, Mason, Putnam and Wayne counties; and

(12) Effective the first day of July, two thousand three, the following changes are made to the responsibility districts:

(A) The responsibility districts of the components known as Glenville state community and technical college and Bluefield state community and technical college are abolished and the counties formerly within those responsibility districts are reassigned as provided in this subsection.

(B) New River community and technical college of Bluefield state college - Clay, Fayette, Greenbrier, Mercer, McDowell, Monroe, Nicholas, Pocahontas, Raleigh, Summers and Webster counties; and

(C) Fairmont state community and technical college - Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison,
Lewis, Marion, Monongalia, Preston, Randolph, Taylor and Upshur counties.

(b) It is the intent of the Legislature that, where counties are listed in more than one district, the county shall be the joint responsibility of each community and technical college assigned that county or shall be divided as determined by the commission. The boundaries of the districts may be modified from time to time by the commission to serve better the needs within the districts. Such modifications are not required to follow county boundaries.

(c) Prior to the first day of July, two thousand three, Glenville state college, Fairmont state college and Bluefield state college shall agree as to the transfer of ownership of or title to any property, materials, equipment or supplies of the former Glenville state community and technical college; the transfer of any valid agreement, obligation or claim entered into or incurred by the Glenville state community and technical college; and the transfer, if any, of faculty and staff employed by Glenville state college for the benefit of its community and technical college. Any disagreement regarding these transfers shall be submitted to the higher education policy commission for resolution.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

(a) Over a six-year period beginning the first day of July, two thousand one, West Virginia shall move from having “component” community and technical colleges to having a statewide network of independently-accredited community and technical colleges serving every region of the state. This section does not apply to the freestanding community and technical colleges, West Virginia university at Parkersburg and Potomac state college of West Virginia university.
(b) To be eligible for funds appropriated to develop independently accredited community and technical colleges, a state institution of higher education shall demonstrate the following:

(1) That it has as a part of its institutional compact approved by the council and the commission a step-by-step plan with measurable benchmarks for developing an independently accredited community and technical college that meets the essential conditions set forth in section three of this article;

(2) That it is able to offer evidence annually to the satisfaction of the council and the commission that it is making progress toward accomplishing the benchmarks established in its institutional compact for developing an independently accredited community and technical college; and

(3) That it has submitted an expenditure schedule approved by the council and the commission which sets forth a proposed plan of expenditures for funds allocated to it from the fund.

(c) The following are recommended strategies for moving from the current arrangement of "component" community and technical colleges to the legislatively mandated statewide network of independently accredited community and technical colleges serving every region of the state. The Legislature recognizes that there may be other means to achieve this ultimate objective; however, it is the intent of the Legislature that the move from the current arrangement of "component" community and technical colleges to the legislatively-mandated statewide network of independently-accredited community and technical colleges serving every region of the state shall be accomplished. The following recommendations are designed to reflect significant variations among regions and the potential impacts on the sponsoring institutions.
(1) New River community and technical college of Bluefield state college. —

(A) Bluefield state shall retain its existing mission but place greater emphasis and priority on its community and technical college role and serving the citizens of its expanded service district. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Bluefield state college. Nothing herein may be construed to require Bluefield state college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(B) Effective the first day of July, two thousand three, the component formerly known as Bluefield state community and technical college shall become a multi-campus entity known as New River community and technical college, administratively linked to Bluefield state college. The multi-campus community and technical college shall serve Raleigh, Summers, Fayette, Greenbrier, Clay, Mercer, McDowell, Monroe, Nicholas, Pocahontas, and Webster counties and be headquartered in Beckley. The West Virginia council for community and technical college education shall appoint an institutional board of advisors, pursuant to section one, article six of this chapter, for New River community and technical college which is separate from the institutional board of governors of Bluefield state college.

(C) Bluefield state college shall take immediate steps to seek independent accreditation of New River community and technical college including all sites within its revised service district. The president and the board of governors are responsible for obtaining independent accreditation of the community
and technical college by the thirty-first day of December, two
thousand four. If the multi-campus entity known as New River
community and technical college has not obtained independent
accreditation by this date, the commission shall choose one of
the following options:

(i) Create New River as a freestanding community and
technical college; or

(ii) Assign the responsibility for obtaining independent
accreditation to another state institution of higher education.

(D) The president and the board of governors of Bluefield
state college also are accountable to the commission for
ensuring that the full range of community and technical college
services is available throughout the region and that New River
community and technical college adheres to the essential
conditions pursuant to section three of this article.

(E) As an independently accredited community and
technical college, New River also shall serve as a higher
education center for its region by brokering with other colleges,
universities and other providers, in-state and out-of-state, both
public and private, to ensure the coordinated access of students,
employers, and other clients to needed programs and services.

(F) New River community and technical college shall
facilitate the planning and development of a unified effort
involving multiple providers and facilities, including, but not
limited to, Concord college, the college of West Virginia,
Marshall university, West Virginia university, West Virginia
university institute of technology and other entities to meet the
documented work force development needs in the region.

Nothing in this subdivision prohibits or limits any existing, or
the continuation of any existing, affiliation between the college
of West Virginia, West Virginia university institute of technol-
ogy and West Virginia university. New River community and technical college also shall provide the facilities and support services for other public and private institutions delivering courses, programs and services in Beckley. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(2) Fairmont state community and technical college. — Fairmont state community and technical college shall be an independently accredited community and technical college serving Marion, Doddridge, Barbour, Harrison, Monongalia, Preston, Randolph Taylor, Braxton, Calhoun, Gilmer, Lewis, and Upshur counties. The community and technical college is developed on the base of the existing component community and technical college of Fairmont state college. Subject to the provisions of this section, the president and the governing board of Fairmont state college are responsible, according to a plan approved by the commission, for step-by-step implementation of the independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Fairmont state college. Nothing herein may be construed to require Fairmont state college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(3) Marshall university community and technical college. — Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college
education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, Marshall university community and technical college shall become an independently accredited community and technical college. It shall serve Cabell, Kanawha, Mason, Putnam and Wayne counties. The new community and technical college is developed on the base of the existing component community and technical college of Marshall university. Subject to the provisions of this section, the president and the governing board of Marshall university are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Marshall university. Nothing herein may be construed to require Marshall university to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(4) Shepherd community and technical college. — Shepherd community and technical college shall become an independently accredited community and technical college. It shall serve Jefferson, Berkeley and Morgan counties. The new community and technical college is developed on the base of the existing component community and technical college of Shepherd college. Subject to the provisions of this section, the president and the governing board of Shepherd college are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to
the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Shepherd college. Nothing herein may be construed to require Shepherd college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(5) West Virginia state community and technical college. — Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, West Virginia state community and technical college shall become an independently accredited community and technical college. It shall serve Kanawha, Putnam and Clay counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia state college. Subject to the provisions of this section, the president and the governing board of West Virginia state college are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to West Virginia state college. Nothing herein may be construed to require West Virginia state college to discontinue any associate degree program in areas of particular institutional strength.
which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(6) West Virginia university institute of technology. — Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, West Virginia university institute of technology community and technical college shall become an independently accredited community and technical college. It shall serve Fayette, Clay, Kanawha, Raleigh and Nicholas counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia university institute of technology. Subject to the provisions of this section, the president and the governing board of West Virginia university institute of technology are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to West Virginia university institute of technology. Nothing herein may be construed to require West Virginia university institute of technology to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.
ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

The governing boards and the commission are authorized and empowered to enter into contracts and expend funds for programs, services and facilities provided by public and private education institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and federal governmental bodies within and outside of West Virginia in order that maximum higher education opportunities of high quality may be provided to the citizens of the state in the most economical manner. In no event may a contract for such services and facilities be entered into unless the commission or the governing boards have determined that such services and facilities are necessary and would be at a savings to the state.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The commission and each governing board, through the vice chancellor for administration, shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the commission, as appropriate, and the state institutions of higher education under their jurisdiction.
The commission shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. The rules shall assure that the commission and the governing boards:

(1) Do not preclude any person from participating and making sales thereof to the governing board or to the commission except as otherwise provided in section five of this article. Provision of consultant services such as strategic planning services will not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services;

(2) Establish and prescribe specifications, in all proper cases, for materials, supplies, equipment, services and printing to be purchased; and

(3) Adopt and prescribe such purchase order, requisition or other forms as may be required;

(4) Negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices;

(6) Post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making such purchases and ensure that the notice is available to the public during business hours;
(7) Provide for purchasing in the open market;

(8) Make provision for vendor notification of bid solicitation and emergency purchasing; and

(9) Provide that competitive bids are not required for purchases of five thousand dollars or less.

(b) The commission or each governing board, through the vice chancellor for administration, may issue a check in advance to a company supplying postage meters for postage used by that board, the commission and by the state institutions of higher education under their jurisdiction.

(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, the commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code apply to the competitive bids made pursuant to this section.

(d) The governing boards and the commission shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards and the commission shall indicate upon the successful bid that it was the successful bid and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. No records in the purchase file may be destroyed without the written consent of the legislative auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have
(e) The commission also shall adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that no person may be employed as a buyer unless that person, at the time of employment, either is:

(1) A graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(f) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through eight of this article and the rules of the interim governing board and the commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond shall be filed with the secretary of state. The cost of any such bond shall be paid from funds appropriated to the applicable governing board or commission.

(g) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two,
chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds.

(h) The governing boards and the commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the governing board or the commission, and the auditor shall draw a warrant upon the treasurer for such accounts. All advance allowance accounts shall be accounted for by the applicable governing board or commission once every thirty days or more often if required by the state auditor.

(i) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the commission in the name of the state and shall be approved as to form by the attorney general. A contract which requires approval as to form by the attorney general and for which the attorney general has not responded within fifteen days of presentation of the contract, the contract shall be considered approved. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the attorney general and do not make substantive changes in the terms and conditions of the contract do not require approval by the attorney general. The attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds fifteen thousand dollars shall be filed with the state auditor. If requested to do so, the governing boards or the commission shall make all contracts available for inspection by the state auditor. The governing board or the commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of
deposit or bond to be given for the faithful performance of a contract.

(j) If the governing board or the commission purchases or contracts for materials, supplies, equipment, services and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract shall be void and of no effect.

(k) Any governing board or the commission, as appropriate, may request the director of purchases to make available, from time to time, the facilities and services of that department to the governing boards or the commission in the purchase and acquisition of materials, supplies, equipment, services and printing and the director of purchases shall cooperate with that governing board or the commission, as appropriate, in all such purchases and acquisitions upon such request.

(l) Each governing board or the commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the commission, as appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(m) Notwithstanding any other provision of this code to the contrary, the governing boards and the commission, as appropriate, may make purchases from cooperative buying groups,
consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from cooperative buying groups, consortia, the federal government or from a federal contract and purchasing from the cooperative buying groups, consortia, federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(n) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards and the commission, as appropriate, shall be responsible for paying the cost of the audit from funds appropriated to the governing boards or the commission.

(o) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the “prompt pay act of 1990”.

(p) Consultant services, such as strategic planning services, may not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(q) After the commission has granted approval for lease-purchase arrangements by the governing boards, a governing board may enter into lease-purchase arrangements for capital improvements, including equipment. Any lease-purchase arrangement so entered shall constitute a special obligation of the state of West Virginia. The obligation under
a lease-purchase arrangement so entered may be from any funds
legally available to the institution and must be cancelable at the
option of the governing board or institution at the end of any
fiscal year. The obligation, any assignment or securitization
thereof, shall never constitute an indebtedness of the state of
West Virginia or any department, agency or political subdivi-
sion thereof, within the meaning of any constitutional provision
or statutory limitation, and may not be a charge against the
general credit or taxing powers of the state or any political
subdivision thereof; and such facts shall be plainly stated in any
lease-purchase agreement. Further, the lease-purchase agree-
ment shall prohibit assignment or securitization without consent
of the lessee and the approval of the attorney general of West
Virginia. Proposals for any arrangement must be requested in
accordance with the requirements of this section and any rules
or guidelines of the commission. In addition, any lease-pur-
chase agreement which exceeds one hundred thousand dollars
total shall be approved by the attorney general of West Vir-
ginia. The interest component of any lease-purchase obligation
shall be exempt from all taxation of the state of West Virginia,
except inheritance, estate and transfer taxes. It is the intent of
the Legislature that if the requirements set forth in the internal
revenue code of one thousand nine hundred eighty-six, as
amended, and any regulations promulgated pursuant thereto are
met, the interest component of any lease-purchase obligation
also shall be exempt from the gross income of the recipient for
purposes of federal income taxation and may be designated by
the governing board or the president of the institution as a bank-
qualified obligation.

(r) Notwithstanding any other provision of this code to the
counter, the commission and the governing boards have the
authority, in the name of the state, to lease, or offer to lease, as
lessee, any grounds, buildings, office or other space in accor-
dance with this paragraph and as provided below:
(1) The commission and the governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is necessarily required by the commission or governing boards for the institutions under their jurisdiction. The chief executive officer of the commission or an institution shall certify the following:

(A) That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the commission or institution;

(B) That the commission or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and

(C) That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the commission or the institution.

Before executing any rental contract or lease, the commission or a governing board shall determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair rental value.

(2) The commission and the governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year, but not to exceed forty years. Any purchases of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting therefrom, pursuant to the provisions of this subsection shall be presented by the policy commission to the joint committee on
government and finance for prior review. Any such lease shall contain, in substance, all the following provisions:

(A) That the commission or the governing board, as lessee, have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days’ written notice to the lessor at least thirty days prior to the last day of the succeeding month:

(B) That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds therefor or otherwise acts to impair the lease or cause it to be canceled; and

(C) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the commission or the governing board before the end of the then-current fiscal year.

(3) The commission or an institution which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commission or the governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a “permanent change” means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

(4) Leases and other instruments for grounds, buildings, office or other space, once approved by the commission or
governing board, may be signed by the chief executive officer of the commission or the institution. Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the attorney general. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the state auditor.

(5) The commission may promulgate rules it considers necessary to carry out the provisions of this section.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the commission or the governing boards, upon competitive bids or otherwise, any materials, equipment, services or supplies in excess of twenty-five thousand dollars:

(1) Shall comply with the provisions of section twelve, article three, chapter five-a of this code;

(2) Shall file with the director of the purchasing division of the state of West Virginia the affidavit required herein; and

(3) If presently in compliance with said section may not be required to requalify thereunder to be able to transact business with the commission or the governing boards.

(b) Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell materials, supplies, equipment, services or printing to the commission or the governing boards as hereinafter set forth. Any person suspended under the provisions of section thirty-two, article three, chapter five-a of this code is not eligible to sell or offer to sell materials, supplies, equipment, services or printing to the commission or the governing boards. The commission or the governing boards
may suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the commission or the governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards pursuant thereto. Any person whose right to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for the suspension and has the right to have the action of the commission or the governing board, as applicable, reviewed in accordance with section thirty-three, article three, chapter five-a of this code. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code do not control or govern the purchase, acquisition or other disposition of any equipment, materials, supplies, services or printing by the commission or the governing boards, except as provided in sections four through seven of this article. Sections twenty-nine, thirty and thirty-one, article three, chapter five-a of this code apply to all purchasing activities of the commission and the governing boards.

Neither the commission, the governing boards, nor any employee of the commission or governing boards, may be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services or printing, nor in any firm,
partnership, corporation or association furnishing them, except as may be authorized by the provisions of chapter six-b of this code. Neither the commission, the governing boards nor any employee of the commission or governing boards may accept or receive directly or indirectly from any person, firm or corporation, known by the commission, governing boards or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation, except as may be authorized by the provisions of chapter six-b of this code.

A person who violates any of the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both imprisoned and fined, in the discretion of the court. Any person who violates any provisions of this section by receiving money or other thing of value under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as provided in section nine of said article.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

(a) The commission and the governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The commission and each governing board shall adopt rules governing and controlling the disposition of all such equipment, supplies and materials. At least ten days prior to the disposition, the commission or the governing boards, as applicable, shall advertise, by newspaper publication as a Class
II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the county in which the equipment, supplies and materials are located the availability or sales of such disposable equipment, supplies and materials. The commission or governing boards, as applicable, may sell the disposable equipment, supplies and materials, in whole or in part, at public auction or by sealed bid, or may transfer, exchange or trade the same to other governmental agencies or institutions (if by transfer, exchange or trade, then without advertising), in whole or in part, as sound business practices may warrant under existing circumstances and conditions.

(b) The commission or governing board, as appropriate, shall report semiannually to the legislative auditor, all sales of commodities made during the preceding six months. The report shall include a description of the commodities sold, the name of the buyer to whom each commodity was sold, and the price paid by the buyer.

(c) The proceeds of sales or transfers shall be deposited in the state treasury to the credit on a pro rata basis of the fund or funds from which the purchase of the particular commodities or expendable commodities was made. The commission or governing board, as appropriate, may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property that is disposed of or sold pursuant to the provisions of this section.


(a) The commission shall ensure the fiscal integrity of any electronic process conducted at its offices or at any institution using best business and management practices.
(b) The commission shall implement a process whereby, to the maximum extent practicable, employees of the commission and any state institution of higher education receive their wages via electronic transfer or direct deposit.

(c) Notwithstanding the provisions of section ten-a, article three, chapter twelve of this code, the amount of any purchase made with a purchasing card used by the commission or an institution may not exceed five thousand dollars. Subject to approval of the purchasing division of the department of administration, any routine, regularly-scheduled payment, including, but not limited to, utility payments and real property rental fees may exceed this amount limit. The commission or an institution may use a purchasing card for travel expenses directly related to the job duties of the traveling employee. Traveling expenses may include registration fees and airline and other transportation reservations, if approved by the administrative head of the institution. Traveling expenses may not include fuel or food purchases. The commission and each institution shall maintain one purchase card for use only in and for situations declared an emergency by the president of the institution and approved by the chancellor. Such emergencies may include, but are not limited to, partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating, ventilation, or air conditioning failure in an essential academic building; loss of campus road, parking lot or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the campus.

(d) Notwithstanding the provisions of section ten-f, article three, chapter twelve of this code, or any other provision of this code or law to the contrary, by the thirtieth day of June, two thousand four, the auditor shall accept any receiving report submitted in a format utilizing electronic media and from the effective date of this section shall conduct any audit or investi-
37 gation of the commission or any institution at its own expense
38 and at no cost to the commission or institution.

39 (e) The Legislature finds that an emergency exists, and,
40 therefore, by the first day of July, two thousand three, the
41 commission shall file an emergency legislative rule in accor-
42 dance with the provisions of article three-a, chapter twenty-
43 nine-a of this code. The rule shall provide for institutions
44 individually or cooperatively to maximize their use of any of
45 the following purchasing practices that are determined to
46 provide a financial advantage:

47 (1) Bulk purchasing;

48 (2) Reverse bidding;

49 (3) Electronic marketplaces; and

50 (4) Electronic remitting.

51 (f) Each institution shall establish a consortium with at least
52 one other institution in the most cost-efficient manner feasible,
53 to consolidate the following operations and student services:

54 (1) Payroll operations;

55 (2) Human resources operations;

56 (3) Warehousing operations;

57 (4) Financial transactions;

58 (5) Student financial aid application, processing and
59 disbursement;

60 (6) Standard and bulk purchasing; and

61 (7) Any other operation or service appropriate for consoli-
62 dation as determined by the commission.
(g) An institution may charge a fee to each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the providing institution, as approved by the commission.

(h) Any community and technical college, college and university may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(i) Commencing with the two thousand four fall academic term, each institution shall reduce its number of low-enrollment sections of introductory courses. To the maximum extent practicable, institutions shall use distance learning to consolidate the course sections. The commission shall report the progress of the reduction to the legislative oversight commission on education accountability by the first day of December, two thousand four.

(j) An institution shall use its natural resources and alternative fuel resources to the maximum extent feasible. The institution may supply the resources for its own use and for use by any other institution. The institution may supply the resources to the general public at fair market value. An institution shall maximize all federal or grant funds available for research regarding alternative energy sources, and may develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(k) Any cost-savings realized or fee procured or retained by an institution pursuant to implementation of the provisions of this section shall be retained by the institution.

(l) In assuring the fiscal integrity of processes implemented under this section, at a minimum, the commission has the following responsibilities:
(1) To conduct a performance audit of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education;

(2) To make progress reports on the implementation of this section to the legislative oversight commission on education accountability throughout the two thousand three interim meetings period;

(3) To make a comprehensive report to the legislative oversight commission on education accountability by the first day of December, two thousand three, on the results of the performance audit, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the state institutions of higher education and the commission.

(m) The commission shall report annually to the legislative oversight commission on education accountability regarding any savings achieved by implementing the provisions of this section.

ARTICLE 6. ADVISORY COUNCILS.

§18B-6-4b. Institutional classified employee council.

(a) For the purposes of this section the following words have the specified meanings unless the context clearly indicates a different meaning:

(1) “Council” or “staff council” means the advisory group of classified employees formed on each campus of state institutions of higher education pursuant to subsections (b) and (c) of this section; and

(2) “State institutions of higher education” means all institutions as defined in section two, article one of this chapter and, additionally, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd
health sciences Charleston division of West Virginia university, the Marshall university graduate college, New River community and technical college, the higher education policy commission and the West Virginia network for educational telecomputing.

(b) Effective the first day of April, two thousand three, there is established at each state institution of higher education an institutional classified employees advisory council to be known as the staff council. Current members of staff councils and their officers who have been duly elected shall continue to serve with all the rights, privileges and responsibilities prescribed by this section until the time that members elected as set forth in subsection (c) of this section assume office.

(1) During the month of April of each odd-numbered year, beginning in the year two thousand three, each president or other administrative head of a state institution of higher education, at the direction of the council, and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect members of the staff council as follows:

(A) Two classified employees from the administrative/managerial sector;

(B) Two classified employees from the professional/non-teaching sector;

(C) Two classified employees from the paraprofessional sector;

(D) Two classified employees from the secretarial/clerical sector;

(E) Two classified employees from the physical plant/maintenance sector; and

(F) The member who is elected to serve on the advisory council of classified employees pursuant to section four-a of
this article. This person shall serve as an ex officio, voting
member of the staff council and shall report to the council on
meetings of the advisory council and the board of governors.

(2) Classified employees at Marshall university and West
Virginia university may elect five classified employees from
each of the five sectors to serve on the staff council.

(3) Members shall serve a term of two years which term
shall begin on the first day of July of each odd-numbered year.
Members of the council are eligible to succeed themselves.

(4) Classified employees shall select one of their members
to serve as chair. All classified employees at the institution are
eligible to vote for the chair by any method approved by a
majority of their members. The chair is eligible to succeed
himself or herself.

(5) The staff council shall meet at least monthly or at the
call of the chair. With appropriate notification to the institu-
tional president, the chair may convene staff council meetings
for the purpose of sharing information and discussing issues
affecting the classified employees or the efficient and effective
operations of the institution.

(6) The president of the institution shall meet at least
quarterly with the staff council to discuss matters affecting
classified employees.

(7) The governing board shall meet at least annually with
the staff council to discuss matters affecting classified employ-
eses and the effective and efficient management of the institu-
tion.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention;
hearing.
§18B-7-6. Adjunct faculty; part-time and temporary classified employees.
§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

(a) The president or other administrative head of each state institution of higher education shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year: (1) Not later than the first day of March for those probationary faculty members who are in their first academic year of service; (2) not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and (3) at least one year before the expiration of an appointment for those probationary faculty members who have been employed two or more years with the institution. Such notice to those probationary faculty members not being retained shall be by certified mail, return receipt requested.

(b) For any probationary faculty member employed after the effective date of this section, the president or other administrative head of each institution shall give written notice concerning retention or nonretention for the ensuing academic year not later than the first day of March.

(c) If a request is made by the probationary faculty member not retained, the president or other administrative head of the institution shall inform the probationary faculty member by certified mail within ten days of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision shall use the grievance procedure established in article six-a, chapter twenty-nine of this code. If it is concluded that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year.

(d) The term “probationary faculty member” shall be defined according to rules promulgated by the governing boards. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.
§18B-7-6. Adjunct faculty; part-time and temporary classified employees.

(a) Each governing board, with the advice and assistance of the faculty senate, shall establish a policy regarding the role of adjunct faculty at state institutions of higher education and define an appropriate balance between full-time and adjunct faculty members.

(b) Each governing board, with the advice and assistance of the staff council shall establish a policy regarding the role of part-time classified employees. Such policy shall discourage the hiring of part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all qualified classified employees with nine-month or ten-month contracts with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment.

(c) Each governing board shall establish the policies required by this section by the first day of July, two thousand three. The commission shall report to the legislative oversight commission on education accountability by the first day of December, two thousand three, regarding the development and implementation of these policies, including the number of adjunct faculty and part-time employees at each institution and the level of compliance with the policies. In making determinations regarding the development, implementation and compliance with the policies required by this section, the commission shall take into account the special flexibility needs of community and technical colleges and shall allow greater discretion for these institutions to make decisions regarding employing adjunct faculty.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-3. Faculty salary policies; reductions in salary prohibited; salary increase upon promotion in rank.
(a) Each governing board shall establish and maintain a faculty salary policy that is competitive and which furthers the goals of attracting, retaining and rewarding high quality faculty.

(b) The salary of any full-time faculty member may not be reduced by the provisions of this article.

(c) Upon promotion in rank, each faculty member shall receive a salary increase of up to ten percent, as determined by the salary policy adopted by the governing board.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-5. Classified employee salary.


§18B-9-5. Classified employee salary.

(a) Any classified employee may receive merit increases and salary adjustments in accordance with policies established by the board of governors: Provided, That merit raises may be granted only pursuant to a rule adopted by the board of governors, and approved by the chancellor, which provides a fair and equitable basis for granting merit raises pursuant to regular evaluations based upon reasonable performance standards.

(b) The current annual salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article may be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if the promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

(c) The cost of providing any salary increase pursuant to the provisions of section two, article five, chapter five of this code, shall be borne by the commission or institution from its existing
budget. The commission or institution may not increase tuition and fee charges, increase auxiliary fee charges, or receive additional general revenue funds to recover the costs of the increase. Notwithstanding any other provision of this code or law to the contrary, if insufficient funding is available to an institution or the commission to implement the provisions of said section two, funding may be derived from reducing employee positions to any level, in the discretion of the institution or commission, that is sufficient to provide adequate funds, and without regard to seniority.


(a) For the purposes of this section, “employee” means:

(1) A classified or nonclassified employee who is employed by a higher education governing board or by the policy commission; or

(2) A faculty member, as defined in section one, article eight of this chapter, who is eligible to accrue sick leave.

(b) An employee may donate sick and annual leave to a leave bank established and operated in accordance with the provisions of subsection (d) of this section or directly to another employee in accordance with the provisions of subsection (e) of this section. No employee may be compelled to donate sick or annual leave. Any leave donated by an employee pursuant to this section shall be used only for the purpose of catastrophic illness or injury as defined in subsection (c) of this section and shall reduce, to the extent of such donation, the number of days of annual or sick leave to which the employee is entitled.

(c) For the purpose of this section, a catastrophic illness or injury is one that is expected to incapacitate the employee and create a financial hardship because the employee has exhausted all sick and annual leave and other paid time off. Catastrophic illness or injury also includes an incapacitated immediate family member as defined by a governing board or the policy
commission, as appropriate, if this results in the employee being required to take time off from work for an extended period of time to care for the family member and if the employee has exhausted all sick and annual leave and other paid time off.

(d) A leave bank or banks may be established at each state institution of higher education and the policy commission to which employees may donate either sick or annual leave. The bank or banks may be established jointly by the policy commission and the governing boards or may be established for the policy commission and each of the governing boards. Sick or annual leave may be deposited in the leave bank, and such deposit shall be reflected as a day-for-day deduction from the sick or annual leave balance of the depositing employee.

Donated leave may be withdrawn by any employee experiencing a catastrophic illness or injury when the following conditions are met:

(1) The president of the institution or the chancellor of the policy commission, as appropriate, verifies that the employee is unable to work due to the catastrophic illness or injury; and

(2) The president of the institution or the chancellor, as appropriate, approves the withdrawal and provides written notice to the personnel office.

The withdrawal shall be reflected as a day-for-day addition to the leave balance of the withdrawing employee.

(e) Sick or annual leave may be donated to any employee experiencing a catastrophic illness or injury. Such leave shall be donated at the request of the employee after appropriate verification that the employee is unable to work due to the catastrophic illness or injury as determined by the president of the institution or the chancellor. When transfer of sick or annual leave is approved by the president of the institution or the chancellor, any employee may donate sick or annual leave in one-day increments by providing written notice to the personnel
office. Donations shall be reflected as a day-for-day deduction from the sick or annual leave balance of the donating employee. An employee receiving the donated sick or annual leave shall have any time which is donated credited to his or her account in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee.

(f) Use of donated credits may not exceed a maximum of twelve continuous calendar months for any one catastrophic illness or injury. The total amount of sick or annual leave withdrawn or received may not exceed an amount sufficient to ensure the continuance of regular compensation and may not be used to extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code. An employee withdrawing or receiving donations of sick or annual leave pursuant to this section shall use any leave personally accrued on a monthly basis prior to receiving additional donated sick or annual leave.

(g) Donated sick or annual leave deposited in an institutional leave bank or transferred under subsection (d) of this section may be inter-institutional in accordance with the policies of the appropriate governing board. Each institution and the policy commission is responsible for the administration of the sick or annual leave deposits, withdrawals and transfers of its employees. Rules implementing the provisions of this section may be adopted jointly or separately by the governing boards and the policy commission in accordance with article three-a, chapter twenty-nine-a of this code.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.


§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.
(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following:

(1) Health service fees;

(2) Infirmary fees;

(3) Student activities, recreational, athletic and extracurricular fees, which fees may be used to finance a students’ attorney to perform legal services for students in civil matters at such institutions. Such legal services are limited to only those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed; and

(4) Graduate center fees and branch college fees, or either, if the establishment and operations of graduate centers or branch colleges are otherwise authorized by law.

(b) All fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely for the maintenance and operation of the graduate center or branch college at which they were collected. The commission shall set tuition and fee goals for residents at each institution after examining tuition and fees at the institutions’ peers. Tuition and fees for nonresident, undergraduate students shall, at a minimum, cover actual instructional costs as determined in accordance with commission policy. Students enrolled in undergraduate courses offered at off-campus locations shall pay an off-campus instruction fee and may not be required to pay the athletic fee and the student activity fee.

(c) The off-campus instruction fee shall be used solely for the support of off-campus courses offered by the institution. Off-campus locations for each institution shall be defined by the appropriate governing board. The schedule of all fees, and any changes therein, shall be entered in the minutes of the
meeting of the appropriate governing board, and the board shall
file with the legislative auditor a certified copy of such schedule
and changes.

(d) In addition to the fees mentioned in the preceding
paragraph, each governing board may impose and collect a
student union building fee. All such building fees collected at
an institution shall be paid into a special student union building
fund for such institution, which is hereby created in the state
treasury. Pursuant to the provisions of section ten of this article,
the fees shall be used only for the following purposes:

(1) The construction, operation and maintenance of a
student union building or a combination student union and
dining hall building;

(2) The payment of the principal of and interest on any
bond issued to finance part or all of the construction of a
student union building or a combination student union and
dining hall building; or

(3) The renovation of an existing structure for use as a
student union building or a combination student union and
dining hall building, all as more fully provided in section ten of
this article.

Any moneys in such funds not needed immediately for such
purposes may be invested in any such bonds or other securities
as are now or hereafter authorized as proper investments for
state funds.

(e) The boards shall establish the rates to be charged
full-time students enrolled during a regular academic term.

(1) For fee purposes, a full-time undergraduate student is
one enrolled for twelve or more credit hours in a regular term,
and a full-time graduate student is one enrolled for nine or more
credit hours in a regular term.

(2) Undergraduate students taking fewer than twelve credit
hours in a regular term shall have their fees reduced pro rata
based upon one twelfth of the full-time rate per credit hour, and
graduate students taking fewer than nine credit hours in a
regular term shall have their fees reduced pro rata based upon
one ninth of the full-time rate per credit hour.

(3) Fees for students enrolled in summer terms or other
nontraditional time periods shall be prorated based upon the
number of credit hours for which the student enrolls in accor-
dance with the above provisions.

(f) All fees are due and payable by the student upon
enrollment and registration for classes except as provided for in
this subsection:

(1) The governing boards shall permit fee payments to be
made in up to three installments over the course of the aca-
demic term. All fees shall be paid prior to the awarding of
course credit at the end of the academic term.

(2) The governing boards also shall authorize the accep-
tance of credit cards or other payment methods which may be
generally available to students for the payment of fees. The
governing boards may charge the students for the reasonable
and customary charges incurred in accepting credit cards and
other methods of payment.

(3) If a governing board determines that a student's
finances are affected adversely by a legal work stoppage, it may
allow the student an additional six months to pay the fees for
any academic term. The governing board shall determine on a
case-by-case basis if the finances of a student are affected
adversely.

(g) The rule related to assessment, payment and refund of
fees including refund of fees upon voluntary or involuntary
withdrawal from classes, shall comply with all applicable state
and federal laws and shall be uniformly applied throughout the
system.
(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(i) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with a revised tuition policy adopted by the respective governing boards and approved by the commission. The revised tuition policy shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission and either the students at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees and that amount shall be returned to general revenue. All state subsidies for the auxiliary services
shall cease five years from the date the mandatory auxiliary fee was implemented;

(E) The commission shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years.

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission upon any institution based upon the number of nonresidents who attend the institution unless the commission determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of the resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission on the numbers of nonresidents and such other enrollment information as the commission may request.

(k) Tuition and fee increases of the governing boards are subject to rules adopted by the commission pursuant to subsection (a), section four, article one-b of this chapter.

(1) A governing board may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year except that proposed tuition and fees increases for community and technical colleges may be up to four and three quarters percent. Any proposed increase shall be approved by the commission. The commission shall examine individually each request from a governing board for an increase. Approval for any increase shall be based on a determination by the commission that the institution has met the following conditions:
(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Is implementing the efficiency measures required by section nine, article five of this chapter;

(E) Has demonstrated to the satisfaction of the commission that an increase will be used to maintain high-quality programs at the institution;

(F) Has demonstrated to the satisfaction of the commission that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(G) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(2) In making a determination on tuition and fee proposals, the commission also may take into consideration whether the per capita income in an institution's service region exceeds the state per capita income. For the purposes of this subdivision only:

(A) Service region is the county in which the main campus of the institution is located and the contiguous West Virginia counties; and

(B) Per capita income for the service region shall be computed using the most current annual, county-level per capita income data published by the United States department of
commerce, bureau of economic analysis, weighted by the compatible year population estimates published by the United States census bureau.

(3) This section may not be construed to require equal increases among institutions or to require any level of increase at an institution.

(4) The commission shall report to the legislative oversight commission on education accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (1) of this subsection.


1 The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. The bookstore shall be operated for the use of the institution itself, including each of its schools and departments, in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but no sales shall be made to the general public. The prices to be charged the institution, the students and the faculty for such products shall be fixed by the governing board, shall not be less than the prices fixed by any fair trade agreements, and shall in all cases include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the bookstore.

Each governing board shall also ensure that bookstores operated at institutions under its jurisdiction meet the additional objective of minimizing the costs to students of purchasing textbooks by adopting policies which may require the repurchase and resale of textbooks on an institutional or a statewide
basis and provide for the use of certain basic textbooks for a reasonable number of years.

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. Each governing board shall, subject to the approval of the governor, fix, and, from time to time, change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store. From any balance in the Marshall university bookstore fund not needed for operation and maintenance and replenishing the stock of goods, the governing board of that institution shall have authority to expend a sum not to exceed two hundred thousand dollars for the construction of quarters to house the bookstore in the university center at Marshall university. Until such quarters for housing the bookstore are completed, the governing board of Marshall university and the governor shall take this authorization into account in fixing the amount of the revolving fund for the Marshall university bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and ensuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

ARTICLE 14. MISCELLANEOUS.

§18B-14-11. Health insurance coverage option study.

(a) Together, the commission and the public employees insurance agency shall submit to the legislative oversight commission on education accountability by the first day of December, two thousand three, draft legislation regarding benefits offered by the agency.

(b) The draft legislation shall provide:
Incentives for employees insured by the agency to decline benefits from the agency. Incentives may include:

(A) Optional purchase of supplemental benefits;

(B) Payment of a percentage of the savings realized by the employer due to cancellation of insurance coverage for the employee; and

(C) Any other incentive determined appropriate by the agency and commission;

(2) A requirement that a public employee may decline benefits from the agency only if that employee verifies that he or she has health insurance coverage by an alternate provider;

(3) A procedure for verifying the alternate coverage required by subdivision (2) of this subsection at least annually; and

(4) A procedure whereby an employee who has declined coverage pursuant to this section will be reinstated automatically in the agency’s program immediately following loss of the alternate coverage.

CHAPTER 97

(S. B. 646 — By Senators Caldwell, Plymale, Edgell, White, Dempsey, Sprouse, Unger and Oliverio)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect from Passage. Approved by the Governor.]
code, all relating to higher education; centers for economic development and technology advancement generally; findings and purpose; definitions; authorizing doctoral institutions to enter into agreements with centers; setting forth requirements for governing bodies; powers and duties of governing bodies; providing for appointment of president; qualifications; powers and duties of president; authorizing agreements; terms and conditions; authorizing audit of center operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations of centers; student financial aid; and expanding definition of "eligible institution" for purposes of higher education grant program.

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 twelve-a; and that section two, article five, chapter eighteen-c of said code be amended and reenacted, all to read as follows:

Chapter
18B. Higher Education.
18C. Student Loans; Scholarships and State Aid.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 12A. CENTERS FOR ECONOMIC DEVELOPMENT AND TECHNOLOGY ADVANCEMENT.

§18B-12A-1. Legislative findings and purpose.
§18B-12A-3. Establishment of centers for economic development and technology advancement; doctoral institutions authorized to enter into agreements.
§18B-12A-4. Powers and duties of governing bodies and centers.
§18B-12A-5. Appointment of president; qualifications.
§18B-12A-6. Agreements; required provisions.
§18B-12A-7. Audit.
§18B-12A-8. Conflicts of interest.
§18B-12A-9. No waiver of sovereign immunity.
§18B-12A-10. Not obligation of the state.
§18B-12A-1. Legislative findings and purpose.

(a) The Legislature finds that economic development in West Virginia depends in part on the effective and efficient management of research grants and opportunities at doctoral institutions of higher education, on collaborations developed between doctoral institutions and businesses and industry and on the advancement and commercialization of new and evolving technologies. It is in the best interests of citizens of the state to develop programs which promote these goals and contribute to the general economic welfare of citizens. In order to enhance the competitive position of doctoral institutions in the current environment for research and economic development, expenditures for equipment and material for research projects must be handled efficiently and effectively and the acquisition and use of grant funds should be simplified and expedited through the use of centers for economic development and technology advancement.

(b) The purpose of this article is to provide a mechanism for doctoral institutions to enter into agreements with centers for economic development and technology advancement to provide research assistance; to provide maximum flexibility as to the form of organization of centers so as to encourage and facilitate private sector participation in and support of research and economic development grants and opportunities in collaboration with doctoral institutions; to expedite the acquisition, administration and management of research and development grants and opportunities; to provide technical assistance in the commercialization of research opportunities; and to authorize doctoral institutions to contract with centers organized for the purpose of providing these services.


The following words used in this article have the meaning ascribed to them in this section unless the context clearly indicates a different meaning:
(a) "Agreement" means any agreement or contractual relationship being entered into between a doctoral institution and a center pursuant to the provisions of this article.

(b) "Center" means a center for economic development and technology advancement created pursuant to section three of this article.

(c) "Governing body" means the governing body of a center created pursuant to the provisions of this article.

(d) "President" means the chief executive officer of a center employed pursuant to section five of this article.

(e) "Doctoral institution" means a state institution of higher education as defined in subsection (d), section one, article eight of this chapter.

§18B-12A-3. Establishment of centers for economic development and technology advancement; doctoral institutions authorized to enter into agreements.

There is authorized the establishment of independent entities to be known as centers for economic development and technology advancement. Each center shall be formed with respect to a specific doctoral institution and each center shall meet the following conditions:

(1) Representatives from private sector business and industry constitute a majority of the voting members of the governing body of each center;

(2) The president of the appropriate doctoral institution or a senior member of the doctoral institution’s administrative staff is a member of the appropriate governing body.

(3) Each center shall be organized as one of the following:

(A) A nonprofit, nonstock corporation under the general corporation laws of the state exclusively for charitable, educa-
§18B-12A-4. Powers and duties of governing bodies and centers.

The primary responsibility of each center is to foster and support economic development and the advancement and commercialization of new and emerging technologies through collaboration agreements between business-industry and the respective doctoral institution. To that end, the governing body of each center has the following powers and duties:

(a) To adopt and amend, from time to time, a statement of purpose and scope of operations. When the governing body amends the purpose or scope of a center, the governing body shall advise the appropriate doctoral institution of the changes;

(b) To employ a president subject to the provisions of section five of this article;

(c) To approve employment of other staff recommended by the president as being necessary and appropriate to carry out the purpose and scope of the center;

(d) To serve as fiscal agent and provide additional services, including, but not limited to, evaluation of technology, verification and assessment of market applications, grant administration and human resource management for any entity associated with the doctoral institution if the entity is engaged in business-industry collaborations, technology advancement and commercialization activities and research into new areas of economic development;

(e) To meet as a governing body: Provided, That centers created under this article are exempt from the provisions of

(B) A corporation, partnership, limited partnership, limited liability company or other form of entity authorized to be formed under this code.
section three, article nine-a, chapter six of this code and from
the provisions of article one, chapter twenty-nine-b of this code;

(f) To receive, purchase, hold, lease, use, sell and dispose
of real and personal property of all classes, including all kinds
of intellectual property, subject to the provisions of section ten
of this article;

(g) To receive and accept from any public or private
agency, corporation, association, person, partnership, company
or any other organization or entity of any nature whatsoever
grants to be expended in accomplishing the objectives of this
article and to receive and accept from the state, from any
municipality, county or other political subdivision of the state
and from any other source, aid or contributions of either money,
property or other things of value to be held, used and applied
only for the purposes for which the grants and contributions
may be made;

(h) To accept and expend any gift, grant, contribution,
bequest, endowment or other money for the purposes of this
article and to make a maximum effort to encourage external
support for the center's programs. Any transfer of endowment
or other assets by the doctoral institution to a center or by the
center to the doctoral institution for management or investment
shall be formalized in a memorandum of agreement to assure,
at a minimum, that any restrictions governing the future
disposition of funds are preserved;

(i) To make, amend and repeal bylaws and rules consistent
with the provisions of this article to carry into effect the
purpose and scope of the center and, subject to such directions
and limitations as may be contained in its governing documents,
to delegate the exercise of any of its powers to the president
except for the power to approve budgets; to make, amend or
repeal its governing documents; or to alter the purpose or scope
of the center;

(j) In addition to the powers and duties provided for in this
section and any other powers and duties that may be assigned
to it by law or agreement, each center has such other powers and duties as may be necessary or expedient to accomplish the objectives of this article or as provided by law.

§18B-12A-5. Appointment of president; qualifications.

(a) The governing body of each center shall employ a president who shall be the chief executive officer of the center and who shall serve at the will and pleasure of the governing body;

(b) The center shall be under the control and supervision of the president who, with the approval of the governing body, may employ staff as is necessary to carry out the center’s purpose and scope;

(c) The governing body shall set the qualifications for the position of president and shall conduct a thorough search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses a broad understanding of the relationship between public and private sector research, the advancement and commercialization of new and emerging technologies and economic development and has significant experience and an established professional reputation in these fields;

(2) Holds, at a minimum, a bachelor’s degree in a field related to the duties and responsibilities of the position of president;

(3) Demonstrates specifically that he or she has developed effective and successful grant management skills, as well as skill in fostering collaborations between business-industry and doctoral institutions;

(4) Demonstrates strong communication skills and the ability to work with all types of businesses and industry, government agencies and higher education institutions; and
§18B-12A-6. Agreements; required provisions.

(a) Notwithstanding section ten, article three, chapter twelve of this code or any other provision of law to the contrary, each doctoral institution is hereby authorized to enter into agreements with one or more centers: Provided, That each center is formed with respect to that specific doctoral institution and meets the conditions set forth either in paragraph (A) or paragraph (B), subdivision (2), section three of this article.

(b) Any agreement with a center shall benefit the doctoral institution or one or more of its schools, departments or institutes whose purpose is to further economic development, training, education and technology research and development in its region.

(c) On the effective date of the agreement, the center is charged with the responsibility of serving as fiscal agent for specified sponsored projects conducted by the faculty, staff and students of the doctoral institution pursuant to terms of the agreement and grants shall be accepted by the center on behalf of the doctoral institution and assigned to the center for fiscal management.

(d) If an agreement is terminated, the funds, contributions or grants paid or held by the center and not encumbered or committed prior to termination shall be distributed as provided for in the agreement.

(e) If part of the agreement, a center may utilize both center employees and personnel of the doctoral institution. The center may pay the costs incurred by the doctoral institution, including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement. The center may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs.
§18B-12A-7. Audit.

The operations of the center are subject to an audit by an independent auditor.

§18B-12A-8. Conflicts of interest.

Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected doctoral institution may hold appointments to offices of the center and be members of its governing body or officers or employees of other entities contracting with either the center or a governing board of a doctoral institution. The governing body shall make an annual report of these appointments to the doctoral institution.

§18B-12A-9. No waiver of sovereign immunity.

Nothing contained in this article may be construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the governing board of a doctoral institution, a doctoral institution or any officer or employee of a doctoral institution of sovereign immunity.

§18B-12A-10. Not obligation of the state.

Obligations of a governing body or its center do not constitute debts or obligations of a doctoral institution, the governing board of a doctoral institution or the state.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-2. Definitions.
(a) "Approved 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; Alderson-Broaddus college, Appalachian Bible college, Bethany college, Mountain State university, Davis and Elkins college, Ohio Valley college, Salem international university, the university of Charleston, West Virginia Wesleyan college and Wheeling Jesuit college, all in West Virginia; and

(2) Any other regionally or nationally accredited institution of higher education in this state, public or private, approved by the vice chancellor for administration if the institution has been licensed for a minimum of fifteen years subject to the provisions of section five, article three, chapter eighteen-b of this code and section four, article one-b of said chapter.

(b) "Grant" or "grant program" means a grant or the grant program authorized and established by the provisions of this article.

(c) "Senior administrator" means the vice chancellor for administration, as provided in section two, article one, chapter eighteen-b of this code.

CHAPTER 98

(Com. Sub. for H. B. 2051 — By Delegates Mezzatesta and Williams)

[Passed March 8, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the semester
or term hours required for eligibility; requiring rule provisions to provide for set aside and distribution of funds for certain noncredit and customized training programs; and requiring rule provisions on grant availability for approved distance education.

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

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

**ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

§18C-5-7. Higher education adult part-time student grant program.

(a) There is established the higher education adult part-time student grant program, referred to in this section as the HEAPS grant program. The grant program established and authorized by this section is administered by the vice chancellor for administration. Moneys appropriated or otherwise available for the grant 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.

(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 three nor more than eleven semester or term hours: Provided, That in the case of enrollment in postsecondary certificate, industry recognized credential and other skill development programs in demand occupations in this state, “part-time” means enrollment on such basis as is established for the program in which enrolled.
(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. In the case of postsecondary certificate, industry recognized credential and other skill development programs, satisfactory academic progress means continuous advancement toward completion of the program on the normal schedule established for the program in which enrolled;

(4) "Eligible institution" means:

(A) Any community college; community and technical college; adult technical preparatory education program or training;

(B) Any state college or university, as those terms are defined in section two, article one, chapter eighteen-b of this code;

(C) Any approved institution of higher education as that term is defined in section two of this article; and

(D) Any approved distance education, including world wide web based courses;

(5) "Eligible program or programs" or "eligible course or courses" means, in addition to programs and courses offered by eligible institutions as defined in subdivision (4) of this subsection:

(A) Programs and courses offered by any nationally accredited degree granting institution of higher learning permitted pursuant to section five, article three, chapter eighteen-b of this code and approved by the joint commission for vocational-technical-occupational education; and

(B) Any postsecondary certificate, industry recognized credential and other skill development programs of study as defined in this section in a demand occupation in this state;
(6) "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;

(7) "Postsecondary certificate program" means an organized program of study, approved by the joint commission for vocational-technical-occupational education, with defined competencies or skill sets that may be offered for credit or noncredit and which culminates in the awarding of a certificate: Provided, That postsecondary certificate programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission for vocational-technical-occupational education;

(8) "Demand occupation" means any occupation having documented verification from employers that job opportunities in that occupation are currently available or are projected to be available within a year within the state or regions of the state. The joint commission for vocational-technical-occupational education shall prepare and update annually a list of occupations that they determine meet the requirements of this definition;

(9) "Industry recognized credential program" means an organized program that meets nationally recognized standards in a particular industry, is approved by the joint commission for vocational-technical-occupational education and which culminates in the awarding of a certification or other credential commonly recognized in that industry: Provided, That industry recognized credential programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission for vocational-technical-occupational education; and

(10) "Skill development program" means a structured sequence or set of courses, approved by the joint commission for vocational-technical-occupational education, with defined competencies that are designed to meet the specific skill
requirements of an occupation and which culminates in the
awarding of a certificate of completion that specifically lists the
competencies or skills mastered: Provided, That skill develop-
ment programs offered by eligible institutions as defined in
subdivision (4) of this subsection do not require the approval of
the joint commission.

(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) Demonstrates financial need for funds, as defined by
legislative rule;

(3) Is a state resident and may not be considered a resident
of any other state;

(4) Is a United States citizen or permanent resident thereof;

(5) Is not incarcerated in a correctional facility;

(6) Is not in default on a higher education loan; and

(7) Is enrolled in a program of study at less than the
graduate level on a part-time basis in an eligible institution or
program of study 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 an eligible institution or 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 higher education policy commission shall propose
a legislative rule pursuant to article three-a, chapter twenty-
nine-a of this code 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, two thousand three. The Legislature hereby declares that an emergency situation exists and, therefore, the policy commission may establish, by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section, after approval by the legislative oversight commission on education accountability.

(f) The legislative rule shall provide at least the following:

(1) 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 vice chancellor for administration; and

(C) Whether the applicant will receive any other source of student financial aid during the award period.

(2) That an appropriate allocation process be provided for distribution of funds directly to the eligible institutions or programs based on the part-time enrollment figures of the prior year;

(3) That not less than twenty-five percent of the funds appropriated in any one fiscal year be used to make grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study: Provided, That after giving written notice to the legislative oversight commission on education accountability, the vice chancellor for administration may allocate less than twenty-five percent of the funds for such grants;
(4) That ten percent of the funds appropriated in any one fiscal year shall be granted to state community and technical colleges by the council for community and technical college education in accordance with a process specified in the rule for noncredit and customized training programs which further the economic development goals of the state, help meet the training and skill upgrade needs of employers in the state, and for which funds are not available from other sources;

(5) That any funds not expended by an eligible institution or program at the end of each fiscal year shall be returned to the vice chancellor for administration for distribution under the provisions of this section;

(6) That grants under this section shall be available for approved distance education throughout the calendar year, subject only to the availability of funds; and

(7) That the amount of each HEAPS grant award be determined using the following guidelines:

(A) The amount of any HEAPS grant awarded to a student per semester, term hour or program for those students who are enrolled in eligible institutions or programs operated under the jurisdiction of an agency of the state or a political subdivision thereof shall be based upon the following:

(i) Actual cost of tuition and fees;

(ii) The portion of the costs determined to be appropriate by the commission; and

(iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the vice chancellor may consider the demand for the program pursuant to subdivision (8), subsection (b) of this section; and

(B) The amount of any HEAPS grant awarded to a student who is enrolled in any other eligible institution, program or course shall be no greater than the average amount for compara-
ble programs or courses as determined pursuant to the provi-
sions of paragraph (A) above.

(g) The vice chancellor for administration 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 99

(H. B. 3093 — By Mr. Speaker, Mr. Kiss, and Delegates Staton,
Kominar and Trump)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter three
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to requiring county commissions to
follow geographic physical features recognized by the U.S.
Census Bureau when determining precinct boundaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.
§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

(a) The precinct shall be the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than three hundred nor more than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters, unless upon a written finding by the county commission that establishment of or retention of a precinct of less than two hundred voters would prevent undue hardship to the voters, the secretary of state determines that such precinct be exempt from the two hundred voter minimum limit. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits. If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: Provided, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than seven hundred registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall
designate alphabetically the voters who will be eligible to vote in each precinct so created. Each such precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two of such precincts may use the same counting board.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries must be comprised of intersecting geographic physical features or municipal boundaries recognized by the U.S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks and mountain ridge lines. The county commission of every county must modify precinct boundaries to follow geographic physical features or municipal boundaries and submit changes to the West Virginia office of legislative services by June 30, 2007 and by the thirtieth day of June, every ten calendar years thereafter. The county commission must also submit precinct boundary details to the U.S. Census Bureau upon request.

The West Virginia office of legislative services shall be available for consultation with the county commission regarding the precinct modification process: Provided, That nothing in this subsection removes or limits the ultimate responsibility
of the county commission to modify precinct boundaries to follow geographic physical features.

(d) The provisions of this section are subject to the provisions of section twenty-eight, article four of this chapter relating to the number of voters in precincts in which voting machines are used.

(e) The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts.

CHAPTER 100

(S. B. 648 — By Senators Oliverio, Jenkins, Hunter, White, McKenzie, Kessler, Caldwell, Fanning, Minard, Rowe and Deem)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty, article two of said chapter; to repeal section twenty-one, article four-a of said chapter; to repeal section twenty-one, article nine of said chapter; to amend and reenact sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter; to further amend said article by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; to amend and reenact sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter; to further amend said article by adding thereto a new section, designated section
four-a; to amend and reenact sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter; to amend and reenact sections ten and twenty-three, article four of said chapter; to amend and reenact sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, thirteen, fifteen and nineteen, article five of said chapter; to amend and reenact sections three, four-a, five, six, seven and nine, article six of said chapter; to amend and reenact sections one and four, article seven of said chapter; to amend and reenact sections two, four, five and twelve, article eight of said chapter; to amend and reenact sections seven and eight, article ten of said chapter; and to amend and reenact section two, article six, chapter eight of said code, all relating to elections generally; requiring written notice to registered voters if precinct is changed; clarifying how members of the state executive committees are elected and providing for additional members; specifying the information to be on the general information cards; providing instruction on casting a provisional ballot; requiring posting of names of official write-in candidates; requiring all information available to voters on election day to be available during the early in-person voting period; requiring the circuit clerk to transfer absentee ballots to the clerk of the county commission where clerk of the county commission is responsible for absentee voting; authorizing poll clerks to pick up election supplies; authorizing reimbursement for county employees who deliver election supplies; prohibiting election officials from also being official write-in candidates; making expanded receiving boards optional; clarifying that alternate election officials be paid for attending training; changing challenged ballot to provisional ballot throughout; clarifying that the clerk of the county commission may use election records and returns to update voter registration records; eliminating the requirement for the immediate arrest of a person accused of voting illegally; establishing procedures for taking and securing affidavits regarding illegal voting; providing for the secured
affidavits to be given to the prosecuting attorney; establishing procedures for challenging ballots and voting a provisional ballot; requiring that the secretary of state establish a system to allow provisional voters to learn whether or not their vote was counted and why; requiring the circuit court to decide proceedings to compel performance of election duties within fifteen days; establishing a state election fund; setting new standards for voting systems; providing for state administrative complaint procedures for election law violations; authorizing the secretary of state to establish and maintain a statewide voter registration list; providing for stricter identification procedures for voter registration; clarifying when seventeen-year-olds may vote in municipal elections; providing that voter registration services will be provided whenever the office of the clerk of the county commission is open for business; clarifying that the secretary of state must periodically review and revise the rule relating to voter registration; clarifying that voter registration lists or data files may not be used or sold for commercial or charitable solicitations or advertising; changing regular absentee voting to early in-person voting; allowing voters who have resided in a nursing home for less than thirty days to vote by an emergency absentee ballot; clarifying that absentee ballots require a mail-in absentee ballot application; authorizing two representatives to assist with absentee voting and establishing qualifications; expanding the early in-person voting period to twenty days; eliminating voting on Monday before a Tuesday election and adding voting on the two Saturdays prior to the election; requiring notice to voters that Monday voting is no longer available; clarifying procedures for, and materials required for, early in-person voting; authorizing representatives to sign the back of mail-in ballots; requiring proper supplies be sent to mail-in absentee voters; establishing measures for securing mail-in absentee ballots; providing that the emergency absentee ballot commissioners must sign an oath; authorizing counties that use paper ballots to begin counting absentee ballots at nine o’clock the morning of election day;
removing certain requirements for challenging absentee ballots; removing language that require ballot commissioner’s signatures on absentee ballots; requiring that all electronic voting system materials be retained twenty-two months; providing that a person who assists voters casting their ballots cannot be a candidate on the ballot or an official write-in candidate; removing the requirement that write-in votes be indicated by punching out write-in voting position on a punch card ballot in addition to entering the candidate’s name; providing that the publication of sample ballots will be made not more than twenty-six nor less than twenty days prior to the primary and general elections; requiring numbers and perforated stubs on paper ballots; clarifying the requirements for an executive committee to call a meeting to fill vacancies on a ballot; allowing issues of candidate eligibility to be brought before the election commission; requiring the certificate of announcement for a write-in candidate be received by the close of business the eighteenth day prior to the election; requiring contests for state offices, legislative seats and judgeships to be filed within ten days of the certification of the election; removing the requirement that political committees advocating for or against an issue file financial statements; excluding federal political action committees from filing with the state; allowing a change of treasurer of a campaign committee by filing a written statement; requiring that candidates in a primary election file financial statements on the last Saturday in March or within six days thereafter; requiring that candidates in a general election file financial statement on the first Saturday in September or within six days thereafter; eliminating requirement that financial reports be notarized and requiring them to be sworn; allowing corporations to participate in nonpartisan registration and get-out-the-vote campaigns; prohibiting anonymous radio or television advertisements advocating the election or defeat of candidates; clarifying how a vacancy in the office of county commissioner or clerk of the county commission is to be filled; removing requirement to fill certain vacancies by election if the unexpired term is
greater than one year; removing inconsistent time frames for holding annexation election; and clarifying that a majority of votes in the municipality and a majority of votes in the territory to be annexed determine the outcome of annexation elections.

Be it enacted by the Legislature of West Virginia:

That section forty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty, article two of said chapter be repealed; that section twenty-one, article four-a of said chapter be repealed; that section twenty-one, article nine of said chapter be repealed; that sections seven, nine, twenty, twenty-one, twenty-four, twenty-five, twenty-eight, twenty-nine, thirty, thirty-four, thirty-nine, forty-one, forty-four and forty-five, article one of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty; that sections two, three, five, seven, ten, thirteen, nineteen and thirty, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-a; that sections one, two, two-a, three, five, five-c, seven, eight, ten and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty-three, article four of said chapter be amended and reenacted; that sections nine, nineteen, twenty-two, twenty-four-a and twenty-seven, article four-a of said chapter be amended and reenacted; that sections ten, thirteen, fifteen and nineteen, article five of said chapter be amended and reenacted; that sections three, four-a, five, six, seven and nine, article six of said chapter be amended and reenacted; that sections one and four, article seven of said chapter be amended and reenacted; that sections two, four, five and twelve, article eight of said chapter be amended and reenacted; that sections seven and eight, article ten of said chapter be amended and reenacted; and that section two, article six, chapter eight of said code be amended and reenacted, all to read as follows:
Chapter
  3. Elections.

CHAPTER 3. ELECTIONS.

Article
  2. Registration of Voters.
  3. Voting by Absentees.
  4. Voting Machines.
  4A. Electronic Voting Systems.
  5. Primary Elections and Nominating Procedures.
  6. Conduct and Administration of Elections.
  7. Contested Elections.
  8. Regulation and Control of Elections.
  10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-7. Precinct changes; procedure; precinct record.
§3-1-9. Political party committees; how composed; organization.
§3-1-20. Cards of instructions to voters; sample ballots; posting.
§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.
§3-1-24. Obtaining and delivering election supplies.
§3-1-25. Supplies by special messenger.
§3-1-28. Election officials; eligibility, suspension of eligibility.
§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
§3-1-39. Illegal voting; affidavit; procedure.
§3-1-41. Challenged and provisional voter procedures; counting of provisional voters’ ballots; ballots of election officials.
§3-1-44. Compensation of election officials; expenses.
§3-1-45. Court proceedings to compel performance of duties, etc.
§3-1-48. State election fund.
§3-1-49. Voting system standards.
§3-1-50. Establishment of state-based administrative complaint procedures.
§3-1-7. Precinct changes; procedure; precinct record.

(a) Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within the county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.

(b) No order effecting the change, division or consolidation shall be made by the county commission within ninety days prior to an election nor without giving notice at least one month before the change, division or consolidation 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. The publication area is the county in which the precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, publish the order in the manner required for publication of the notice.

(c) The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts and shall mail written notification to all registered voters affected by the change.

(d) The county commission shall keep in a well-bound book, marked "election precinct record", a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. The "election precinct record" shall be kept by the county commission clerk in his or her office and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.
(e) When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place and shall mail written notification to all registered voters affected by the change.

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the secretary of state. A change, if made however, shall not cause any voter to be moved to a different district.

§3-1-9. Political party committees; how composed; organization.

(a) Every fourth year at the primary election, the voters of each political party in each senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the
Provided, That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender and county of residence. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large which shall constitute the entire voting membership of the state executive committee: Provided, however, That if it chooses to do so, the committee may by motion or resolution, and in accordance with party rules, may expand the voting membership of the committee. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms. Appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

(b) At the primary election, the voters of each political party in each county shall elect one male and one female member of the party’s executive committee of the congressional district, of the senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty senatorial or delegate district. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members will represent the county if
the number of multicounty senatorial or delegate districts in the
county is decreased; and shall appoint members to complete the
remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each
magisterial district or executive committee district, as the case
may be, shall elect one male and one female member of the
party’s county executive committee except that in counties
having three executive committee districts, there shall be
elected two male and two female members of the party’s
executive committee from each magisterial or executive
committee district.

(d) For the purpose of complying with the provisions of this
section, the county commission shall create the executive
committee districts. The districts shall not be fewer than the
number of magisterial districts in the counties, nor shall they
exceed in number the following: Forty for counties having a
population of one hundred thousand persons or more; thirty for
counties having a population of fifty thousand to one hundred
thousand; twenty for counties having a population of twenty
thousand to fifty thousand; and the districts in counties having
a population of less than twenty thousand persons shall be
coeextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly
equal in population as practicable and shall each be composed
of compact, contiguous territory. The county commissions shall
change the territorial boundaries of the districts as required by
the increase or decrease in the population of the districts as
determined by a decennial census. The changes must be made
within two years following the census.

(f) All members of executive committees, selected for each
political division as herein provided, shall reside within the
county or district from which chosen. The term of office of all
74 members of executive committees elected at the primary
75 election in the year one thousand nine hundred ninety-four will
76 begin on the first day of July, following the primary and
77 continue for four years thereafter until their successors are
78 elected and qualified. Vacancies in the state executive commit-
79 tee shall be filled by the members of the committee for the
80 unexpired term. Vacancies in the party's executive committee
81 of a congressional district, senatorial district, delegate district
82 or county shall be filled by the party's executive committee of
83 the county in which the vacancy exists for the unexpired term.

84 (g) As soon as possible after the certification of the election
85 of the new executive committees, as herein provided, they shall
86 convene an organizational meeting within their respective
87 political divisions, on the call of the chairman of corresponding
88 outgoing executive committees or by any member of the new
89 executive committee in the event there is no corresponding
90 outgoing executive committee. During the first meeting the new
91 executive committee must select a chairman, a treasurer and a
92 secretary and other officers as they may desire. Each of the
93 officers shall, for their respective committees, perform the
94 duties that usually appertain to his or her office. The organiza-
95 tional meeting may be conducted prior to the beginning of the
96 term, but no official action other than the election of officers
97 and the appointment to fill vacancies on the committee may be
98 made before the first day of July. A current listing of all
99 executive committees' members shall be filed with the secre-
100 tary of state by the end of July of each year. Vacancies in any
101 executive committee shall be filled no later than four months
102 after the vacancy occurs. The chairman of each executive
103 committee shall submit an updated committee list as changes
104 occur. Executive committee membership lists shall include at
105 least the member's name, full address, employer, telephone
106 number and term information. If a vacancy on an executive
107 committee is not filled within the four-month period prescribed
108 by the provisions of this section, the chair of the executive
committee shall name someone to fill the vacancy within ten
days of the expiration of the four-month period.

(h) Any meeting of any political party executive committee
shall be held only after public notice and notice to each member
is given according to party rules and shall be open to all
members affiliated with the party. Meetings shall be conducted
according to party rules, all official actions shall be made by
voice vote and minutes shall be maintained and shall be open to
inspection by members affiliated with the party.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county shall
provide cards of general information which will provide the
date of the election and the hours during which polling places
will be open, instruction for mail-in registrants and first-time
voters and voters' rights and prohibitions against fraud and
misrepresentation and cards of instruction for voters in prepar-
ing their ballots and casting a provisional ballot as prescribed
by the secretary of state. They shall furnish a sufficient number
of cards to the commissioners of election at the same time they
deliver the ballots for the precinct.

(b) The commissioners of election shall post one instruction
card in each voting booth giving instructions to the voters on
how to prepare the ballots for deposit in the ballot boxes and
how to obtain a new ballot in place of one accidentally spoiled.

(c) The commissioners of election shall post one or more
other cards of general information at places inside and outside
of the voting place where voters pass or wait to vote. The
commissioners shall also post the official write-in candidates in
the same locations inside and outside of the voting place.

(d) The ballot commissioners shall have printed, on a
different color paper than the official ballot, ten or more copies
22 of sample ballots for each voting place for each election. Sample ballots shall be furnished and posted with the cards of general information at each voting place.

25 (e) During the period of early in-person voting, the official designated to supervise and conduct absentee voting shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

1 (a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

5 (b) The persons required to provide the ballots necessary for conducting all other elections are:

7 (1) The secretary of state, for any statewide special election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide special election ordered by the county commission;

11 (3) The board of education, for any special levy or bond election ordered by the board of education; or

13 (4) The municipal board of ballot commissioners, for any election conducted for or within a municipality except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those printed by the proper authorities as specified in this section shall not be cast, received or counted in any election.
(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. The circuit clerk shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the circuit clerk who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the circuit clerk of the appropriate county not later than the forty-second day before the election. In counties where the clerk of the county commission is responsible for conducting absentee voting, the circuit clerk shall transfer the absentee ballots to the clerk of the county commission prior to the beginning of absentee voting. All official ballots in paper ballot systems shall be delivered to the circuit clerk of the appropriate county not later than twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude as to confuse or mislead the
voters, the board shall cause the error to be corrected either by
the reprinting of the ballots or by the use of stickers printed
with the correction and of suitable size to be placed over the
error without covering any other portion of the ballot.

§3-1-24. Obtaining and delivering election supplies.

(a) It shall be the duty of the clerk of the county commis-

sion to appoint one or more of the commissioners of election or

poll clerks at each precinct of the county to attend at the offices

of the clerks of the circuit court and county commission, as the
case may be, at least one day before each election to receive the
ballots, ballot boxes, poll books, registration records and forms
and all other supplies and materials for conducting the election
at the respective precincts. The clerks shall take a receipt for the
respective materials delivered to the commissioners of election
or poll clerks and shall file the receipt in their respective
offices. It shall be the duty of the commissioners or poll clerks

to receive the supplies and materials from the respective clerks

and to deliver them with the seal of all sealed packages unbro-

ken at the election precinct in time to open the election.

(b) The commissioners or poll clerks, if they perform the
messenger services, shall receive the per diem and mileage rate

prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with seals
unbroken. For general and special elections the delivered
ballots shall not be in excess of one and one-twentieth times the
number of registered voters in the precinct. For primary
elections the ballots for each party shall be in a separately
sealed package containing not more than one and one-twentieth
times the number of registered voters of each party in the
election precinct.
(d) For primary elections one copy of the poll books, including the written or printed forms for oaths of commissioners of election and poll clerks, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

(e) There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

§3-1-25. Supplies by special messenger.

In case any commissioner of election or poll clerk fails to appear at the offices of the clerks of the county commission and circuit courts by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman or the circuit clerk shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for the precinct. The messenger, if not a county employee, shall be allowed five dollars for this service. The messenger shall also receive mileage up to the rate of reimbursement authorized by the travel management rule of the department of administration for each mile necessarily traveled in the performance of his or her services. The messenger shall promptly report to the clerks of the circuit court and county commission, respectively, and file with the clerks the receipts of the person to whom he or she delivered the ballots and other supplies and his or her affidavit stating when and to whom he or she delivered them.

§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county or municipal election held in West Virginia, a person:
(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: Provided, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election;

(4) May not be the parent, child, sibling or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;
(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter’s ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) of this section: Provided, That the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election date. The names of those persons signing the petition must be kept confidential.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term “standard receiving board” means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box;

(2) The term “expanded receiving board” means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;
(3) The term "counting board" means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner;

(4) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(5) The term "election official trainee" means an individual who is sixteen or seventeen years of age who meets the requirements of subdivisions (2), (3), (4), (5) and (6), subsection (a), section twenty-eight of this article who serves as a trainee to the standard receiving board on a volunteer basis by assisting the standard receiving board in performing its official duties and who receives credits for an official community service program as may be required to obtain a high school diploma.

(b) The composition of boards of election officials shall be as follows:

(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board; and
(B) For precincts of more than five hundred registered
voters, one standard receiving board or, at the discretion of the
county commission, one expanded receiving board.

(3) In any election conducted using paper ballots, counting
boards may be allowed, disallowed or required as follows:

(A) For any state, county or municipal special election, no
counting board may be allowed;

(B) In a statewide primary or general election, one counting
board is required for any precinct of more than four hundred
registered voters and one counting board may be allowed, at the
discretion of the county commission, for any precinct of at least
two hundred but no more than four hundred registered voters;
and

(C) In a municipal primary or general election, one count-
ing board may be allowed, at the discretion of the municipal
governing body, for any precinct of more than two hundred
registered voters.

(c) For each primary and general election in the county, the
county commission shall designate the number and type of
election boards for the various precincts according to the
provisions of this section. At least eighty-four days before each
primary and general election the county commission shall
notify the county executive committees of the two major
political parties in writing of the number of nominations which
may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the
municipality shall perform the duties of the county commission
as provided in this section.

(e) For each primary, general or special election in the
county, the county commission, and for each municipal
election, the governing body of the municipality, may appoint one or two election official trainees for each precinct.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least ten percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on its behalf, shall file in writing with the appointing body, no later than the fifty-sixth day before the election, a list of those persons nominated and the positions for which they are designated.
(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.
(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

1. Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

2. The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

1. Those alternates nominated by the executive committees shall be appointed;

2. The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

3. The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.
(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If an appointed election official fails to appear at the polling place by forty-five minutes past five o'clock a.m. on election day, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

1. The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

2. If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

3. If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.
(k) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

§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 that 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 that person is physically or otherwise unable to sign his or her 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 the affixation. No ballot may be given to the 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 that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must 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 provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is 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 the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional 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 provisional ballots prior to removal of the ballot from the unmarked envelope.

(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 deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it 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 required by this subsection. 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 is 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
the 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, the challenge 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 may 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 to the voter the names of the candidates selected on the ballot;

(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, other than the voter’s present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; 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 if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional 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 the ballot on the ground that the voter thereof received assistance in voting it when in his, her or their opinion 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 the 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:

(A) May 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 must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must 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 the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the 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. The 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 a voter is required to sign an oath or affirmation where the reason for requesting 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 the 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.

(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 has been assisted in voting, the commissioners shall likewise make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot the voter shall fold the ballot so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall 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 the 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 unfold-
ing 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 may 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. The clerk
of the county commission shall make the oaths, affirmations
and list available for public inspection and shall preserve them
for a period of twenty-two months or until disposition is
authorized or directed by the secretary of state, or court of
record: Provided, That the clerk may use these records to
update the voter registration records in accordance with
subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required
under the provisions of this section who knowingly swears
falsely or any person who counsels, advises, aids or abets
another in the commission of false swearing under this section
is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not more than one thousand dollars or confined in the
county or regional jail for a period of not more than one year,
or both fined and confined.

(i) Any election commissioner or poll clerk who authorizes
or provides unchallenged assistance to a voter when the voter
is known to the election commissioner or poll clerk not to
require assistance in voting is guilty of a felony and, upon
conviction thereof, shall be fined not more than five thousand
§3-1-39. Illegal voting; affidavit; procedure.

(a) If at any time during the election any qualified voter shall appear at the polls for the purpose of stating that any person who has voted is an illegal voter in the precinct, that person shall be admitted to the election room and shall appear before a commissioner of election to make an affidavit explaining why he or she believes the accused to be an illegal voter.

(b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by the commissioners of election. The envelope shall be securely sealed and each of the commissioners shall endorse his or her name on the back of the envelope. At the close of the count the envelope shall be delivered to the clerk of the circuit court in accordance with section sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed as if it had been made before him or her.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It shall be the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election if the person's registration record is not available at the time of the election or if the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the
registration record, if the registration record of the person indicates any other legal disqualification or if any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason thereof and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Provisional ballot shall not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(e) Any person duly appointed as an election commissioner or clerk under the provisions of section twenty-eight of this
article who serves in that capacity in a precinct other than the
precinct in which the person is legally entitled to vote may cast
a provisional ballot in the precinct in which the person is
serving as a commissioner or clerk. The ballot shall not be
invalid for the sole reason of having been cast in a precinct
other than the precinct in which the person is legally entitled to
vote. The county commission shall record the provisional ballot
on the voter’s permanent registration record: Provided, That the
county commission may only count the votes for the offices that
the voter was legally authorized to vote for in his or her own
precinct.

(f) The secretary of state shall establish a free access system
such as a toll-free telephone number or an internet website that
may be accessed by any individual who casts a provisional
ballot to discover whether the vote of that individual was
counted and, if not, the reason that the vote was not counted.

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be
fixed by the county commission, not exceeding one hundred
twenty-five dollars for each day he or she serves as ballot
commissioner, but in no case may a ballot commissioner
receive allowance for more than ten days’ services for any one
primary, general or special election.

(b) Each commissioner of election and poll clerk is to be
paid a sum, to be fixed by the county commission, not exceed-
ing one hundred twenty-five 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
seventy-five dollars for his or her services at any one election:
Provided, That each commissioner of election and poll clerk is
to be paid a sum not exceeding one hundred seventy-five
dollars for his or her services at any of the three special elections described in subsection (f) of this section.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county commission, not exceeding fifty dollars for one day's services for attending the school of instruction for election officials: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks 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, are to be paid an additional sum, fixed by the county commission, not exceeding one hundred twenty-five dollars for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the department of administration for each mile necessarily traveled in the performance of his or her services.

(e) 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 described in subsection (f) of this section, are to be audited by the county commission and paid out of the county treasury.

(f) 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 are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the secretary of state. If satisfied that the 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 the warrants directly to the vendors of the special election services, supplies and facilities.

§3-1-45. Court proceedings to compel performance of duties, etc.

Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case, issue a writ to be returned, heard and determined within fifteen days from the commencement of the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the proceedings, settling all questions presented therein within fifteen days from the commencement of the proceedings, unless delayed by proceedings in the supreme court of appeals, or a judge thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five days thereafter and proceed forthwith
to the performance of its duties under the provisions of this article. A mandamus shall lie from the supreme court of appeals, or any one of the judges thereof in vacation, returnable before court, to compel any officer herein to do and perform legally any duty required of him or her. In an election of a member of the House of Delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the supreme court of appeals, or a judge thereof in vacation, returnable before the court, to correct any error of law and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and determine all matters arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or certiorari shall have precedence over all other business pending before the court. The issues before the court shall be determined within five days from the assembling of the court and, in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers in order that the board may perform its duty and issue the certificate of election before the second Wednesday in January, then next following. Mandamus and prohibition proceedings under this section may be upon affidavit alone.

§3-1-48. State election fund.

There is hereby created in the state treasury a special revenue account to be known as the “State Election Fund” account. Expenditures from the account shall be used by the secretary of state for the administration of this chapter in accordance with the provisions of 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, in
accordance with the provisions of article eleven, chapter four of this code.

§3-1-49. Voting system standards.

(a) In accordance with 42 U. S. C. §1530, et seq., the Help America Vote Act of 2002, Public Law 107-252, each voting system used in an election for federal office shall:

(1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error; and

(3) If the voter selects votes for more than one candidate for a single office: (A) Notify the voter that the voter has selected more than one candidate for a single office on the ballot; (B) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (C) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted: Provided, That a county that uses a paper ballot voting system, a punch card voting system or an optical scan voting system may meet the requirements of this paragraph by establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and providing the voter with instructions on how to correct the ballot before it is cast and counted, including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.
(4) Ensure that any notification required under this section preserves the privacy of the voter and the confidentiality of the ballot.

(b) Each voting system used in an election for federal office shall produce a record with an audit capacity for the system which shall meet the following requirements:

(1) Produce a permanent paper record with a manual audit capacity for the system; and

(2) Provide the voter with an opportunity to change the ballot or correct any error before the ballot is cast and counted and before the permanent paper record is produced.

(c) Each voting system used in an election for federal office shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters: Provided, That the provisions of this subsection may be satisfied through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

§3-1-50. Establishment of state-based administrative complaint procedures.

The secretary of state shall establish and maintain a state-based administrative complaint procedure for complaints received concerning election violations which shall meet the following requirements:

(1) The procedures shall be uniform and nondiscriminatory.

(2) Under the procedures, any person who believes that there is a violation of any provision of this chapter, including a
violation which has occurred, is occurring or is about to occur, may file a complaint.

(3) Any complaint filed under the procedures shall be in writing, notarized and signed and sworn by the person filing the complaint.

(4) The secretary of state may consolidate complaints filed under this section.

(5) At the request of the complainant, there shall be a hearing on the record.

(6) Violations of any provision of this chapter shall be punishable in accordance with the provisions of article nine of this chapter.

(7) If, under the procedures, the secretary of state determines that there is no violation, the secretary of state shall dismiss the complaint and publish the results of the procedures.

(8) The secretary of state shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period which begins on the date the complaint is filed unless the complainant consents to a longer period for making a determination.

(9) If the secretary of state fails to meet the deadline applicable under subdivision (8) of this section, the complaint shall be resolved within sixty days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

ARTICLE 2. REGISTRATION OF VOTERS.
§3-2-2. Eligibility to register to vote.

(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a state or county primary election, but may only vote in a municipal primary election if he or she will be eighteen years of age by the time of the next municipal general election, but is not eligible to vote in a special election.

(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and is not eligible to register or to continue to be
registered to vote while serving his or her sentence, including
any period of incarceration, probation or parole related thereto.
Any person who has been determined to be mentally incompe-
tent by a court of competent jurisdiction is disqualified and
shall not be eligible to register or to continue to be registered to
vote for as long as that determination remains in effect.

§3-2-3. State authority relating to voter registration; chief elec-
tion official.

(a) The secretary of state, as chief election official of the
state as provided in section six, article one-a of this chapter,
shall have general supervision of the voter registration proce-
dures and practices and the maintenance of voter registration
records in the state and shall have authority to require reports
and investigate violations to ensure the proper conduct of voter
registration throughout the state and all of its subdivisions.

(b) The secretary of state, as chief election official of the
state, is responsible for implementing, in a uniform and
nondiscriminatory manner, a single, uniform, official, central-
ized, interactive computerized statewide voter registration list
defined, maintained and administered at the state level that
contains the name and registration information of every legally
registered voter in the state and assigns a unique identifier to
each legally registered voter in the state.

(c) The secretary of state is hereby designated as the chief
election official responsible for the coordination of this state’s
responsibilities under 42 U. S. C. §1973gg, et seq., the “Na-
tional Voter Registration Act of 1993”. The secretary of state
shall have general supervision of voter registration procedures
and practices at agencies and locations providing services as
required by the provisions of this article and shall have the
authority to propose procedural, interpretive and legislative
rules for promulgation in accordance with the provisions of
article three, chapter twenty-nine-a of this code for application
for registration, transmission of applications, reporting and
maintenance of records required by the provisions of this article
and for the development, implementation and application of
other provisions of this article.

§3-2-4a. Statewide voter registration list.

(a) The secretary of state shall implement and maintain a
single, official, statewide, centralized, interactive computerized
voter registration list of every legally registered voter in the
state and shall assign a unique voter registration identifier to
each legally registered voter in the state, which shall include the
following:

(1) The computerized list shall serve as the single system
for storing and managing the official list of registered voters
throughout the state.

(2) The computerized list shall contain the name and
registration information of every legally registered voter in the
state.

(3) Under the computerized list, a unique identifier shall be
assigned to each legally registered voter in the state.

(4) The computerized list shall be coordinated with other
agency databases within the state.

(5) The secretary of state and any clerk of the county
commission may obtain immediate electronic access to the
information contained in the computerized list.

(6) Voter registration information obtained by every clerk
of the county commission in the state shall be electronically
entered into the computerized list on an expedited basis at the
time the information is provided to the clerk.
(7) The secretary of state shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The computerized list shall serve as the official voter registration list for conducting all elections in the state.

(b) The secretary of state or any clerk of a county commission shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(1) If an individual is to be removed from the computerized list, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The secretary of state shall coordinate the computerized list with state agency records and remove the names of individuals who are not qualified to vote because of felony status or death.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the computerized list;

(2) Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(3) Duplicate names are eliminated from the computerized list.

(d) The secretary of state and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.
(e) The secretary of state shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty-four, article three of this chapter and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters except that no registrant may be removed solely by reason of a failure to vote.

(2) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection, notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes either: (A) In the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number; or (B) in the case of any other applicant, the last four digits of the applicant’s social security number.

(2) If an applicant for voter registration has not been issued a current and valid driver’s license or a social security number, the secretary of state shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.
(g) The secretary of state and the commissioner of the division of motor vehicles shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the division of motor vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The commissioner of the division of motor vehicles shall enter into an agreement with the commissioner of social security under 42 U.S.C. §301, et seq., the Social Security Act.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the secretary of state and shall conform with the requirements of 42 U. S. C. §1973gg, et seq., the "National Voter Registration Act of 1993" and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the secretary of state to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U. S. C. §1973, et seq., the "Uniformed and Overseas Citizens Absentee Voting Act of 1986", and the mail voter registration application form
prescribed by the Federal Election Commission pursuant to 42 U. S. C. § 1973gg, et seq., the "National Voter Registration Act of 1993", shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U. S. C. § 1973gg, et seq., the "National Voter Registration Act of 1993";

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration unless the political party has determined otherwise;

(4) The last four digits of the applicant's social security number or the applicant's driver's license number; and

(5) Any other instructions or information essential to complete the application process.

c) Each application form shall require that the following be provided by the applicant, under oath, and any application which does not contain each of the following shall be considered incomplete:

(1) The applicant's legal name, including the first name, middle or maiden name, if any, and last name;

(2) The month, day and year of the applicant's birth;
46 (3) The applicant’s residence address, including the number and street or route and city and county of residence except:

48 (A) In the case of a person eligible to register under the provisions of 42 U. S. C. § 1973ff, et seq., the “Uniformed and Overseas Citizens Absentee Voting Act”, the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and

54 (B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; and

61 (4) The applicant’s signature, under penalty of perjury, as provided in section thirty-six of this article to the attestation of eligibility to register to vote and to the truth of the information given.

65 (d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

68 (1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

71 (2) The applicant’s choice of political party affiliation, if any, or an indication of no affiliation: Provided, That any applicant who does not enter any choice of political party affiliation shall be listed as having no party affiliation on the voting record;
(3) The applicant's residence mailing address if different than the residence street address;

(4) The last four digits of the applicant's social security number;

(5) The applicant's telephone number;

(6) The address at which the applicant was last registered to vote, if any, for the purpose of canceling or transferring the previous registration; and

(7) The applicant's gender.

(e) The secretary of state shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form.

(f) Application forms prescribed in this section may refer to various public officials by title or official position, but in no case may the actual name of any officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than the first day of July of each odd-numbered year the secretary of state shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required.
(a) The clerk of the county commission shall provide voter registration services at all times when the office of the clerk is open for regular business.

(b) Any eligible voter who desires to apply for voter registration in person at the office of the clerk of the county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy. The applicant shall present valid identification and proof of age, except that the clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

(c) The clerk shall attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes.

(d) Upon receipt of the completed registration application, the clerk shall either:

(1) Provide a notice of procedure for verification and notice of disposition of the application and immediately begin the verification process prescribed by the provisions of section sixteen of this article; or

(2) Upon presentation of a current driver’s license or state-issued identification card containing the residence address as it appears on the voter registration application, issue the receipt of registration.

§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Applica-
tion shall be made on a prescribed form as provided by section five of this article.

(b) To the extent possible, with funds allocated annually for such purpose, the secretary of state shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The secretary of state shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The secretary of state may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and, only after completing the information, sign the prescribed applicant’s oath under penalty of perjury as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county commission may correct any entry upon the request of the applicant provided the request is properly documented and the correction is dated and initialed by the clerk.
(e) Completed applications shall be mailed or delivered to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant's residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

   (1) Attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

   (2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state or if the statewide voter registration has not yet been implemented, the voter has not previously voted in the county shall be required to present the following forms of identification to the secretary of state or clerk of the county commission:

   (1) In the case of an individual who votes in person, a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter;

   (2) In the case of an individual who votes by mail, submits with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government
check, paycheck or other government document that shows the name and address of the voter.

(h) An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g), may cast a provisional ballot.

(i) Subsection (g) shall not apply in the case of a person:

(1) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;

(2)(A) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits with his or her registration either a driver’s license number or at least the last four digits of the individual’s social security number; and (B) with respect to whom the secretary of state or clerk of the county commission matches the information submitted under paragraph (A) with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

(3) Who is: (A) Entitled to vote by absentee ballot under 42 U. S. C. §1973ff-1, et seq., the Uniformed and Overseas Citizens Absentee Voting Act; (B) provided the right to vote otherwise than in person under 42 U. S. C. §1973ee-1(b) (2)(B) (ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act; (C) entitled to vote otherwise than in person under any other federal law: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (b), section one, article three of this chapter; paragraph (B), subdivision (2) of said subsection; subdivision (3) of said subsection; or subsec-
tion (c) of said section shall not have his or her ballot in that
election challenged for failure to appear in person or for failure
to present identification.

(j) Any person who submits a state mail voter registration
application to the clerk of the county commission in the county
in which he or she is currently registered for the purpose of
entering a change of address within the county, making a
change of party affiliation or recording a change of legal name
shall not be required to make his or her first vote in person or
to present identification or proof of age.

§3-2-13. Agencies to provide voter registration services; designa-
tion of responsible employees; forms; prohibitions;
confidentiality.

(a) For the purposes of this article, “agency” means a
department, division or office of state or local government, or
a program supported by state funds, which is designated under
this section to provide voter registration services, but does not
include departments, divisions or offices required by other
sections of this article to provide voter registration services.

(b) Beginning on the first day of January, one thousand nine
hundred ninety-five, the following agencies shall provide voter
registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide
services under the food stamp program, the “Aid to Families
with Dependent Children” (AFDC) program, the “Women,
Infants and Children” (WIC) program and the medicaid
program;

(2) Those state-funded agencies primarily engaged in
providing services to persons with disabilities;
(3) County marriage license offices; and

(4) Armed services recruitment offices, as required by federal law.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the secretary of state shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the “National Voter Registration Act of 1993” (42 U. S. C. §1973gg, et seq.). The offices and programs so designated shall begin providing voter registration services on the first day of January, one thousand nine hundred ninety-five.

(d) No later than the first day of July, one thousand nine hundred ninety-six, and each even-numbered year thereafter, the secretary of state shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section. The secretary of state shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.

(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all programs under the agency’s jurisdiction. Each state supervisor shall be responsible for coordination with the secretary of state, overall
operation of the program in conjunction with services within
the agency, designation and supervision of local coordinators
and for the review of any complaints filed against employees
relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee
as a local coordinator for voter registration services for each
office or program delivery center who shall be responsible for
the proper conduct of voter registration services, timely return
of completed voter registration applications, proper handling of
declinations and reporting requirements. Notice of the designa-
tion of these persons shall be made upon request of the secre-
tary of state and within five days following any change of
designation.

(g) The registration application forms used for agency
registration shall be issued pursuant to the provisions of section
five of this article.

(h) The secretary of state, in conjunction with those
agencies designated to provide voter registration services
pursuant to the provisions of this section, shall prescribe the
form or portion of the appropriate agency form required by the
provisions of 42 U. S. C. §1973gg, et seq., section 7(a)(6)(B) of
the “National Voter Registration Act of 1993”, containing the
required notices and providing boxes for the applicant to check
to indicate whether the applicant would like to register or
decline to register to vote. The form or portion of the form is
designated the “declination form”.

(i) A person who provides voter registration services shall
not:

(1) Seek to influence an applicant’s political preference or
party registration;
(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

§3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.

(a) Each county shall continue to maintain a record of each active and inactive voter registration in precinct registration books until the statewide voter registration system is adopted pursuant to the provisions of section four-a of this article, fully implemented and given final approval by the secretary of state. The precinct registration books shall be maintained as follows:

(1) Each active voter registration shall be entered in the precinct book or books for the county precinct in which the voter's residence is located and shall be filed alphabetically by name, alphabetically within categories, or by numerical street address, as determined by the clerk of the county commission for the effective administration of registration and elections. No active voter registration record shall be removed from the
(2) Each voter registration which is designated "inactive" pursuant to the procedures prescribed in section twenty-seven of this article shall be retained in the precinct book for the county precinct in which the voter's last recorded residence address is located until the time period expires for which a record must remain on the inactive files. Every inactive registration shall be clearly identified by a prominent tag or notation or arranged in a separate section in the precinct book clearly denoting the registration status. No inactive voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(b) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) County precinct books shall be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other precinct books to make up a complete set of registration records for the municipal election precinct.

(2) Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county precinct books or separate municipal sections of those precinct books. If the clerk of the county commission objects to
the request of a municipality for separate municipal precinct books, the state election commission must determine whether the separate municipal precinct books should be maintained.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(c) Within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter's address is within the boundaries of the municipality.

(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The alphabetical file may be maintained on individual paper forms or, upon approval of the secretary of state of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to prevent accidental destruction of the information on file.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.
(a) The active, inactive, rejected and canceled voter registration records shall be made available for public inspection during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person shall be allowed to examine these files under the supervision of the clerk and obtain copies of records except when a precinct book is in temporary use for updating and preparing lists or during the time the books are sealed for use in an election. Other original voter registration records, including canceled voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents, shall be available for inspection upon specific request;

(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person shall be allowed to examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available shall include all registration and voting information maintained in the file, except that the telephone number and social security number of any voter shall not be available for inspection or copying in any format.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.

(1) In counties maintaining active and inactive files on precinct registration books only, a separate list for each of the two major political parties and for voters registered independent or other affiliation shall be prepared for each precinct. The lists shall be arranged in alphabetical order or street order, as the
books are maintained, and shall include the name, residence address and party affiliation of the voter, along with a designation of inactive status where applicable. The lists shall be prepared prior to the primary election and the clerk shall not be required to supplement or revise those lists as registrations are added or canceled.

(2) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the telephone number or social security number of the registrant. The clerk shall establish a written policy, which shall be posted within public view, listing the options which may be requested for selection and sorting criteria and available data elements, which shall include at least the name, residence address, political party affiliation and status and the format of the lists and the times at which lists will be prepared. A copy of the policy shall be filed with the secretary of state no later than the first day of January, one thousand nine hundred ninety-five, and within thirty days after any change in policy.

(c) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No data file prepared under this subsection may include the telephone number or social security number of the registrant.

(d) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.
(e) After the implementation of the state uniform voter data system, the secretary of state may make voter lists available for sale subject to the limitations as provided in this section for counties, except that the cost shall be one and one-half cents per name plus ten dollars for each disk required. One cent per name for each voter from a particular county on each list sold shall be reimbursed to the appropriate county and one-half cent per name shall be deposited to a special account for purpose of defraying the cost of the preparation of the lists.

(f) No voter registration lists or data files containing the names, addresses or other information relating to voters derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.

§3-3-3. Early voting in person.

§3-3-5. Voting an absentee ballot by mail; penalties.

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

§3-3-7. Delivery of absentee ballots to polling places.

§3-3-8. Disposition and counting of absent voters’ ballots.

§3-3-10. Challenging of absent voters’ ballots.

§3-3-11. Preparation, number and handling of absent voters’ ballots.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.
(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active
duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less; and

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability.

(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than thirty days; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if
§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission: Provided, That if the clerk of the county commission and the clerk of the circuit court jointly petition the county commission setting forth their agreement that the clerk of the circuit court should continue to supervise and conduct the absentee voting, the county commission shall designate the clerk of the circuit court to supervise and conduct the absentee voting; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "circuit clerk" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in absentee ballot in any primary, general or special election is to make application in writing in the proper form to the proper official as follows:
(1) The completed application is to be on a form prescribed by the secretary of state and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required and an indication as to whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act; or

(3) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline for an application for an absentee ballot by mail is to be received by the proper official, the completed application may be in a form set out by the voter, provided all information required to meet the provisions of this article is set forth and the application is signed by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.

Throughout the period of early in-person voting, the official designated to supervise and conduct absentee voting shall make the following provisions for voting:
(1) The official 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 are to be in an area separate from but within clear view of the public entrance area of the official’s office or other area designated by the county commission for absentee voting and are to be arranged to ensure the voter complete privacy in casting the ballot.

(2) The official 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 officials or employees of the official designated to supervise and conduct absentee voting or members of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

(3) The official designated to supervise and conduct absentee voting shall request the county commission designate another area within the county courthouse or any annex of the courthouse as a portion of the official’s office for the purpose of absentee voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;

(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting; or

(C) If there is no suitable area for absentee voting within the office.
Any designated area is subject to the same requirements as the regular absentee voting area.

(4) The official designated to supervise and conduct absentee voting shall have at least two representatives to assist with absentee voting: Provided, That the two representatives shall not be registered with the same political party affiliation or two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of absentee voting in person or volunteers.

(5) 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 any annex facilities during the entire period of regular in-person absentee voting. The official designated to supervise and conduct absentee voting is hereby authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

§3-3-3. Early voting in person.

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the twentieth day before the election and continuing through the third day before the election. For any election held on a Tuesday, the early voting period for in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the election.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representa-
tive designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she shall be required to sign his or her name in the space marked “signature of voter” on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. No ballot may be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter’s signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter’s absentee ballot as provided in this article.

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the secretary of state:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or
(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: Provided, however, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope;

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk;

(4) Due to the reenactment of this section by the Legislature in the two thousand three regular session removing authorization for early in-person voting on the Monday prior to a Tuesday election, to assure notice to all persons that voted on the Monday before the Tuesday election day of the two thousand two general election are made aware of this change, the clerk of each county shall, for the primary election of the year two thousand four, include along with the sample ballots
§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail or by facsimile, if the official has access to facsimile equipment, the appropriate application for voting absentee by mail as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(b) Completed applications for voting an absentee ballot by mail is to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail or by facsimile, if the official has access to facsimile equipment, within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to absent uniformed services and overseas voters, not earlier than the first day of January of an election year, or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter’s request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.
28 (c) Upon acceptance of a completed application, the official
designated to supervise and conduct absentee voting shall
determine whether the following requirements have been met:

31 (1) The application has been completed as required by law;

32 (2) The applicant is duly registered to vote in the precinct
of his or her residence and, in a primary election, is qualified to
vote the ballot of the political party requested;

35 (3) The applicant is authorized for the reasons given in the
application to vote an absentee ballot by mail;

37 (4) The address to which the ballot is to be mailed is an
address outside the county if the voter is applying to vote by
mail under the provisions of paragraph (A) or (B), subdivision
(2), subsection (b), section one of this article; or subdivision (3)
or (4) of said subsection;

42 (5) The applicant is not making his or her first vote after
having registered by postcard registration or, if the applicant is
making his or her first vote after having registered by postcard
registration, the applicant is exempt from these requirements;
and

47 (6) No regular and repeated pattern of applications for an
absentee ballot by mail for the reason of being out of the county
during the entire period of voting in person exists to suggest
that the applicant is no longer a resident of the county.

(d) If the official designated to supervise and conduct
absentee voting determines that the required conditions have
been met, two representatives that are registered to vote with
different political party affiliations shall sign their names in the
places indicated on the back of the official ballot. If the official
designated to supervise and conduct absentee voting determines
the required conditions have not been met, or has evidence that
any of the information contained in the application is not true, the official shall give notice to the voter that the voter’s absentee ballot will be challenged as provided in this article and shall enter that challenge.

(e) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as prescribed by the secretary of state:

(1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) One envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(3) One postage paid envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”;

(4) Instructions for voting absentee by mail;

(5) For electronic systems, one punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;

(6) If a punching tool is to be utilized, one disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter; and

(7) Any other supplies required for voting in the particular voting system.

(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot
or ballots, the voter shall: (1) Place the ballot or ballots in envelope no. 1 and seal that envelope; (2) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope; (3) complete and sign the forms on envelope no. 2; and (4) return that envelope to the official designated to supervise and conduct absentee voting.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if: (1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or (2) the ballot bears a postmark of the United States postal service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.

(j) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting no later than the day preceding the election: Provided, That no person may hand
deliver more than two absentee ballots in any election, and any
person hand delivering an absentee ballot is required to certify
that he or she has not examined or altered the ballot. Any
person who makes a false certification violates the provisions
of article nine of this chapter and is subject to those provisions.

(k) Upon receipt of the sealed envelope, the official
designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent
record of persons applying for and voting an absentee ballot in
person; and

(4) Place the sealed envelope into a ballot box that is
secured by two locks with a key to one lock kept by the
president of the county commission and a key to the other lock
kept by the county clerk.

§3-3-5c. Procedures for voting an emergency absentee ballot by
qualified voters.

(a) Notwithstanding any other provision of this chapter, a
person qualified to vote an emergency absentee ballot, as
provided in subsection (c), section one of this article may vote
an emergency absentee ballot under the procedures established
in this section. The county commission may adopt a policy
extending the emergency absentee voting procedures to: (1)
Hospitals or other duly licensed health care facilities within an
adjacent county or within thirty-five miles of the county seat;
or (2) nursing homes within the county: Provided, That the
policy is to be adopted by the county commission at least ninety
days prior to the election that will be affected and a copy of the
policy is to be filed with the secretary of state.
(b) On or before the fifty-sixth day preceding the date on which any election is to be held the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter’s immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the secretary of state and is to include the name, residence address and political party affiliation of the voter, the date, location and
reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of section ten of this article.
(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in section ten of this article.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of section six of this article. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

§3-3-7. Delivery of absentee ballots to polling places.

(a) Except as otherwise provided in this article, in counties using paper ballots systems or voting machines, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the secretary of state, are to be delivered in a
sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article are to be delivered to the board of canvassers along with the provisional ballots.

§3-3-8. Disposition and counting of absent voters’ ballots.

(a) In counties using paper ballots, all absentee ballots shall be processed as follows:

(1) The ballot boxes containing the absentee ballots shall be opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) Absentee ballots shall be delivered to the polls to be opened and counted in accordance with section thirty-three, article one of this chapter, section fifteen, article five of this chapter; and section six, article six of this chapter. Disclosure of any results before the voting has been closed and the precinct
returns posted on the door of the polling place shall be a per se violation of the oath taken by the counting board. In all other counties, counting is to begin immediately after closing of the polls.

(b) In the counties using punch card systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(c) In counties using optical scan systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(d) In counties using direct recording elections systems, the absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(e) The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.
(f) Any election official who determines a person has voted an absent voter's ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

§3-3-10. Challenging of absent voters' ballots.

(a) The official designated to supervise and conduct absentee voting may challenge an absent voter's ballot on any of the following grounds:

1. That the application for an absent voter's ballot has not been completed as required by law;

2. That any statement or declaration contained in the application for an absent voter's ballot is not true;

3. That the applicant for an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

4. That the person voting an absent voter's ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot;

5. That the person who voted an absent voter's ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this article for assistance; and
(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times: 
Provided, That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.

(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter’s ballot on any of the following grounds:

(1) That the application for an absent voter’s ballot was not completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter’s ballot is not true;

(3) That the person voting an absent voter’s ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the signatures of the person voting an absent voter’s ballot as they appear on his or her registration record, his or her application for an absent voter’s ballot and the absent voter’s ballot envelope are not in the same handwriting;

(5) That the person voting an absent voter’s ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically
disabled as to have been unable to see or mark the absent voter's ballot;

(6) That the person voted an absent voter's ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;

(7) That the person who voted the absent voter's ballot voted in person at the polls on election day;

(8) That the person voted an absent voter's ballot under authority of subdivision (3), subsection (b), section one of this article and is or was present in the county in which he or she is registered to vote between the opening and closing of the polls on election day; and

(9) On any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

No challenge may be made to any absent voter ballot if the voter was registered and qualified to vote pursuant to the provisions of subsection (a), section one of this article.

(c) Forms for, and the manner of, challenging an absent voter's ballot under the provisions of this article are to be prescribed by the secretary of state.

(d) Absent voters' ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters' ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged
§3-3-11. Preparation, number and handling of absent voters’ ballots.

(a) Absent voters’ ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case the lesser number of days applies, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the circuit court of the county not less than forty-two days before the day of the election at which they are to be used. In counties where the clerk of the county commission is responsible for conducting absentee voting, the circuit clerk shall transfer the absentee ballots to the clerk of the county commission prior to the beginning of absentee voting.

(b) The official designated to supervise and conduct absentee voting shall be primarily responsible for the mailing, receiving, delivering and otherwise handling of all absent voters’ ballots. He or she shall keep a record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any,
marked before him or her and shall deliver to the commissioner
of election a certificate stating the number of ballots delivered
or mailed to absent voters and those marked before him or her,
if any, and the names of the voters to whom those ballots have
been delivered or mailed or by whom they have been marked,
if marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure
and requirements.
§3-4-23. Voting by challenged voters.

§3-4-10. Ballot labels, instructions and other supplies; vacancy
changes; procedure and requirements.

(a) The ballot commissioners of any county in which voting
machines are to be used in any election shall cause to be printed
for use in the election the ballot labels for the voting machines
and paper ballots for absentee voting, voting by persons unable
to use the voting machine and provisional ballots or if an
electronic voting system or direct recording election equipment
is to be used in an election, the ballot commissioners shall
comply with requirements of section eleven, article four-a of
this chapter. The labels shall be clearly printed in black ink on
clear white material in a size that will fit the ballot frames. The
paper ballots shall be printed in compliance with the provisions
of this chapter governing paper ballots.

(b) The heading, the names and arrangement of offices and
the printing and arrangement of names of the candidates for
each office indicated must be placed on the ballot for the
primary election as nearly as possible according to the provi-
sions of sections thirteen and thirteen-a, article five of this
chapter and for the general election according to the provisions
of section two, article six of this chapter: Provided, That the
staggering of the names of candidates in multicandidate races
and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the provisions of the laws and regulations governing the question.

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for provisional ballots and ballots to be cast by persons unable to use the voting machine. All required paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.

(e) When the ballot labels and absentee ballots are delivered, the clerk of the circuit court shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct and deliver the ballot labels to the clerk of the county commission who shall insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of the ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

(f) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their
county. In addition, they shall provide appropriate facilities for
the reception and safekeeping of the ballots of absent voters and
of challenged voters and of the "independent" voters who shall,
in primary elections, cast their votes on nonpartisan candidates
and public questions submitted to the voters.

§3-4-23. Voting by challenged voters.

If the right of any person to vote is challenged in accor-
dance with provisions of article one of this chapter relating to
the challenging of voters, the person shall not be permitted to
cast his or her vote by use of the voting machine but he or she
shall be supplied by the election officer at the polling place with
an official printed ballot of the election. The provisional ballot
shall not be endorsed on the back by the poll clerks but, when
voted by the challenged voter, shall have affixed thereto by the
poll clerks their statement of information as to the challenge on
the form prescribed therefor. The provisional ballots shall be
secured, handled and disposed of as provisional ballots in other
elections, as provided in article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.
§3-4A-19. Conducting electronic voting system elections generally; duties of
election officers; penalties.
§3-4A-22. Assistance to illiterate and disabled voters.
§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems
are used.
§3-4A-27. Proceedings at the central counting center.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design
may not be approved by the state election commission or be
purchased, leased or used by any county commission unless it
meets the following requirements:
(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that no person, except in instances of open voting as provided for in this section, can see or know for whom any voter has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;
(7) It contains two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It permits each voter at any election other than primary elections by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter;

(10) It permits each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote and precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for nonpartisan nomination or election and permits him or her to vote on public questions;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) Where vote recording devices are used, they:

(A) Are durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;
(B) Are so constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices and wording of questions are reasonably protected from any modification;

(C) Bear a number that will identify it or distinguish it from any other machine;

(D) Are constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(E) Are accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;

(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a
visual or audible confirmation, or both, to the voter upon
completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed to present the entire ballot to the voter,
in a series of sequential pages, and to ensure that the voter sees
all of the ballot options on all pages before completing his or
her vote and to allow the voter to review and change all ballot
choices prior to completing and casting his or her ballot;

(I) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed to allow election commissioners to
spoil a ballot where a voter fails to properly cast his or her
ballot, has departed the polling place and cannot be recalled by
a poll clerk to complete his or her ballot;

(J) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed to allow election commissioners, poll
clerks, or both, to designate, mark or otherwise record provi-
sional ballots;

(K) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, consist of devices which are independent, nonnetworked voting systems in which each vote is recorded
and retained within each device’s internal nonvolatile electronic
memory and contain an internal security, the absence of which
prevents substitution of any other device;

(L) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, store each vote in no fewer than three separate,
independent, nonvolatile electronic memory components and
that each device contains comprehensive diagnostics to ensure
that failures do not go undetected;

(M) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, contain a unique, embedded internal serial number for
auditing purposes for each device used to activate, retain and
record votes;

(N) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed to record all pre-election, election and
post-election activities, including all ballot images and system
anomalies, in each device’s internal electronic memory and are
to be accessible in electronic or printed form;

(O) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed with a battery backup system in each
device to, at a minimum, prevent the loss of any votes, as well
as all preélection, election and post-election activities, including
all ballot images and system anomalies, stored in the device’s
internal electronic memory and to allow voting to continue for
two hours of uninterrupted operation in case of an electrical
power failure; and

(P) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, are constructed to prevent the loss of any votes, as
well as all preélection, election and post-election activities,
including all ballot images and system anomalies, stored in
each device’s internal electronic memory even in case of an
electrical and battery power failure.

§3-4A-19. Conducting electronic voting system elections gener-
ally; duties of election officers; penalties.
(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels, where applicable by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, supplies, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the
clerk of the county commission. Any discrepancies are to be
noted and reported immediately to the clerk of the county
commission. The election commissioners shall then number in
sequential order the ballot stub of each ballot in their possession
and report in writing to the clerk of the county commission the
number of ballots received. They shall issue the ballots in
sequential order to each voter.

(e) Where applicable, each voter shall be instructed how to
operate the vote recording device before he or she enters the
voting booth.

(f) Where applicable, any voter who spoils, defaces or
mutilates the ballot delivered to him or her, on returning the
ballot to the poll clerks, shall receive another in its place. Every
person who does not vote any ballot delivered to him or her
shall, before leaving the election room, return the ballot to the
poll clerks. When a spoiled or defaced ballot is returned, the
poll clerks shall make a minute of the fact on the pollbooks, at
the time, write the word “spoiled” across the face of the ballot
and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commission-
ers shall ascertain the number of spoiled ballots during the
election and the number of ballots remaining not voted. The
election commissioners shall also ascertain from the pollbooks
the number of persons who voted and shall report, in writing
signed by them to the clerk of the county commission, any
irregularities in the ballot boxes, the number of ballots cast, the
number of ballots spoiled during the election and the number of
ballots unused. All unused ballots are to be returned at the same
time to the clerk of the county commission who shall count
them and record the number. All unused ballots shall be stored
with the other election materials and destroyed at the expiration
of twenty-two months.
(g) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, 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.

(h) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(i) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked “spoiled” and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(j) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted
and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the pollbooks, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(k) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-22. Assistance to illiterate and disabled voters.

(a) Any duly registered voter who requires assistance to vote by reason of blindness, disability, advanced age or
inability to read and write may be given assistance by one of the following means:

(1) By a person of the voter’s choice: Provided, That the assistance may not be given by the voter’s present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter’s choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter’s declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter’s choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating
to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter into the voting device a voter-specific electronic code for any person voting a provisional ballot. The devices are to retain provisional ballots in electronic memory and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall ensure that the ballots are included in the tabulation.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission,
during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or ballot card or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the secretary of state, subject to the following requirements:

(1) In systems using punch card ballots, the ballot cards and secrecy envelopes for a precinct are to be removed from the box and examined for write-in votes before being separated and stacked for delivery to the tabulator. Immediately after valid write-in votes are tallied, the ballot cards are to be delivered to the tabulator. No write-in vote may be counted for an office unless the voter has entered the name of that office and the name of an official write-in candidate for that office on the inside of the secrecy envelope, either by writing, affixing a sticker or label or placing an ink-stamped impression thereon;

(2) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the
51 valid write-in votes are to be tallied. No write-in vote may be
52 counted for an office unless the voter has entered the name of
53 an official write-in candidate for that office on the line pro-
54 vided, either by writing, affixing a sticker or placing an ink-
55 stamped impression thereon;

56 (3) In systems using ballots in which votes are recorded
57 upon screens with a stylus or by means of touch, the personal-
58 ized electronic ballots are to be removed from the containers
59 and stacked for the tabulator. Systems using ballots in which
60 votes are recorded upon screens with a stylus or by means of
61 touch are to tally write-in ballots simultaneously with the other
62 ballots;

63 (4) When more than one person is to be elected to an office
64 and the voter desires to cast write-in votes for more than one
65 official write-in candidate for that office, a single punch or
66 mark, as appropriate for the voting system, in the write-in
67 location for that office is sufficient for all write-in choices.
68 When there are multiple write-in votes for the same office and
69 the combination of choices for candidates on the ballot and
70 write-in choices for the same office exceed the number of
71 candidates to be elected, the ballot is to be duplicated or hand
72 counted, with all votes for that office rejected;

73 (5) Write-in votes for nomination for any office and write-
74 in votes for any person other than an official write-in candidate
75 are to be disregarded;

76 (6) When a voter casts a straight ticket vote and also
77 punches or marks the location for a write-in vote for an office,
78 the straight ticket vote for that office is to be rejected, whether
79 or not a vote can be counted for a write-in candidate; and

80 (7) Official write-in candidates are those who have filed a
81 write-in candidate’s certificate of announcement and have been
certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards are to be clearly labeled "duplicate" and are to bear a serial number which is recorded on the damaged or defective ballot card and on the replacement ballot card.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the official preliminary returns of each precinct or election district. Further, all the returns are to be printed on a precinct basis. Periodically throughout and upon completion of the count, the returns are to be open to the public by posting the returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns are to be posted in the same manner.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

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 this article and articles four and four-a of this chapter, 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 the 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 twenty-six nor less than twenty days preceding the primary election, the ballot commissioners 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 twenty-six nor less than twenty 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
27 county having the largest circulation in compliance with the
28 provisions of article three, chapter fifty-nine of this code; and

29 (3) Each facsimile sample ballot shall be a photographic
30 reproduction of the official sample ballot or ballot pages and
31 shall be printed in a size no less than eighty percent of the
32 actual size of the ballot, at the discretion of the ballot commis-
33 sioners: Provided, That when the ballots for the precincts within
34 the county contain different senatorial, delegate, magisterial or
35 executive committee districts or when the ballots for precincts
36 within a city contain different municipal wards, the facsimile
37 shall be altered to include each of the various districts in the
38 appropriate order. If, in order to accommodate the size of each
39 ballot, the ballot or ballot pages must be divided onto more than
40 one page, the arrangement and order shall be made to conform
41 as nearly as possible to the arrangement of the ballot. The
42 publisher of the newspaper shall submit a proof of the ballot
43 and the arrangement to the ballot commissioners for approval
44 prior to publication.

45 (c) The ballot commissioners of each county shall prepare,
46 in the form and manner prescribed by the secretary of state, an
47 official list of offices and candidates for each office which will
48 appear on the primary election ballot for each party and, as the
49 case may be, for the nonpartisan candidates to be voted for at
50 the primary election. All information which appears on the
51 ballot, including instructions as to the number of candidates for
52 whom votes may be cast for the office, any additional language
53 which will appear on the ballot below the name of the office,
54 any identifying information relating to the candidates, such as
55 residence, magisterial district or presidential preference, and the
56 ballot numbers of the candidates for punch card systems shall
57 be included in the list in the same order in which it appears on
58 the ballot. Following the names of all candidates, the list shall
59 include the full title, text and voting positions of any issue to
60 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 commis-
sioners 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.

§3-5-13. Form and contents of ballots and ballot labels.

The face of every primary election ballot shall conform as
nearly as practicable to that used at the general election.

(a) The heading of every ballot is to be printed in display
type. The heading is to contain a ballot title, the name of the
county, the state, the words “Primary Election” and the month,
day and year of the election. The ballot title of the political
party ballots is to contain the words “Official Ballot of the
(Name) Party” and the official symbol of the political party
may be included in the heading. The ballot title of any separate
paper ballot or portion of any electronic or voting machine
ballot for the board of education is to contain the words
“Nonpartisan Ballot of Election of Members of the
__________ County Board of Education”. The districts for
which less than two candidates may be elected and the number
of available seats are to be specified and the names of the
candidates are to be printed without reference to political party
affiliation and without designation as to a particular term of
office. Any other ballot or portion of a ballot on a question is to
have a heading which clearly states the purpose of the election
according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot is to be
separated from the rest of the ballot by heavy lines and the
offices shall be arranged in columns with the following
headings, from left to right across the ballot: “National Ticket”,
“State Ticket”, “County Ticket” and, in a presidential election
year, “National Convention” or, in a nonpresidential election
year, “District Ticket”. The columns are to be separated by
heavy lines. Within the columns, the offices are to be arranged
in the order prescribed in section thirteen-a of this article.

(2) For voting machines, electronic voting devices and any
ballot tabulated by electronic means, the offices are to appear
in the same sequence as prescribed in section thirteen-a of this
article and under the same headings as prescribed in subsection
(a) of this section. The number of pages, columns or rows,
where applicable, may be modified to meet the limitations of
ballot size and composition requirements subject to approval by
the secretary of state.

(3) The title of each office is to be separated from preceding
offices or candidates by a line and is to be printed in bold type
no smaller than eight point. Below the office is to be printed the
number of the district, if any, the number of the division, if any,
and the words “Vote for _______” with the number to be
nominated or elected or “Vote For Not More Than _______”
in multicandidate elections. For offices in which there are
limitations relating to the number of candidates which may be
nominated, elected or appointed to or hold office at one time
from a political subdivision within the district or county in
which they are elected, there is to be a clear explanation of the
limitation, as prescribed by the secretary of state, printed in
bold type immediately preceding the names of the candidates
for those offices on the ballot in every voting system. For
counties in which the number of county commissioners exceeds
three and the total number of members of the county commis-
sion is equal to the number of magisterial districts within the
county, the office of county commission is to be listed sepa-
rately for each district to be filled with the name of the magiste-
rial district and the words “Vote for One” printed below the
name of the office.

(c) The location for indicating the voter’s choices on the
ballot is to be clearly shown. For paper ballots, other than those
tabulated electronically, the official primary ballot is to contain
a square formed in dark lines at the left of each name on the
ballot, arranged in a perpendicular column of squares before
each column of names.

(d) (1) The name of every candidate certified by the
secretary of state or the board of ballot commissioners is to be
printed in capital letters in no smaller than eight-point type on
the ballot for the appropriate precincts. Subject to the rules
promulgated by the secretary of state, the name of each
candidate is to appear in the form set out by the candidate on
the certificate of announcement, but in no case may the name
misrepresent the identity of the candidate nor may the name
include any title, position, rank, degree or nickname implying
or inferring any status as a member of a class or group or
affiliation with any system of belief.

(2) The city of residence of every candidate, the state of
residence of every candidate residing outside the state, the
county of residence of every candidate for an office on the
ballot in more than one county and the magisterial district of
residence of every candidate for an office subject to magisterial
district limitations are to be printed in lower case letters beneath
the names of the candidates.

(3) The arrangement of names within each office must be
determined as prescribed in section thirteen-a of this article.

(4) If the number of candidates for an office exceeds the
space available on a column or ballot label page and requires
that candidates for a single office be separated, to the extent
possible, the number of candidates for the office on separate
columns or pages are to be nearly equal and clear instructions
given the voter that the candidates for the office are continued
on the following column or page.

(e) When an insufficient number of candidates has filed for
a party to make the number of nominations allowed for the
office or for the voters to elect sufficient members to the board
of education or to executive committees, the vacant positions on
the ballot shall be filled with the words “No Candidate Filed”:
Provided, That in paper ballot systems which allow for write-
ins to be made directly on the ballot, a blank line shall be placed
in any vacant position in the office of board of education or for
election to any party executive committee. A line shall separate
each candidate from every other candidate for the same office.
Notwithstanding any other provision of this code, if there are
multiple vacant positions on a ballot for one office, the multiple
vacant positions which would otherwise be filled with the
words “No Candidate Filed” may be replaced with a brief
detailed description, approved by the secretary of state, indicat-
ing that there are no candidates listed for the vacant positions.

(f) In presidential election years, the words “For election in
secretary of state" is to be printed following the names of all candidates for delegate to national convention.

(g) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems.

(h) Ballots and ballot cards are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots or ballot cards printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(i) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

(j) Absent voters' ballots are to be in all respects like other official ballots except that three blank lines are to be printed on the back of the ballot or ballot card in the lower left corner with the words "Ballot Commissioners" printed underneath.

(k) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

§3-5-15. Ascertaining and certifying primary election results.
When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.
(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is, and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed, and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of provisional ballots of that party, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents
thereof, and the number of excess ballots of each party shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose so as to show the number of votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the secretary of state, giving the complete returns of the election at the polling place, which form shall include the following oath:

"We, the undersigned commissioners and poll clerks of the primary election held at precinct No. .................. of .......... district of ............... County, W.Va., on the ........ day of ............... 20...., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ............... party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot, and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Three of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes,
furnished for the purpose, and shall be disposed of by the
precinct commissioners as follows: One of the sealed envelopes
containing the returns of each party shall be delivered to the
clerk of the circuit court and two shall be delivered to the clerk
of the county commission who shall, within forty-eight hours,
mail one of the sealed returns for each precinct by certified mail
to the secretary of state. The one not sealed up shall be posted
on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be
sealed up in separate envelopes and the commissioners and
clerks shall each sign across the seal.

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy shall occur in the party nomination of
candidates for office nominated at the primary election or by
appointment under the provisions of section eleven of this
article, the vacancies may be filled, subject to the following
requirements and limitations:

(1) Each appointment made under this section shall be
made by the executive committee of the political party for the
political division in which the vacancy occurs: Provided, That
if the executive committee holds a duly called meeting in
accordance with section nine, article one of this chapter but
fails to make an appointment or fails to certify the appointment
of the candidate to the proper filing officer within the time
required, the chairperson of the executive committee may make
the appointment not later than two days following the deadline
for the executive committee.

(2) Each appointment made under this section is complete
only upon the receipt by the proper filing officer of the certifi-
cate of appointment by the executive committee, or its chairper-
son, as the case may be, the certificate of announcement of the
candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than seventy-eight days before the general election. A candidate may be determined ineligible if a written request is made by an individual with information to show a candidate’s ineligibility to the state election commission no later than ninety-five days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The state election commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission may authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.
(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than ninety-eight days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected and if the candidate or the chairperson of the executive committee for the political division applies in writing to the state election commission no later than ninety-five days before the general election for permission to remove the candidate's name from the general election ballot, the state election commission shall review the reasons for the request. If the commission finds the circumstances warrant the withdrawal of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of death or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear...
on the ballot in the general election, and the vacancy occurs
after the close of candidate filing for the primary election but
not later than eighty-four days before the general election, a
nominee of each political party may be appointed by the
executive committee and certified to the proper filing officer no
later than seventy-eight days before the general election.
Appointments shall be filed in the same manner as provided in
subsection (a) of this section, except that the filing fee shall be
paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after
the close of candidate filing for the primary election but not
later than eighty-four days before the general election, a special
candidate filing period shall be established. Candidates seeking
election to any unexpired term for board of education shall file
a certificate of announcement and pay the filing fee to the clerk
of the circuit court no earlier than the first Monday in August
and no later than seventy-seven days before the general
election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.
§3-6-4a. Filing requirements for write-in candidates.
§3-6-5. Rules and procedures in election other than primaries.
§3-6-6. Ballot counting procedures in paper ballot systems.
§3-6-7. Ballot irregularities; procedures.
§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

§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 this article and articles four and
four-a of this chapter, as appropriate to the voting system, and
for any ballot issue, according to the provisions of law authorizing the 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 twenty-six nor less than twenty 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 twenty-six nor less than twenty 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 newspa-
per is published immediately preceding the general election, the
ballot commissioners shall publish the official list of nominees
and issues as a Class I-O legal advertisement in the two quali-
fied 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 commis-
sioners shall publish the sample official list of nominees and
issues as a Class I legal advertisement in the qualified newspa-
per within the county having the largest circulation in compli-
ance 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 require-
ments 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 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 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.

§3-6-4a. Filing requirements for write-in candidates.

Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter shall file a write-in candidate’s certificate of announcement as provided in this
section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.

(a) The write-in candidate’s certificate of announcement shall be in a form prescribed by the secretary of state on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths containing the following information:

(1) The name of the office sought and the district and division, if any;

(2) The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;

(3) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(4) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

(5) The words “subscribed and sworn to before me this _____ day of _____________, ___” and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:
(1) Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the twenty-first day before the election at which the office is to be filled;

(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;

(3) When a vacancy occurs in an elective office which would not otherwise appear on the ballot in the election, but which creates an unexpired term of one or more years which, according to the provisions of this chapter, is to be filled by election in the next ensuing election and the vacancy occurs no earlier than the twenty-first day and no later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate’s certificate of announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:

(1) The secretary of state shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the circuit court of the appropriate counties.
(2) The clerk of the circuit court shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the clerk of the county commission and the election officials of the appropriate precincts the names of all official write-in candidates and the office sought by each for statewide, district and county offices on the ballot in the precinct for which valid write-in votes will be counted and the names shall be posted at the office where absentee voting is conducted and at the precincts in accordance with section twenty, article one of this chapter.

§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket, or in other words, for each and every candidate for one party for whatever office nominated, the voter shall either:

(1) Mark the position designated for a straight ticket in the manner appropriate to the voting system; or

(2) Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.

(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties, the voter shall either:

(1) Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name
of each candidate for whom he or she desires to vote on whatever ticket the name may be; or

(2) Mark the position designated for a straight ticket for the party for some of whose candidates he or she desires to vote and then mark the name of any candidate of any other party for whom he or she may desire to vote, in which case the cross mark in the circular space above the name of the party straight ticket mark will cast his or her vote for every candidate on the ticket of the party except for offices for which candidates are marked on other party tickets and the marks for the candidates will cast a vote for them; or

(3) Write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, the marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.

(d) When a voter casts a straight ticket vote and also writes in any name for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate.

(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with
voting machines or electronic devices or which would obliterate
or deface a paper ballot or any portion thereof, but the secretary
of state shall preserve the right to vote by a write-in vote for
those candidates who have filed and have been certified as
official write-in candidates under the provisions of section four-
a of this article.

(f) If the voter marks more names than there are persons to
be elected to an office or if, for any reason, it is impossible to
determine the voter's choice for an office to be filled, the ballot
shall not be counted for the office. The intention of the voter
shall be deemed to be clear if the write-in vote cast for an office
contains both the first and last name of an official write-in
candidate for that office; and if no two official write-in candi-
dates for that office share a first or last name, either the first
name or last name alone shall be deemed to express the clear
intention of the voter.

(g) Except as otherwise specifically provided in this
chapter, no ballot shall be rejected for any technical error which
does not make it impossible to determine the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where
2 only a single election board has served, the receiving board
3 shall perform all of the duties prescribed in this section. When
4 the polls are closed in an election precinct where two election
5 boards have served, both the receiving and counting boards
6 shall together conclude the counting of the votes cast, the
7 tabulating and summarizing of the number of the votes cast,
8 unite in certifying and attesting to the returns of the election and
9 join in making out the certificates of the result of the election
10 provided for in this article. They shall not adjourn until the
11 work is completed.
In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, the result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poli clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the
proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected whether or not a vote can be counted for a write-in candidate;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of provisional ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

§3-6-7. Ballot irregularities; procedures.
If two or more ballots are found folded or rolled together and the names voted for thereon be the same, one of them only shall be counted; but if the names voted for thereon be different, in any particular, neither of them shall be counted except as hereinbefore provided; and in either case, the commissioners of election shall, in writing in ink, place a common number on the ballots and state thereon that they were folded or rolled together when voted. If any ballot be found to contain more than the proper number of names for any office, the ballot shall not be counted as to the office. In any election for state senator, if a person is voted for on any ballot who is not a resident of the proper county, as required by section four, article VI of the constitution, the ballot shall not be counted for the office. Any ballot or part of a ballot from which it is impossible to determine the elector’s choice of candidates shall not be counted as to the candidates affected thereby.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

(a) The commissioners of the county commission shall be ex officio a board of canvassers and, as such, shall keep in a well-bound book, marked “election record”, a complete record of all their proceedings in ascertaining and declaring the results of every election in their respective counties. They shall convene as the canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, pollbooks, registration records, tally sheets and certificates have been placed shall lay them before the board for examination. They may, if considered necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election to appear and testify respecting the election and make other orders as shall seem proper to procure correct returns and ascertain the true results of the election in their county; but in this case all the questions
to the witnesses and all the answers thereto and evidence shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record. They may adjourn, from time to time, but no longer than absolutely necessary. When a majority of the commissioners are not present, the meeting shall stand adjourned until the next day and so from day to day, until a quorum is present. All meetings of the commissioners sitting as a board of canvassers shall be open to the public. The board shall proceed to open each sealed package of ballots laid before them and, without unfolding them, count the number in each package and enter the number upon their record. The ballots shall then be again sealed up carefully in a new envelope and each member of the board shall write his or her name across the place where the envelope is sealed. After canvassing the returns of the election, the board shall publicly declare the results of the election; however, they shall not enter an order certifying the election results for a period of forty-eight hours after the declaration.

(b) Within the 48-hour period a candidate voted for at the election may demand the board to open and examine any of the sealed packages of ballots and recount them; but they shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his or her name across the places where it is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No.____, in the district of _____________, and county of ______________, on the ______ day of __________." In computing the 48-hour period as used in this section, Saturdays, Sundays and legal holidays shall be excluded: Provided, That at the end of the 48-hour period, an order shall be entered certifying all election results except for those offices in which a recount has been demanded.

(c) If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the 48-hour period
in which to send notice to all candidates who filed for the office
in which a recount has been demanded of the date, time and
place where the board will convene to commence the recount.
The notice shall be served under the provisions of subdivision
(d) of this section. The recount shall be set for no sooner than
three days after the serving of the notice: Provided, That after
the notice is served, candidates so served shall have an addi-
tional twenty-four hours in which to notify the board, in
writing, of their intention to preserve their right to demand a
recount of precincts not requested to be recounted by the
candidate originally requesting a recount of ballots cast:
Provided, however, That there shall be only one recount of each
precinct, regardless of the number of requests for a recount of
any precinct. A demand for the recount of ballots cast at any
precinct may be made during the recount proceedings only by
the candidate originally requesting the recount and those
candidates who notify the board, pursuant to this subdivision,
of their intention to preserve their right to demand a recount of
additional precincts.

(d) Any sheriff of the county in which the recount is to
occur shall deliver a copy thereof in writing to the candidate in
person; or if the candidate is not found, by delivering the copy
at the usual place of abode of the candidate and giving informa-
tion of its purport, to the spouse of the candidate or any other
person found there who is a member of his or her family and
above the age of sixteen years; or if neither the spouse of the
candidate nor any other person be found there and the candidate
is not found, by leaving the copy posted at the front door of the
place of abode. Any sheriff, thereto required, shall serve a
notice within his or her county and make return of the manner
and time of service; for a failure so to do, he or she shall forfeit
twenty dollars. The return shall be evidence of the manner and
time of service.
(e) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

(f) After the board of canvassers has made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts from whom they were received, who shall carefully preserve them for twenty-two months: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. If there is no contest pending as to any election and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

(g) If the result of the election is not changed by the recount, the costs and expenses thereof shall be paid by the party at whose instance the recount was made.

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-1. Contests for state offices and judgeships; procedure.

§3-7-4. Contests of seats in Legislature; notices and procedure.

§3-7-1. Contests for state offices and judgeships; procedure.

If the election of governor, secretary of state, treasurer, auditor, attorney general, commissioner of agriculture, a judge of the supreme court of appeals or a judge of a circuit court, is
contested, the contestant shall give notice, with specifications
and affidavit, to the person whose election is contested within
ten days after the election is certified and within ten days
thereafter the return notice shall be given to the contestant. The
parties shall finish taking depositions within forty days after the
notice is delivered. The depositions shall be transmitted to the
clerk of the House of Delegates, to be delivered by him or her
to the joint committee or special court hereinafter provided for.
In other respects the regulations contained in this article
respecting contests for a seat in the Legislature shall be ob-
served, so far as they are applicable.

§3-7-4. Contests of seats in Legislature; notices and procedure.

Any person intending to contest the election of another as
senator or delegate shall, within ten days after the election is
certified, give him or her notice thereof in writing and a list of
the votes he or she will dispute, with the objections to each, and
of the votes rejected for which he or she will contend. If the
contestant objects to the legality of the election or the qualifica-
tion of the person returned, the notice shall set forth the facts on
which the objection is founded. The person whose election is
contested shall, within ten days after receiving the notice,
deliver to the contestant a like list of the votes he or she will
dispute and of the objection to each, and of the rejected votes he
or she will claim; and, if he or she has any objection to the
qualification of the contestant, shall specify in the notice the
facts on which the objection is founded. Each party shall
append to the notice an affidavit that the matters therein set
forth, so far as they are stated of his or her knowledge, are true
and that, so far as they are stated on the information of others,
he or she believes them to be true. If new facts are discovered
by either party after he or she has given notice, he or she may
give an additional notice or notices to his or her adversary, with
specifications and affidavit as above prescribed.
ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

§3-8-5. Detailed accounts and verified financial statements required.

§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 and federal committees required to file under the provisions 2 U. S. C. §434, 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 shall keep records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the 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 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 multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a
candidate on the ballot in more than one county, any municipal
candidate 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 expendi-
ture 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 the 24-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 independ-
ence 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 commu-
ication is not authorized by the candidate or his or her commit-
tee.

§3-8-4. Treasurers and financial agents; written designation
requirements; "person" and "financial agent" defined.

(a) No person shall act as the treasurer of any political
committee, or as financial agent for any candidate for nomina-
tion or election to any office to be filled by the voters of the
entire state, or candidates for nomination or election for any
office, encompassing an election district larger than a county,
or candidates for nomination for legislative office, or any
person or organization advocating or opposing the nomination,
election or defeat of any candidate, encompassing an election
district larger than a county, unless a written statement designating him or her as the treasurer or financial agent is filed with
the secretary of state at least twenty-eight days before the
election at which he or she is to act and must be received before
midnight, eastern standard time, of that day or if mailed, shall
be postmarked before that hour: Provided, That a change of
treasurer may be made at any time by filing a written statement
with the secretary of state.

(b) No person shall act as treasurer of any committee or as
financial agent for any candidate to be nominated or elected by
the voters of a county or a district therein, except legislative
candidates, or as the treasurer or financial agent for a candidate
for the nomination or election to any other office, unless a
written statement designating him or her as the treasurer or
financial agent is filed with the clerk of the county commission
at least twenty-eight days before the election at which he or she
is to act and must be received before midnight, eastern standard
time, of that day or if mailed, shall be postmarked before that
hour: Provided, That a change of treasurer may be made at any
time by filing a written statement with the clerk of the county
commission.

(c) Notwithstanding the provisions of subsections (a) and
(b) of this section, a filing designating a treasurer or financial
agent for a state or county political executive committee may be
made anytime before the committee either accepts or spends
funds on behalf of the committee. Once a designation is made
by a state or county political executive committee, no additional
designations are required under this section until a successor
treasurer or financial agent is designated. A state or county
political executive committee may terminate a designation
made pursuant to this section by making a written request to
terminate the designation and by stating in the request that the
committee has no funds remaining in the committee’s account.
This written request shall be made with either the secretary of
state or the clerk of the county commission as provided by
subsections (a) and (b) of this section.

(d) As used in this article:

The term “person” means an individual, partnership,
committee, association, corporation, and any other organization
or group of persons; and

The term “financial agent” means any person acting for and
by himself or herself, or any two or more natural persons acting
together or cooperating in a financial way to aid or take part in
the nomination or election of any candidate for public office, or
to aid or promote the success or defeat of any political party or
principle at any election, or any proposition submitted to a vote
at a public election.

§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 this section and also including the
treasurer or equivalent officer of the association or organiza-
tion, advocating or opposing the nomination, election or defeat
of any candidate, 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 or her, including all
loans of money or things of value, and of all expenditures and
disbursements made, liabilities incurred, by the candidate,
financial agent, person, association or organization or commit- 
tee, for political purposes, or by any of the officers or members 
of the 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 sworn statement, 
according to the following provisions and times:

(1) On the last Saturday in March or within six days 
thereafter, and annually 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;

(2) Not less than ten nor more than seventeen days preced-
ing each primary or other election, a statement which shall 
include all financial transactions which have taken place by the 
date of the statement, subsequent to the previous statement, if 
any;

(3) Not less than twenty-five nor more than thirty-one days 
after each primary or other election, a statement which shall 
include all financial transactions which have taken place by the 
date of the statement, subsequent to the previous statement; and

(4) On the first Saturday in September or within six days 
thereafter, 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 the statement, subsequent to the 
previous statement.
(c) Every person who shall announce as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the 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 to be voted on.

§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 may publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication expressly advocating the election or defeat of a clearly identified candidate.

(b) No owner, publisher, editor or employee of a newspaper or other periodical may 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 may, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or
by written communication delivered within the room or building, 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 of the state. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of 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 of the state.

(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 of the state, 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 of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may, during the period of negotiation for or performance under the contract or furnishing 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 may any person or firm solicit any contributions for any purpose during any period.

(e) No person may, 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 may, 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 subdivisions, 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 of the offices.

(g) (1) Notwithstanding the provisions of subsection (f) of this section to the contrary, the aggregate contributions made to a state party executive committee or state party legislative caucus committee are to be permitted only pursuant to the limitations imposed by the provisions of this subsection.

(2) No person may, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, 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 by this subsection may not exceed fifty thousand dollars in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: Provided, however, That the moneys transferred may only be used for
voter registration and get-out-the-vote activities of the state committees.

(i) No person may solicit any contribution from any nonelective salaried employee of the state government or of any of its subdivisions or coerce or intimidate any nonelective salaried employee into making a contribution. No person may 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 of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily, without coercion, intimidation or solicitation.

(j) No person may solicit a contribution from any other person without informing the other person at the time of the 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 the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(k) No person may place any letter, circular, flyer, advertisement, 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 acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term “roadside receptacle” means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.
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 a regional or county jail for not more than one year, or, in the discretion of the court, be subject to both fine and confinement.

ARTICLE 10. FILLING VACANCIES.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election: Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner it shall be the mandatory, nondiscretionary duty of each county commissioner, within sixty days from the date the vacancy occurs, to submit in person to the chief judge of the circuit court of the county, the name of one person who is a member of the same political party as was the person whose vacancy is being filled and was such member for at least one year next preceding the filling of the vacancy and who is legally qualified and willing to fill the vacancy. The judge shall thereupon, in the presence of the quorum of the county commission, cause each name to be
written on a separate piece of paper, shall fold or roll up the
pieces of paper so as to resemble each other and so that the
name written thereon shall not be visible on the outside, and
shall deposit the pieces of paper in a box from which one of the
county commissioners, selected by lot under the supervision of
the judge, shall, in the presence of each other and the judge,
draw one of the names. The person whose name is so drawn
shall be the county commission’s choice to fill the vacancy. The
circuit court shall have jurisdiction to compel compliance with
the provisions of this proviso.

Notice of the election shall be given by order of the county
commission and published as prescribed in section six of this
article. Nomination of candidates to fill the office for an
unexpired term in the office of county commissioner or clerk of
the county commission shall be made in the manner prescribed
for making nominations to fill a vacancy in the office of the
clerk of the circuit court.

In the event that the election for an unexpired term is held
at the same time as the election for a full term for county
commissioner, the full term shall be counted first and the
unexpired term shall be counted second. If the candidate with
the highest number of votes for the unexpired term resides in
the same magisterial district as the candidate with the highest
number of votes for the full term, the candidate for the full term
shall be seated. The candidate with the next highest number of
votes for the unexpired term residing in a different magisterial
district shall be seated for the unexpired term.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,
assessor and surveyor.

Any vacancy occurring in the office of prosecuting attor-
eey, sheriff, assessor or county surveyor shall be filled by the
county commission by appointment of a person of the same
political party as the officeholder vacating the office. The appointed person shall hold the office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six of this article. Nomination of candidates to fill any vacancy shall be made in the manner prescribed in section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

Part II. Annexation by Election.

§8-6-2. Petition for annexation.

(a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.

(b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.

(c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be
taken upon the proposed annexation on a date and at a time and place to be named in the order.

(d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of the additional territory whether they reside or have a place of business therein or not, to be taken upon the question on the same day at some convenient place in or near the additional territory.

(e) The governing body shall cause the order for the election to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order for the election shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, a summary of the municipality's plan for providing services to the additional territory and, if practicable, shall also contain a popular description of the additional territory.

(f) The election shall be held, superintended and conducted and the results thereof ascertained, certified, returned and canvassed in the same manner by the same individuals as elections for municipal officers. The election is reviewable by the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen, article five of this chapter.

(g) The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:
48 // For Annexation

49 // Against Annexation

50 (h) Any freeholder which is a firm or corporation may vote
by its manager, president or executive officer duly designated
in writing by the firm or corporation.

51 (i) An individual who is a qualified voter and freeholder of
the municipality or the additional territory shall be entitled to
vote only once.

52 (j) For purposes of this section, the term "qualified voter of
the additional territory" includes a firm or corporation in the
additional territory regardless of whether the firm or corpora-
tion is a freeholder. A firm or corporation may vote by its
manager, president, or executive officer duly designated in
writing by the firm or corporation. In any instance where a
freeholder leases or rents real property to a firm or corporation
the freeholder and the firm or corporation shall determine
which entity will be entitled to vote in the annexation election.

53 (k) When an election is held in any municipality in accor-
dance with the provisions of this section, another election
relating to the same proposed change or any part thereof shall
not be held for a period of one year.

54 (l) If a majority of all of the legal votes cast in the munici-
pality and a majority of all the legal votes cast in the territory
are in favor of the proposed annexation, then the governing
body shall proceed as specified in the immediately succeeding
section of this article.
AN ACT to amend and reenact section twenty-one, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections generally; and providing that a mass convention of a political party, to elect delegates to the state convention, be held in the county instead of the various magisterial districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.

Candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of the convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party's candidate for governor at the last preceding
general election at which a governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at the convention.

At least sixty days prior to the date fixed for holding any state convention, the chairman of the party's state executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within ten days after receipt of the copy of the resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for governor at the last preceding general election at which a governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to the state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the county, which meeting shall be held at least thirty days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which the district is entitled in the state convention.

The meeting place in the county shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any mass convention and in the selection of delegates. Notice of the time and place of holding the county mass convention and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-O 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. The first publication shall be made not more than fifteen days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of the county, shall choose a chairman and a secretary, who, within five days after the holding of the convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

If, after the election, a vacancy exists for a delegate from any magisterial district, the party’s county executive committee, within ten days after the mass convention, shall appoint a member of the political party in the magisterial district to fill the vacancy, and shall certify the appointment to the chairman of the state executive committee of the political party.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and the county executive committee shall, upon written petition of any contest, meet for a hearing and make a determination within ten days after the holding of a county mass convention. The circuit court of the county and the supreme court of appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state and, in the event of any contest,
those prevailing in the contest, shall make up the state conven-
tion. The number present of those entitled to participate in any
collection shall cast the entire vote to which the county is
entitled in the convention, and it shall require a majority vote to
nominate any candidate for office.

All nominations made at state conventions shall be certified
within fifteen days thereafter, by the chairman and the secretary
of the convention, to the secretary of state, who shall certify
them to the clerk of the circuit court of each county concerned,
and the names of the persons so nominated shall be printed
upon the regular ballot to be voted at the ensuing general
election, except that the names of the presidential elector
candidates shall not be printed thereon.

The delegates to any state convention may formulate and
promulgate the party platform or declaration of party principles
as to them shall seem advisable.

CHAPTER 102

(H. B. 2110 — By Delegates Varner, Mezzatesta,
Williams, Manuel, Shelton and Stemple)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article eighteen, relating to the
Legislature declaring that lawful design, marketing, manufacture,
or sale of firearms or ammunition to the public is not an unrea-
sonably dangerous activity; and providing that the right to
institute suit against firearms manufacturers, dealers or sellers is the strict prerogative of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. LIMITATIONS OF ACTIONS REGARDING FIREARMS MANUFACTURE AND SALE.

§55-18-1. Legislative declarations and purpose.

The Legislature hereby finds and declares:

(a) The lawful design, marketing, manufacture or sale of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se;

(b) To the extent the constitution of this state and the United States protect citizens' rights to keep and bear arms, the Legislature finds and declares that it is within the strict prerogative of its own authority, and not the authority of any county or municipality, to determine whether any manufacturer, dealer or seller of firearms has engaged in any act or omission that would create a cognizable action for damages, injunction or otherwise.

§55-18-2. Authority to bring suit against manufacturers, sellers, trade associations or dealers of firearms.

The authority to bring suit and the right to recover against any firearms or ammunition manufacturer, seller, trade association or dealer of firearms by or on behalf of any county or municipality in this state for damages, abatement or injunctive relief resulting from or relating to the design, manufacture,
marketing, or sale of firearms or ammunition to the public is reserved exclusively to the state: Provided, That nothing contained in this article may prohibit a county or municipality from bringing an action for breach of contract or warranty as to firearms or ammunition purchased by the county or municipality.

CHAPTER 103

(Com. Sub. for H. B. 2714 — By Delegates H. White, Hrutkay and R. M. Thompson)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-c, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the donation of fire fighting and fire rescue equipment and insurance policies dealing with immunity coverage provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8c. Donation of equipment.

(a) Effective the first day of July, two thousand two, no person, company or other organization who donates fire control or rescue equipment, including federal excess or surplus
property, to a volunteer fire department is subject to civil
liability for any personal injury, property damages or death
resulting from any defect in the equipment unless the person,
company or organization acted with malice, gross negligence,
recklessness or intentional misconduct which proximately
caused the personal injury, property damages or death.

(b) For purposes of this section, "fire control or rescue
equipment" means a vehicle, fire fighting tool, protective gear,
breathing apparatus or other supply or tool used in fire fighting
or fire rescue. No breathing apparatus may be donated unless,
 prior to the donation, it has been recertified to the manufac-
turer's specifications by a technician approved by the manufac-
turer.

(c) Unless the insured has executed a specific written
rejection of such coverage in the policy, any insurer who has
sold, issued or delivered an insurance policy providing liability
coverage to any person, company or other organization who
donates fire control or rescue equipment is barred and estopped
from asserting the civil immunity granted to the insured by this
section against claims or suits covered by the terms of the
policy, up to the limits of the policy.

The limitation on civil liability set forth in the provisions of
this section applies only to policies of insurance issued or
renewed on or after the first day of July, two thousand one.

CHAPTER 104

(Com. Sub. for S. B. 39 — By Senators Rowe, Helmick,
Fanning and Ross)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-seven, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the criminal offense for a false fire alarm to a felony when it is done with intent to cause injury to persons or property to divert attention from another offense.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.

§29-3-27. Penalties.

(a) Any person who violates any regulations promulgated by the state fire commission as provided in section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or confined in the county or regional jail not more than ninety days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of section twenty-one of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than one hundred dollars or confined in the county or regional jail for not more than thirty days or both fined and confined and for a second and each subsequent offense fined not less than one hundred dollars nor more than five hundred dollars or confined in the county or regional jail for not less than ninety days nor more than one year, or both.
20 (c) Any person who violates the provisions of section twenty-one of this article with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than three years, or fined not more than five thousand dollars, or both.

29 (d) Any officer who fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each failure or violation.

34 (e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or confined in the county or regional jail not more than ninety days, or both.

CHAPTER 105

(H. B. 3011 — By Delegates Michael, Leach, Proudfoot, Browning, Warner, R. M. Thompson and Border)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state fire commission to establish standards and procedures to implement the provisions of the section.
Be it enacted by the Legislature of West Virginia:

That section nine, 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.

§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.

(a) The state fire commission may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of its office.

(b) The state fire commission is responsible for fire programs within this state, including the state fire marshal’s office, training, uniform standards and certification, finance and planning and fire prevention.

(c) All state and area training and education in fire service shall be coordinated by the state fire commission. The state fire marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commissioner.

(d) The state fire commission shall develop minimum training levels for firefighters, minimum levels of equipment needed to protect life and property within fire service areas, minimum performance standards the departments must meet in response times, communications, minimum levels of water flow and pressure and other performance measures as considered necessary to meet the overall goals of improved fire prevention and control. The state fire commission may make recommendations to the state insurance commissioner regarding town classifications for fire insurance rates.
(e) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the state fire commission. The state fire commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(f) The state fire commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire-fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(g) The state fire commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

(h) The state fire marshal may accept, on behalf of the state fire commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. The state fire marshal, acting on behalf of the state fire commission, may enter into, sign and execute any agreements and do and perform any acts that may be necessary, useful, desirable or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the state fire marshal shall be deposited into the special account set forth in subsection (c), section twelve-b of this article, and the state fire marshal, with the approval of the state fire commission, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.
(i) The state fire commission shall establish standards and procedures by policy to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment and training;

(3) Certification;

(4) Training and education in fire service; and

(5) The creation, operation and responsibilities of fire departments throughout the state.

CHAPTER 106

(Com. Sub. for H. B. 2359 — By Mr. Speaker, Mr. Kiss)

[Passed February 28, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections twelve-b and twenty-two, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the fire marshal fees fund; eliminating the transfer of ten percent of the fees collected by the state fire marshal to general revenue; and transferring a portion of the insurance company tax to the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.
§29-3-22. Tax on insurance companies.

§29-3-12b. Fees.

(a) The state fire marshal may establish fees in accordance with the following:

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

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

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

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

(5) For inspections of residential occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, “residential occupancies” are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: Provided, That if the inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that the complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, “mercantile occupancy” includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.

(7) For business occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: Provided, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this
section, “business occupancies” are those buildings used for the
transaction of business, other than mercantile occupancies, for
the keeping of accounts and records and similar purposes.

(8) For inspections of assembly occupancies. — The state
fire marshal may charge an inspection fee not more than one
time per twelve-month period for the inspection of assembly
occupancies. The inspection fee shall be assessed as follows:
For Class C assembly facilities, an inspection fee not to exceed
fifty dollars; for Class B assembly facilities, an inspection fee
not to exceed seventy-five dollars; and for Class A facilities, an
inspection fee not to exceed one hundred dollars.

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

(b) The state fire marshal may collect fees for the fire safety
review of plans and specifications for new and existing con-
struction. Fees shall be paid by the party or parties receiving the
review.

(1) Structural barriers and fire safety plans review. — The
fee is one dollar for each one thousand dollars of construction
cost up to the first one million dollars. Thereafter, the fee is
forty cents for each one thousand dollars of construction cost.

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

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

(4) Range hood extinguishment system review. — The fee is twenty-five dollars per individual system reviewed.

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

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire commission and thereafter deposited into the special account in the state treasury known as the "fire marshal fees fund". Expenditures from the fund shall be for the purposes set forth in this article and articles three-b and three-c of this chapter and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-
eight hours prior to the scheduled inspection the owner or occupant requests the state fire marshal to reschedule the inspection. In the event a second inspection is required by the state fire marshal as a result of the owner or occupant failing to be ready for the inspection when the state fire marshal arrives, the state fire marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

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

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers’ mutual fire insurance companies, shall pay to the state insurance commissioner annually on or before the first day of March, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the state insurance commissioner is paid by him or her into the treasury and credited to the special revenue fund created in section twelve-b of this article.
AN ACT to amend and reenact section ten, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to confidentiality of trade secrets; modifying review and notification procedures associated with release of information required for air quality permits; and allowing air quality board to hear appeal of agency decisions.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, 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 5. AIR POLLUTION CONTROL.

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to
which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: Provided, That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier
disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.
AN ACT to amend and reenact section four, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding certain records from disclosure under the freedom of information act collected in response to and in preparation for terrorist acts or threats of terrorist acts; definitions; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

(a) The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from
inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;
(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases, and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the department of military affairs and public safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located; and

(16) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15), subsection (a) of this section.
(b) As used in subdivisions (9) through (16), subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivisions (9) through (16), subsection (a) of this section, should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 109

(H. B. 2891 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

There is hereby levied an excise tax of fifteen and one-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as prescribed in this article: Provided, That beginning the first day of May, one thousand nine hundred ninety-three, the tax levied by this article is twenty and one-half cents per gallon: Provided, however, That on and after the first day of August, two thousand seven, the tax levied by this article is fifteen and one-half cents per gallon.

CHAPTER 110

(H. B. 2840 — By Delegates Leach, Craig, Morgan, Smirl, Sobonya and Howard)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect Ninety Days From Passage. Approved by the Governor.]
thousand nine hundred twenty-five (municipal charters), as last amended by chapter one hundred ninety-four, acts of the Legislature, regular session, one thousand nine hundred eighty-three, all relating to the Greater Huntington Park and Recreation District; increasing the number of members on the board.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four and six-a, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as last amended by chapter one hundred ninety-four, acts of the Legislature, regular session, one thousand nine hundred eighty-three, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§2. Greater Huntington Park and Recreation District; composition, terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contacts or property controlled by the board.

(a) The purpose of the board of park commissioners of the city of Huntington as heretofore created and established by the acts hereby amended and reenacted, shall be to establish, own, develop and operate a park system for the benefit, health, safety, welfare, pleasure and relaxation of the inhabitants of the Greater Huntington Park and Recreation District and shall hereafter be known as the “Greater Huntington Park and Recreation District”.

(b) The park district shall be governed by eleven commissioners; ten of whom shall be elected from Cabell County, but no more than two of whom shall be elected from any one magisterial district, and one of whom shall be elected from
Westmoreland magisterial district in the county of Wayne. The commissioners shall be elected pursuant to paragraph (1), subdivision (1) of this subsection.

(1) Commissioners of the park district shall be elected in the general election for state officers on the first Tuesday after the first Monday in November and in the manner prescribed by law for the nomination and election of district officers, except as provided in this subsection.

At the general election in the year, one thousand nine hundred eighty-four, there shall be elected six commissioners. One commissioner shall be elected from the Westmoreland magisterial district in the county of Wayne. Five commissioners shall be elected from the county of Cabell. In Westmoreland district of Cabell County the person receiving the highest number of votes shall be elected for a term of six years. In Cabell County, the three persons receiving the highest number of votes shall be elected for a term of six years, the person receiving the next highest number of votes shall be elected for a term of four years, and the remaining elected commissioner shall be elected for a term of two years.

Beginning at the general election in the year, one thousand nine hundred eighty-six and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

Beginning at the general election in the year, one thousand nine hundred eighty-eight and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

Beginning at the general election in the year, one thousand nine hundred ninety and every sixth year thereafter, there shall
be elected four commissioners who shall be elected for a term of six years.

Beginning at the general election in the year, two thousand four, and every sixth year thereafter, there shall be elected four commissioners from the county of Cabell who shall be elected for a term of six years.

Beginning at the general election in the year, two thousand six, and every sixth year thereafter, there shall be elected three commissioners from the county of Cabell who shall be elected for a term of six years.

Beginning at the general election in the year, two thousand eight, and every sixth year thereafter, there shall be elected four commissioners who shall be elected for a term of six years. One commissioner shall be elected from the Westmoreland magisterial district in the county of Wayne. Three commissioners shall be elected from the county of Cabell.

(2) The commissioners in office upon the effective date of this act under the authority of the acts hereby amended and reenacted, shall continue in office for the term for which they were elected.

(c) No elected commissioner shall hold any other elected or appointed public office.

(d) Commissioners shall receive no compensation for their services as commissioners, but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as commissioners.

(e) Commissioners shall have no personal financial interest, directly or indirectly, in any contract entered into by the park district, or hold any remunerative position in connection with the establishment, construction, improvement, extension,
§3. Vacancies in office of park commissioners.

Any vacancy which may occur in the office of an elected commissioner, by death, resignation, refusal to serve, or otherwise, shall be filled by the park district within sixty days thereafter, by appointment of a suitable person, and the person so appointed shall hold office until the next election for commissioners, when a person shall be elected for the remainder of the unexpired term of commissioner.

§4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.

(a) After appointment or election, and before entering upon his duties as commissioner, each new commissioner shall take the following oath as administered by the county clerk of Cabell or Wayne County as appropriate and convenient:

“I ......................... do solemnly swear that I will faithfully perform the duties as a member of the Greater Huntington Park and Recreation District during the term for which I was elected, to the best of my ability according to law.”

(b) At the park district’s first meeting and every year thereafter, it shall elect one of its members as president, and another member as vice-president. The park district shall elect a secretary who need not be a member of the park district, as well as elect a member of the park district who shall serve as treasurer. The park district shall have the power to appoint from among its members such other officers as it deems necessary and to delegate such duties and authority to these other officers as is consistent with carrying out the purposes of this charter. Any officer may be removed from office, upon adequate notice.
and hearing, although not relieved of his duties as a commis-
sioner, by a vote of the majority of commissioners present and
voting.

(c) The officers of the park district shall have the following
specified duties and any duty which is reasonably inferred
therefrom and which is consistent with carrying out the
purposes of this charter.

(1) President. — The president shall perform such duties as
ordinarily devolve upon the president officer of a deliberative
body, except that he shall have a vote upon each and every
question as every other commissioner, but he shall have only
one vote on each question. Additionally, the president shall: (a)
Act as chief administrative officer and legal representative of
the park district; (b) represent and speak for the park district to
other organizations and to the public; (c) appoint committees
and delegate duties; and (d) sign letters or documents necessary
to carry out the will of the park district.

(2) Vice-president. — The vice-president shall assume the
duties of the president in case of the absence or incapacity of
the president and shall become president on the death, resigna-
tion or permanent incapacity of the president as determined by
the park district.

(3) Secretary. — The secretary shall be the chief recording
and corresponding officer and the custodian of the records of
the park district. The duties of the secretary shall be to: (a) Take
careful and authentic notes of the proceedings of the meetings
as a basis for preparing the minutes; (b) prepare and certify the
correctness of the minutes and enter them in the official minute
book; (c) read or circulate the minutes to the commissioners for
correction and approval; (d) enter any corrections approved by
the commissioners in the minute book and initial them; (e)
record and attest by his signature the approved minutes as the
official minutes of the park district, with the date of approval; (f) provide the presiding officer of the assembly with the exact wording of a pending motion or of one previously acted on; (g) prepare a list of members and call the roll when directed by the presiding officer; (h) read all papers, documents or communications as directed by the presiding officer; (i) bring to each meeting the minute book, a copy of ordinances, rules and policies, a list of the members, a list of standing and special committees, and a copy of the parliamentary authority adopted by the organization; (j) search the minutes for information requested by officers or members; (k) assist the presiding officer before each meeting in preparing a detailed agenda; (l) preserve all records, reports and official documents of the park district except those specifically assigned to the custody of others as well as preserve all papers containing evidence of title, contracts and obligations; (m) prepare and send required notices of meetings and proposals; (n) provide the chairman of each special committee with a list of his committee members, a copy of the motion referring the subject to the committee, and instructions and other documents that may be useful; (o) provide the chairman of each standing committee with a copy of all proposals referred to it, instructions, or material that may be useful; (p) authenticate official documents by his signature; (q) carry on the official correspondence of the park district as directed, except correspondence assigned to other officers; (r) make available the minute book for public inspection as a public record; (s) codify and preserve all ordinances enacted by the park district.

For this service the secretary, who is not a commissioner, may receive such compensation as the park district may allow. Before entering upon the duties of his office, the secretary shall enter into a bond with one or more sureties deemed sufficient by the park district and approved by the park district, conditioned upon the faithful performance of his duties, the bond to be payable to the Greater Huntington Park and Recreation
86 District in such penal sum as the park district determines, which
87 bond shall be filed with the park district for safekeeping. In the
88 secretary’s absence, the park district may appoint a secretary
89 pro tempore.

90 (4) Treasurer. — The treasurer shall be responsible for the
91 collection, safekeeping, investing and expenditure of all funds
92 and assets of the park district, and for keeping an accurate
93 financial record thereof which record shall be available for
94 public inspection. Before entering upon the duties of his office,
95 the treasurer shall enter into a bond with one or more sureties
96 deemed sufficient by the park district, and approved by the park
97 district, conditioned upon the faithful discharge of his duties
98 and the account for and paying over, as may be required, all
99 moneys which may come into his possession by virtue of his
100 office. Such bond shall be in such penal sum as the park district
101 may require, payable to the Greater Huntington Park and
102 Recreation District and filed with the park district for safekeep-
103 ing.

§6a. Comprehensive plan.

1 No later than the first day of January, two thousand four,
2 and every fifth year thereafter, the park district shall prepare
3 and make public a comprehensive plan as to the future develop-
4 ment of the park district.

CHAPTER 111

(H. B. 2669 — By Delegates Mahan, Cann, Kominar and Faircloth)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-two, article eighteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terminating the hazardous waste management annual certification fee and the hazardous waste management fee fund.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eighteen, 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 18. HAZARDOUS WASTE MANAGEMENT ACT.


(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures shall be considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the state treasury into a special fund designated "The Hazardous Waste Management Fund." In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on the first day of July, two thousand three, and for the next two fiscal years, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The fee will be set by rule promulgated by the
secretary in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated shall raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed seven hundred thousand dollars per year.

(c) The revenues collected from the annual certification fee shall be deposited in the state treasury to the credit of the “Hazardous Waste Management Fee Fund,” which is hereby established. Moneys of the fund, together with any interest or other return earned thereon, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand four, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts by appropriation of the Legislature.

(d) The fee provided for in subsection (b) of this section and the fund established in subsection (c) of this section shall terminate on the thirtieth day of June, two thousand six.
AN ACT to amend and reenact section two, article one-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uniform application forms for credentialing, recredentialing and updating information for health care practitioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-2. Development of uniform credentialing application forms.

1 Notwithstanding any provision of this code to the contrary, the secretary of the department of health and human resources and the insurance commissioner shall jointly propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the development and use of uniform application forms for credentialing, recredentialing or updating information of health care practitioners required to use the forms.
AN ACT to repeal article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles five-d and five-t of said chapter, all relating to the changing of personal care homes and residential board and care homes to assisted living residences; defining assisted living; defining limited and intermittent nursing care; establishing limitations and exceptions to definitions; clarifying licensure requirements; specifying duties of licensees; providing for residents to contract for additional services; clarifying responsibilities of property owners; providing for emergency rules; extending the care home advisory board for an additional six months; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

That article five-h, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles five-d and five-t of said chapter be amended and reenacted, all to read as follows:

Article

5D. Assisted Living Residences.

5T. Care Home Advisory Board.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.
§16-5D-1. Purpose.
§16-5D-2. Definitions.
§16-5D-4. Administrative and inspection staff.
§16-5D-5. Rules; minimum standards for assisted living residences.
§16-5D-6. License required; application; fees; duration; renewal.
§16-5D-7. Cost disclosure; surety for residents' funds.
§16-5D-8. Investigation of complaints.
§16-5D-9. Inspections.
§16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.
§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.
§16-5D-14. Legal counsel and services for the secretary.
§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.
§16-5D-16. Availability of reports and records.
§16-5D-17. Licenses and rules in force.
§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5D-1. Purpose.

1. (a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.
(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

(c) The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16-5D-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

(1) “Assisted living residence” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter; or state institutions, as defined under section three, article one, chapter twenty-five of this code or section six,
article one, chapter twenty-seven of this code; or personal care
homes operated by the federal government or the state; or
institutions operated for the treatment and care of alcoholic
patients; or offices of physicians; or hotels, boarding homes or
other similar places that furnish to their guests only room and
board; or to homes or asylums operated by fraternal orders
pursuant to article three, chapter thirty-five of this code;

(2) "Deficiency" means a statement of the rule and the fact
that compliance has not been established and the reasons
therefor;

(3) "Department" means the state department of health and
human resources;

(4) "Division" means the bureau for public health of the
state department of health and human resources;

(5) "Limited and intermittent nursing care" means direct
hands on nursing care of an individual who needs no more than
two hours of nursing care per day for a period of time no longer
than ninety consecutive days per episode: Provided, That such
time limitations shall not apply to an individual who, after
having established a residence in an assisted living residence,
subsequently qualifies for and receives services coordinated by
a licensed hospice and such time limitations shall not apply to
home health services provided by a medicare-certified home
health agency. Limited and intermittent nursing care may only
be provided by or under the supervision of a registered profes-
sional nurse and in accordance with rules proposed by the
secretary for legislative approval in accordance with the
provisions of article three, chapter twenty-nine-a of this code;

(6) "Nursing care" means those procedures commonly
employed in providing for the physical, emotional and
rehabilitational needs of the ill or otherwise incapacitated which
require technical skills and knowledge beyond that which the
untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

(7) "Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state;

(8) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(9) "Resident" means an individual living in an assisted living residence for the purpose of receiving personal assistance or limited and intermittent nursing services;

(10) "Secretary" means the secretary of the state department of health and human resources or his or her designee; and

(11) "Substantial compliance" means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(b) The secretary may define in rules any term used herein which is not expressly defined.


In the administration of this article, the secretary has the following powers, duties and rights:
(a) To enforce rules and standards for assisted living residences which are adopted, promulgated, amended or modified by the secretary;

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of assisted living residences;

(c) To enforce rules adopted, promulgated, amended or modified by the secretary governing the qualification of applicants for assisted living residences, including, but not limited to, educational requirements, financial requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division's operation or otherwise;

(g) To make contracts and to execute all instruments necessary or convenient in carrying out the secretary's functions and duties; and all such contracts, agreements and instruments shall be executed by the secretary;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;
(i) To offer and sponsor educational and training programs for assisted living residences' administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and operation of assisted living residences and to the health, care, treatment and service in general of residents of assisted living residences;

(k) To assess civil penalties for violations of assisted living residence standards in accordance with section ten of this article;

(l) To inspect any assisted living residence and any records maintained therein subject to the provisions of section ten of this article;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of article three, chapter twenty-nine-a of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder by the secretary;

(n) To subpoena witnesses and documents, administer oaths and affirmations and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the secretary may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder by the secretary. Such action may be taken by the secretary without the sanction of the prosecuting attorney of the county in which proceedings are
instituted if the prosecuting attorney fails or refuses to dis-
charge his or her duty. The circuit court of Kanawha County or
the circuit court of the county in which the conduct has oc-
curred shall have jurisdiction in all civil enforcement actions
brought under this article and may order equitable relief without
bond. In no such case may the secretary or any person acting
under the secretary’s direction be required to give security for
costs;

(p) To delegate authority to the secretary’s employees and
agents to perform all functions of the secretary except the
making of final decisions in adjudications; and

(q) To submit an annual report to the governor, the Legisla-
ture and the public. The report shall describe the assisted living
residence licensing and investigatory activities of the division
during the year and the nature and status of other activities of
the division and may include comment on the acts, policies,
practices or procedures of any public or private agency that
affect the rights, health or welfare of residents of assisted living
residences. The annual report shall include a list of all assisted
living residences in the state and such of the following informa-
tion as the secretary determines to apply: Whether the assisted
living residences are proprietary or nonproprietary; the classifi-
cation of each assisted living residence; the name of the owner
or owners; the total number of beds; the number of private and
semiprivate rooms; the costs per diem for private residents; the
number of full-time employees and their professions; recre-
atational programs; services and programs available as well as the
costs thereof; and whether or not those assisted living resi-
dences listed accept medicare and medicaid residents. The
report shall also contain the division’s recommendations as to
changes in law or policy which it deems necessary or appropri-
ate for the protection of the rights, health or welfare of residents
of assisted living residences in the state.
§16-5D-4. Administrative and inspection staff.

The secretary may, as he or she determines necessary, employ administrative employees, inspectors or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division shall be members of the state civil service system. Inspectors and other employees as may be duly designated by the secretary shall act as the secretary’s representatives and, under the direction of the secretary, shall enforce the provisions of this article and all duly promulgated rules of the secretary and, in the discharge of official duties, shall have the right of entry into any place maintained as an assisted living residence at any time.

§16-5D-5. Rules; minimum standards for assisted living residences.

(a) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes and intent of this article and to enable the secretary to exercise the powers and perform the duties conferred upon the secretary by this article.

(b) The secretary shall propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and
(B) A statement of the rights and responsibilities of residents;

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made available;

(9) Physical facilities;

(10) Requirements related to provision of limited and intermittent nursing; and

(11) Such other categories as the secretary determines to be appropriate to ensure resident’s health, safety and welfare.

(c) The secretary shall include in rules detailed standards for each of the categories of standards established pursuant to subsections (b) and (d) of this section and shall classify such standards as follows:

(1) Class I standards are standards the violation of which, as the secretary determines, would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result;
(2) Class II standards are standards which the secretary determines have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the secretary determines have an indirect or a potential impact on the health, safety or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license for each assisted living residence. Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise an assisted living residence within this state unless and until he or she obtains a valid license therefor as provided in this article, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any assisted living residence, as defined in section two of this article, which is being operated without a valid license from the secretary. The licensee shall be responsible for, and shall have complete control of, the operation and premises of the assisted living residence and the personal assistance and supervision provided to the residents: Provided, That the secretary may review any leases or any contracts, subcontracts, agreements or arrangements for the provision of on-site services to the residents of an assisted living residence to ensure the proper care, safety and welfare of current or potential residents. Nothing in this article shall be construed to
prevent or prohibit the ability of a resident of an assisted living residence to contract or arrange for, and to receive, privately paid nursing care or personal assistance in addition to those services provided by the licensee, subject to the consent and cooperation of the licensee and consistent with the duties and responsibilities imposed by this section.

(b) Nothing in this article shall be construed to require the licensing of landlords or property owners who are not involved in the provision of supervision, personal assistance, limited and intermittent nursing care or other on-site professional services for the residents of an assisted living residence or in the advertising, recruitment of residents, transportation of residents or other substantial and ongoing services for the operation or maintenance of the assisted living residence.

(c) The procedure for obtaining a license shall be as follows:

(1) The applicant shall submit an application to the secretary on a form to be prescribed by the secretary, containing such information as may be necessary to show that the applicant is in compliance with the standards for assisted living residences as established by this article and the rules lawfully promulgated by the secretary hereunder. The application and any exhibits thereto shall provide the following information:

(A) The name and address of the applicant;

(B) The name, address and principal occupation:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant;

(ii) Of each officer and director of a corporate applicant;
(iii) Of each trustee and beneficiary of an applicant which
is a trust; and

(iv) Where a corporation has a proprietary interest of
twenty-five percent or more in an applicant, the name, address
and principal occupation of each officer and director of the
corporation;

(C) The name and address of the owner of the premises of
the assisted living residence or proposed assisted living
residence, if he or she is a different person from the applicant,
and in such case, the name and address:

(i) Of each person who, as a stockholder or otherwise, has
a proprietary interest of ten percent or more in the owner;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of the owner if it is a
trust; and

(iv) Where a corporation has a proprietary interest of
twenty-five percent or more in the owner, the name and address
of each officer and director of the corporation;

(D) Where the applicant is the lessee or the assignee of the
assisted living residence or the premises of the proposed
assisted living residence, a signed copy of the lease and any
assignment thereof;

(E) The name and address of the assisted living residence
or the premises of the proposed assisted living residence;

(F) The proposed bed quota of the assisted living residence
and the proposed bed quota of each unit thereof;
An organizational plan for the assisted living residence indicating the number of persons employed or to be employed, the positions and duties of all employees;

(H) The name and address of the individual who is to serve as administrator;

(I) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention and sanitation as the secretary may require; and

(J) Such additional information as the secretary may require.

(d) Upon receipt and review of an application for license made pursuant to subsection (a) of this section and inspection of the applicant assisted living residence pursuant to section ten of this article, the secretary shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, secretary and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to section five of this article and such other requirements for a license as the secretary may establish by rule under this article.
(e) The secretary may deny an initial or renewal license if
the information provided in an application or report is known
by the applicant to be false or the applicant fails to report
required information or for any other reason permitted by law
or rules promulgated pursuant to this article.

(f) Any license granted by the secretary shall state the
maximum bed capacity for which it is granted, the date the
license was issued and the expiration date. Licenses shall be
issued for a period not to exceed one year for assisted living
residences: Provided, That any such license in effect for which
timely application for renewal, together with payment of the
proper fee has been made to the state division of health in
conformance with the provisions of this article and the rules
issued thereunder and prior to the expiration date of the license,
shall continue in effect until: (1) One year following the
expiration date of the license; or (2) the date of the revocation
or suspension of the license pursuant to the provisions of this
article; or (3) the date of issuance of a new license, whichever
date first occurs. Each license shall be issued only for the
premises and persons named in the application and is not
transferable or assignable: Provided, however, That in the case
of the transfer of ownership of an assisted living residence with
an unexpired license, the application of the new owner for a
license shall have the effect of a license for a period of three
months when filed with the secretary. Every license shall be
posted in a conspicuous place in the assisted living residence
for which it is issued so as to be accessible to and in plain view
of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned
upon the licensee filing timely application for the extension of
the term of the license accompanied by the fee and contingent
upon evidence of compliance with the provisions of this article
and rules promulgated by the secretary hereunder; the applica-
tion shall be accompanied by:
(1) The information required in paragraphs (A), (B) and (C), subdivision (1) of this subsection.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;

(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(4) A statement of any changes in the name, address, management or ownership information on file with the secretary.

(h) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the secretary may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional renewal may not be issued for a period greater than one year, may not be renewed and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(i) A nonrefundable application fee in the amount of sixty-five dollars for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding ten facilities based on the size of the facility’s licensed bed capacity shall be borne by the applicant and shall be received by the secretary prior to the issuance of an
initial or amended license. The license fee for renewal of a license shall be at the rate of six dollars per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The secretary may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license shall be determined by the secretary. All license fees shall be due and payable to the secretary, annually, and in the manner set forth in the rules promulgated by the secretary. The fee and application shall be submitted to the secretary who shall retain both the application and fee pending final action on the application. All fees received by the secretary under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.

§16-5D-7. Cost disclosure; surety for residents' funds.

(a) Each assisted living residence shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the assisted living residence handles any money for residents within the assisted living residence, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the secretary shall approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents’ funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the secretary when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended and held on hand. The licensee shall file a bond in a sum to be fixed by the secretary based upon the magnitude of the operations of the applicant, but
which sum may not be less than two thousand five hundred dollars.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of an assisted living residence may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the secretary determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled or whenever the amount of any bond is impaired by any recovery against the bond, the secretary may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of subsection (b) of this section do not apply if the licensee handles less than twenty-five dollars per resident and less than five hundred dollars for all residents in any month.

§16-5D-8. Investigation of complaints.

(a) The secretary shall establish by rule procedures for prompt investigation of all complaints of alleged violations by assisted living residences of applicable requirements of state law or rules, except for such complaints that the secretary determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person so named in the complaint and for promptly informing the complainant and the assisted living residence involved of the results of the investigation.

(b) If, after its investigation, the secretary determines that the complaint has merit, the secretary shall take appropriate
disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

(c) No assisted living residence may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any assisted living residence constitutes ground for the suspension or revocation of the license of the assisted living residence as provided in section eleven of this article. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the secretary, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the assisted living residence in retaliation for the complaint or action.

§16-5D-9. Inspections.

(a) The secretary and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any assisted living residence at any time for which a license has been issued, for which an application for license has been filed with the secretary, or which the secretary has reason to believe is being operated or maintained as an assisted living residence without a license. If entry is refused by the owner or person in charge of the assisted living residence, the secretary shall apply to the circuit court of the county in which the assisted living residence is located or the circuit court of Kanawha County for an order authorizing inspection and the court shall issue an appropriate order if it finds good cause.

(b) The secretary, by the secretary’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article and shall
conduct periodic unannounced inspections thereafter to
determine compliance by the assisted living residence with
applicable statutes and rules promulgated thereunder. All
assisted living residences shall comply with rules of the state
fire commission. The state fire marshal, by his or her employ-
ees or authorized agents, shall make all fire, safety and like
inspections. The secretary may provide for such other inspec-
tions as the secretary may deem necessary to carry out the
intent and purpose of this article. If after investigating a
complaint the secretary determines that the complaint is
substantiated and that an immediate and serious threat to a
resident’s health or safety exists, the secretary may invoke any
remedies available pursuant to section eleven of this article.
Any assisted living residence aggrieved by a determination or
assessment made pursuant to this section shall have the right to
an administrative appeal as set forth in section twelve of this
article.

§16-5D-10. Reports of inspections; plans of correction; assess-
ment of penalties and use of funds derived there-
from; hearings.

(a) Reports of all inspections made pursuant to section nine
of this article shall be in writing and filed with the secretary and
shall list all deficiencies in the assisted living residence’s
compliance with the provisions of this article and the rules
adopted by the secretary hereunder. The secretary shall send a
copy of the report to the assisted living residence by certified
mail, return receipt requested, and shall specify a time within
which the assisted living residence shall submit a plan for
correction of deficiencies, which plan shall be approved,
rejected or modified by the secretary. The surveyors shall allow
audio taping of the exit conference for licensure inspections
with all costs directly associated with the taping to be paid by
the assisted living residence provided that an original tape is
provided to surveyors at the end of taping.
(b) Upon an assisted living residence's failure to submit a plan of correction which is approved by the secretary, or to correct any deficiency within the time specified in an approved plan of correction, the secretary may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the secretary from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the secretary, the violation of the rule jeopardizes the health or safety of residents or where the violation of the rule is the second or subsequent violation occurring during a period of twelve full months.

(d) Civil penalties assessed against assisted living residences shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and rules promulgated thereunder by the secretary, as follows: For each violation of a Class I standard, a civil penalty of not less than fifty nor more than five hundred dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than ten nor more than twenty-five dollars shall be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The secretary shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies, or causes to be notified, an assisted living residence of the time or date on which an inspection is scheduled to be conducted under this article.
(f) If the secretary assesses a penalty under this section, the secretary shall cause delivery of notice of the penalty by personal service or by certified mail. The notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates and the basis upon which the secretary assessed the penalty and selected the amount of the penalty.

(g) The secretary shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under section twelve of this article within thirty days of receipt of notice of the assessment or which has been affirmed under the provisions of that section and not appealed within thirty days of receipt of the secretary's final order or which has been affirmed on judicial review, as provided in section thirteen of this article. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the secretary only for the protection of the health or property of residents of assisted living residences operated within the state that the secretary finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of an assisted living residence pending correction of deficiencies or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in section twelve of this article. In addition to any other rights of appeal conferred upon an assisted living residence pursuant to this section, an assisted living residence shall have the right to request a hearing and seek judicial review pursuant to sections twelve and thirteen of this article to contest the citing by the secretary of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.
§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

(a) The secretary shall, by order, impose a ban on the admission of residents or reduce the bed quota of the assisted living residence, or any combination thereof, where he or she finds upon inspection of the assisted living residence that the licensee is not providing adequate care under the assisted living residence’s existing bed quota and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on new admissions shall include the terms of the order, the reasons therefor and the date set for compliance.

(b) The secretary may suspend or revoke a license issued under this article if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section, the secretary shall file an administrative complaint stating facts constituting a ground or grounds for the limitation, suspension or revocation. Upon the filing of the administrative complaint, the secretary shall notify the licensee in writing of the filing of the administrative complaint, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.
(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the secretary of a license issued by the secretary or the withdrawal of an application for a license after it has been filed with the secretary, may not deprive the secretary of the secretary’s authority to institute or continue a disciplinary proceeding or a proceeding for the denial of a license application against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the secretary, the circuit court of the county in which the conduct has occurred or is occurring, or the circuit court of Kanawha County, may determine that an assisted living residence’s deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare or rights of its residents and issue an order to:

1. Close the assisted living residence;
2. Transfer residents in the assisted living residence to other facilities; or
3. Appoint temporary management to oversee the operation of the assisted living residence and to assure the health, safety, welfare and rights of the assisted living residence’s residents where there is a need for temporary management while:
   A. There is an orderly closure of the assisted living residence; or
   B. Improvements are made in order to bring the assisted living residence into compliance with all the applicable requirements of this article.
(f) If the secretary petitions a circuit court for the closure of an assisted living residence, the transfer of residents or the appointment of a temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the secretary and the licensee or operator of the assisted living residence may participate and present evidence.

(g) A circuit court may divest the licensee or operator of possession and control of an assisted living residence in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the assisted living residence, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the assisted living residence or to repair or improve the assisted living residence so as to return it to compliance with applicable requirements and the power to receive, conserve and expend funds, including payments on behalf of the licensee or operator of the assisted living residence. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

(h) The person charged with temporary management: (i) Shall be an officer of the court; (ii) shall be paid by the licensee; (iii) is not liable for conditions at the assisted living residence which existed or originated prior to his or her appointment; (iv) is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the assisted living residence during his or her temporary management.

(i) No person may impede the operation of temporary management. There shall be an automatic stay for a ninety-day period subsequent to the establishment of temporary manage-
ment of any action that would interfere with the functioning of
the assisted living residence, including, but not limited to,
cancellation of insurance policies, termination of utility
services, attachments to working capital accounts, foreclosures,
evictions and repossessions of equipment used in the assisted
living residence.

(j) A temporary management established for the purpose of
making improvements in order to bring the assisted living
residence into compliance with applicable requirements may
not be terminated until the court has determined that the
assisted living residence has the management capability to
ensure continued compliance with all applicable requirements,
except if the court has not made such determination within six
months of the establishment of the temporary management, the
temporary management terminates by operation of law at that
time and the assisted living residence shall be closed. After the
termination of the temporary management, the person who was
responsible for the temporary management shall make an
accounting to the court and after deducting from receipts the
costs of the temporary management, expenditures and civil
penalties and interest no longer subject to appeal, in that order,
any excess shall be paid to the licensee or operator of the
assisted living residence.

(k) The assessments for penalties and for costs of actions
taken under this article shall have interest assessed at five
percent per annum beginning thirty days after receipt of notice
of the assessment or thirty days after receipt of the secretary’s
final order following a hearing, whichever is later. All assess-
ments against an assisted living residence that are unpaid shall
be added to the assisted living residence’s licensure fee and
may be filed as a lien against the property of the licensee or
operator of the assisted living residence. Funds received from
assessments shall be deposited as funds received as provided in
section ten of this article.
(l) The secretary shall have the power to promulgate emergency rules that expand the power of the secretary in excess of that provided in this article to the extent required to comply with federal requirements, but any such rules shall expand the power of the secretary to the minimum extent required by federal requirements. The rules are subject to the provisions of article three, chapter twenty-nine-a of this code.

(m) The opportunity for a hearing on an action by the secretary taken under this section shall be as provided in section twelve of this article.

§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article may request a formal or informal hearing with the secretary or program manager in order to contest the order as contrary to law or unwarranted by the facts or both. If the contested matter is not resolved at the informal hearing, the licensee or applicant may request a formal hearing before the secretary. An informal hearing is not a prerequisite for requesting a formal hearing.

(b) Informal hearings shall be held within twenty business days of the secretary’s receipt of timely request for appeal unless the licensee or applicant consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the secretary receives a timely request for appeal. Neither the licensee or applicant nor the secretary may be represented by an attorney at the informal hearing. Within ten business days of the conclusion of the informal hearing, the secretary, program manager or designee shall issue an informal hearing order, including the basis for the decision. If the order is not favorable to the licensee or applicant, the licensee or applicant may request an appeal and a
formal hearing. The secretary shall notify the administrative hearing examiner of the request for appeal within five business days of receiving the request for an appeal and a formal hearing.

(c) If the applicant or licensee requests a formal hearing without a prior informal hearing or if an applicant or licensee appeals the order issued as a result of the informal hearing, the secretary shall proceed in accordance with the department’s rules of procedure for contested case hearings and declaratory rulings and the pertinent provisions of article five, chapter twenty-nine-a of this code.

(d) Following a formal hearing, the secretary shall make and enter a written order either dismissing the complaint or taking other action as is authorized in this article. The written order of the secretary 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 the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the secretary suspends an assisted living residence’s license, the order shall also specify the conditions giving rise to the suspension to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the secretary revokes a license, the secretary may stay the effective date of revocation by not more than ninety days upon a showing that the delay is necessary to assure appropriate placement of residents. The order of the secretary shall be final unless vacated or modified upon judicial review of the order in accordance with the provisions of section thirteen of this article.

(e) In addition to all other powers granted by this chapter, the secretary may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in
In such a case, the secretary shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of the order, the secretary shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee's attorney of record, if any, by certified mail, return receipt requested.


(a) Any licensee adversely affected by an order of the secretary rendered after a hearing held in accordance with the provisions of section twelve of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern with like effect as if the provisions of said section were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-5D-14. Legal counsel and services for the secretary.

(a) Legal counsel and services for the secretary in all administrative hearings and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general, his or her assistants or an attorney employed by the secretary in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The governor may appoint counsel for the secretary who shall perform such legal services in representing the interests of residents in assisted living residences in matters under the
jurisdiction of the secretary as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains or is engaged in establishing or maintaining an assisted living residence without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars or by imprisonment in jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in jail for a period of not more than ninety days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The secretary may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the secretary that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the secretary that any person has aided, abetted or caused or is aiding, abetting or causing such an act or practice. Upon application by the secretary, the circuit court of the county in which the conduct has occurred or is occurring shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.
(c) Whenever the secretary refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the secretary and the person deeming himself aggrieved by the refusal, revocation or order appeals the action of the secretary, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the assisted living residence or its failure to comply with the order of the secretary adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary, fail to appeal or should such appeal be decided favorably to the secretary, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the secretary.

(d) Any assisted living residence that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule or by any applicable federal statute or regulation shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may
also maintain an action pursuant to this section for any other
type of relief, including injunctive and declaratory relief,
permitted by law. Exhaustion of any available administrative
remedies may not be required prior to commencement of suit
hereunder.

(e) The amount of damages recovered by a resident, in an
action brought pursuant to this section, are exempt for purposes
of determining initial or continuing eligibility for medical
assistance under article four, chapter nine of this code and may
neither be taken into consideration nor required to be applied
toward the payment or part payment of the cost of medical care
or services available under said article.

(f) Any waiver by a resident or his or her legal representa-
tive of the right to commence an action under this section,
whether oral or in writing, shall be null and void as contrary to
public policy.

(g) The penalties and remedies provided in this section are
cumulative and shall be in addition to all other penalties and
remedies provided by law.

§16-5D-16. Availability of reports and records.

The secretary shall make available for public inspection and
at a nominal cost provide copies of all inspections and other
reports of assisted living residences filed with or issued by the
secretary. Nothing contained in this section may be construed
or deemed to allow the public disclosure of confidential
medical, social, personal or financial records of any resident.
The secretary shall propose rules for legislative approval in
accordance with the provisions of article three, chapter twenty-
nine-a of this code as may be necessary to give effect to the
provisions of this section and to preserve the confidentiality of
medical, social, personal or financial records of residents.
§16-5D-17. Licenses and rules in force.

(a) All licenses for personal care homes and residential board and care homes which are in force on the first day of July, two thousand three, shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.

(b) All rules in effect on the first day of July, one thousand nine hundred ninety-seven, which were adopted by the secretary relating to licensing personal care homes and residential board and care homes shall remain in full force and effect until altered, amended or repealed by the secretary.

(c) Notwithstanding any other provisions of this article, the secretary shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first date of September, two thousand three, to implement this program.

§16-5D-18. Separate accounts for residents’ personal funds; consent for use; records; penalties.

(a) Each assisted living residence subject to the provisions of this article shall hold in a separate account and in trust each resident’s personal funds deposited with the assisted living residence.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any assisted living residence unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each assisted living residence shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the assisted living
residence, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the assisted living residence.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in jail not more than one year, or both fined and imprisoned.

ARTICLE 5T. CARE HOME ADVISORY BOARD.

§16-5T-1. Care home advisory board created; membership; terms; meetings; compensation; termination.

(a) The care home advisory board, as previously created and constituted under this section, is hereby continued to gather information concerning personal care homes, as defined and regulated in article five-d of this chapter, and residential board and care homes, as defined and regulated in article five-h of this chapter, and make its findings and recommendations to the governor and the Legislature.

(b) The care home advisory board shall have seven members: The president of the Senate or his or her designee; the speaker of the House of Delegates or his or her designee; the secretary of the department of health and human resources or his or her designee; an operator of a facility originally licensed as a personal care home in this state; an operator of a facility originally licensed as a residential board and care home in this state; and two members of the public at large, one of whom shall be an advocate for consumer rights.

(c) The governor shall appoint the members to the board by and with the advice and consent of the Senate. Appointments under the provision of this article shall be for a three-year term
or the unexpired term, except in the initial appointments as
follows: One citizen member shall be appointed for a two-year
term; one citizen member shall be appointed for a three-year
term; and the care home operator members shall be appointed
for a one-year term. Subsequent appointments to the committee
shall be for three-year terms. No member shall serve more than
two successive terms.

(d) The advisory board shall meet at least four times
annually at the times and places in the state that it determines.
A majority of the members constitutes a quorum for the purpose
of conducting business. The secretary of the department of
health and human resources or his or her designee shall serve as
chair of the advisory board.

(e) Members of the advisory board are not entitled to
compensation for services performed as members, but are
entitled to reimbursement for all reasonable and necessary
expenses actually incurred in the performance of their duties,
which shall be paid from the funds of the department of health
and human resources.

(f) The care home advisory board shall continue to exist
until the last day of December, two thousand three, unless
sooner terminated, continued or reestablished by act of the
Legislature.

CHAPTER 114

(S. B. 652 — By Senators Prezioso, Unger, Boley, Edgell, Ross,
Rowe, Sharpe, Smith and Weeks)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section one, article eight, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article eleven of said chapter, all relating to emergency hospitals; and renaming the Marion health care hospital the John Manchin, Sr., health care center.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

(a) The hospitals heretofore established and known, respectively, as Welch emergency hospital and Fairmont emergency hospital shall be continued and shall be managed, directed and controlled as prescribed in article eleven of this chapter: Provided, That the hospital established as Fairmont emergency hospital and later renamed the Marion health care hospital shall henceforth be known as the John Manchin, Sr., health care center and any reference in this code to the Fairmont emergency hospital or the Marion health care hospital shall mean the John Manchin, Sr., health care center.

(b) The chief executive officer of each of said hospitals shall be the superintendent, who shall be a college graduate and have a minimum of two years' experience in either hospital
administration, health services administration or business administration with broad knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health-related services.

(c) For purposes of this section, "superintendent" means the person having the fiscal responsibility of the hospital and the authority to manage and administer the financial, business and personnel affairs of the hospital. "Clinical director" means the person having the responsibility for decisions involving clinical and medical treatment of patients and who shall be a duly qualified physician licensed to practice medicine in the state of West Virginia.

(d) The provisions of this section relating to the qualification of persons eligible to serve as superintendent shall not apply to any person serving in the capacity of business manager on the effective date hereof and who has served in such capacity for at least six consecutive months next preceding such effective date.

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

The director of health or his or her successor shall manage, direct, control and govern the Andrew S. Rowan memorial home, Denmar hospital, heretofore established and known as Denmar state hospital, Hopemont hospital, heretofore known as Hopemont state hospital, Pinecrest hospital, John Manchin, Sr., health care center, established as the Fairmont emergency hospital and formerly known as the Marion health care hospital and Welch emergency hospital and such other state health care facilities as are or may hereafter be created by law.

The director shall designate the functions of each facility and prescribe guidelines for the admission of persons thereto,
pursuant to rules and regulations promulgated by the board of
health, and shall supervise the business, personnel and clinical
responsibilities of each facility: Provided, That in prescribing
admission guidelines, precedence shall be given to persons
unable to pay therefor.

CHAPTER 115

(Com. Sub. for S. B. 510 — By Senators Hunter, Oliverio, Prezioso,
McCabe, Rowe, Caldwell, Unger and Ross)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twenty­
eight, chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to the West
Virginia commission on holocaust education; providing for
reimbursement of actual and necessary expenses; and authorizing
the commission to accept gifts, donations and state funds as
appropriated by the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twenty-eight, 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 28. COMMISSION ON HOLOCAUST EDUCATION.

§5-28-2. Commission on holocaust education; compensation.

§5-28-2. Commission on holocaust education; compensation.
(a) Effective the first day of July, two thousand one, there is created the West Virginia commission on holocaust education.

(b) The commission is composed of eleven members: Two members currently serving on the state board of education, selected by the board; the state superintendent of schools or his or her designee; the director of the division of veterans' affairs; one attorney from the attorney general's office, civil rights division; one teacher who has completed professional development related to holocaust education teaching at the high-school level and one teacher who has completed professional development related to holocaust education teaching at the junior-high or middle-school level, each appointed by the governor with the advice and consent of the Senate; and four state residents, appointed by the governor, with the advice and consent of the Senate, who shall be: Individuals who are holocaust scholars or individuals experienced in the field of holocaust education or survivors, second generation, eye-witness/liberators or individuals recommended by the chair of the present holocaust education commission, created by executive order, who, by virtue of their interest, education or long-term involvement in human rights, prejudice reduction and holocaust education have demonstrated, through their past commitment and cooperation with the existing holocaust commission on education, their willingness to work for holocaust awareness and education in West Virginia.

(c) Members of the commission shall be appointed for terms of three years or until their prospective successors are appointed and qualified. Members are eligible for reappointment. Any member of the commission who fails to attend more than two consecutive meetings without an excuse approved by the commission may be removed from the commission. All vacancies shall be filled by appointment in the same manner as
the original appointment and the individual appointed to fill the
vacancy serves for the remainder of the unexpired term.

(d) The governor shall appoint a chairperson for the
commission for a term of three years and until his or her
successor is appointed and qualified.

(e) The speaker of the House of Delegates shall appoint a
member of the House of Delegates and the president of the
Senate shall appoint a member of the Senate to serve as
advisors to the commission.

(f) Members of the commission are not entitled to compensa-
tion for services performed as members but may be reim-
bursed for actual and necessary expenses incurred for each day
engaged in the performance of their official commission duties
in a manner consistent with the guidelines of the travel manage-
ment office of the department of administration.


(a) The commission shall:

(1) Provide, based upon the collective knowledge and
experience of its members, assistance and advice to public and
private schools, colleges and universities with respect to the
implementation of holocaust education and awareness pro-
grams;

(2) Meet with appropriate education officials and other
interested public and private organizations, including service
organizations, for the purpose of providing information,
planning, coordination or modification of courses of study or
programs dealing with the subject of the holocaust;

(3) Compile a roster of individual volunteers who are
willing to share their verifiable knowledge and experiences in
classrooms, seminars and workshops on the subject of the
holocaust. The volunteers may be survivors of the holocaust,
liberators of concentration camps, scholars, members of the
clergy, community relations professionals or other persons who,
by virtue of their experience, education or interest, have
experience with the holocaust;

(4) Coordinate events memorializing the holocaust and seek
volunteers who are willing and able to participate in commemo-
rative events that will enhance public awareness of the signifi-
cance of the holocaust; and

(5) Prepare annual reports for the governor and the Legisla-
ture regarding its findings and recommendations to facilitate the
inclusion of holocaust studies and special programs memorial-
izing the holocaust in educational systems in this state.

(b) The commission may accept and use for the benefit of
the people of West Virginia any gift or devise of any property
or thing which is lawfully given and is authorized to accept
state funds as the same may be appropriated by the Legislature.

CHAPTER 116

(Com. Sub. for S. B. 338 — By Senators Plymale, Bailey, Prezioso,
Unger, Boley, Hunter, Rowe, Jenkins, Caldwell and Kessler)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine 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 the creation of
a medicaid buy-in program for working individuals with disabili-

ties; establishing legislative intent; defining terms; establishing criteria for participation in the program; creating exceptions; establishing fees and premiums; providing for periodic review; and requiring the secretary of the department of health and human resources to fulfill certain reporting requirements, form an advisory counsel and propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4D. MEDICAID BUY-IN PROGRAM.

§9-4D-1. Legislative findings.


§9-4D-3. Medicaid buy-in program; funding.

§9-4D-4. Eligibility guidelines.

§9-4D-5. Exceptions to qualifying factors.

§9-4D-6. Fees, premiums and periodic reviews.


§9-4D-8. Analytical criteria and reporting requirements.


§9-4D-1. Legislative findings.

(a) The Legislature finds that there are many individuals in this state who have disabilities that qualify them for state or federal assistance and who are nonetheless willing and able to enter the workforce, but do not do so out of fear of losing essential medical care. As a result, the state realizes increased costs in fully supporting these disabled individuals who, in turn, suffer under an additional disability of being deprived of the additional income, dignity and self-sufficiency derived by being engaged in competitive employment.

(b) The Legislature finds that establishing a medicaid buy-in program for certain individuals with disabilities will assist
them in becoming independent of public assistance by enabling them to enter the workforce without fear of losing essential medical care.


As used in this article:

(1) "Approved accounts" means any retirement account that the secretary has determined is not to be included as an asset in determining the eligibility of an individual for participation in the buy-in program. Approved accounts may include, but not be limited to, private retirement accounts such as individual retirement accounts; other individual accounts; and employer-sponsored retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

(2) "Basic coverage group" means an optional coverage group as defined by the Ticket to Work and Work Incentives Improvement Act of 1999.

(3) "Copayment" is a fixed fee to be paid by the patient at the time of each office visit, outpatient service or filling of prescriptions.

(4) "Cost-sharing" means the eligible participant will participate in the cost of the program by paying the enrollment fee, monthly premiums and copayments if established by the department.

(5) "Countable income" means income that does not exceed two hundred fifty percent of the federal poverty level: Provided, That for purposes of this article, countable income does not include:

(A) The income of the individual's spouse, parent or guardian with whom he or she resides; and
(B) Income disregarded under the state medicaid plan's financial methodology, including income disregarded under the federal supplemental security income program (42 U. S. C. §1382) as impairment-related work expenses.

(6) "Countable resources" includes earned and unearned income: Provided, That countable resources do not include:

(A) Liquid assets of up to five thousand dollars for an individual;

(B) Liquid assets of up to ten thousand dollars for a family;

(C) Retirement accounts; and

(D) Independence accounts.

(7) "Department" means the department of health and human resources.

(8) "Disability" means a medically determinable physical or mental condition that:

(A) Can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than twelve months; and

(B) Renders a person unable to engage in substantial gainful activity; and

(C) Is a disability defined by social security administration criteria and has been determined by either the social security administration or the West Virginia department of health and human resources.

(9) "Eligible buy-in participant" means an individual who:

(A) Is a resident of the state of West Virginia;
(B) Has a disability as defined herein;

(C) Is at least sixteen years of age and less than sixty-five years of age;

(D) Is engaged in competitive employment, including self-employment or nontraditional work that results in remuneration at or above minimum wage in an integrated setting;

(E) Has countable resources that do not exceed the resource limits as defined in this article; and

(F) Has countable income that does not exceed the income limits as defined in this article.

(10) “Enrollment fee” means a one-time fee to participate in the medicaid buy-in program.

(11) “Federal benefit rate” is the amount of monthly federal or state benefits paid to persons with limited income and resources who are age sixty-five or older, blind or disabled.

(12) “Federal poverty level” means the level of personal or family income below which one is classified as poor according to federal governmental standards, commonly referred to as the federal poverty guidelines which are issued and printed each year in the federal register.

(13) “Income” means money earned from employment wages or self-employment earnings and unearned money received from any other source.

(14) “Independence accounts” are department-approved accounts established with the department solely by funds paid from the earned income of an eligible buy-in participant to cover expenses necessary to enhance or maintain his or her independence or increase employment opportunities. Approved
expenditures from the funds may include: Educational expenses; work-related expenses; home purchase or modification; transportation; medical expenses; assistive technology and related services; or for short-term living expenses in times of qualified emergencies as determined by the department.

(15) “Liquid assets” are cash or assets payable in cash on demand, including financial instruments that can be converted to cash within twenty working days. For purposes of this article, national, state and local holidays are not working days.

(16) “Premium” is a monthly fee paid by an eligible buy-in participant to continue participation in the program.

(17) “Resources” are possessions that the eligible buy-in participant owns that could be changed to cash and used for food, clothing or shelter and that qualify as resources under the applicable social security administration guidelines.

(18) “Retirement accounts” are moneys invested in approved retirement funds and accounts that are disregarded as an asset by the department in determining the eligibility of an individual for participation in the buy-in program.

§9-4D-3. Medicaid buy-in program; funding.

(a) The medicaid buy-in program for working individuals with disabilities is hereby established to provide medicaid benefits to individuals who are disabled and employed, as authorized under Section 201 of the federal Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170, 42 U. S. C. 1396, et seq.). The medicaid buy-in program shall become effective as of the first day of July, two thousand three.

(b) Funding for the buy-in program shall be from funds appropriated by the Legislature, premiums paid, enrollment fees and any federal matching funding available to the program.
§9-4D-4. Eligibility guidelines.

(a) To be eligible to participate in the buy-in program beginning the first day of July, two thousand three, an individual shall:

1. Be a resident of the state of West Virginia;

2. Have a disability that is defined and determined by the social security administration or the department;

3. Be at least sixteen years of age but not more than sixty-four years of age;

4. Be engaged in competitive employment, including self-employment or nontraditional work that results in remuneration at or above minimum wage in an integrated setting;

5. Have countable resources that do not exceed the resource limit for the supplemental security income program;

6. Have countable income that does not exceed two hundred fifty percent of the federal poverty level;

7. Have total countable unearned income, using the social security income program methodology, that does not exceed the federal benefit rate plus the general income exclusion; and

8. Except as provided in section five of this article, not have countable resources that exceed the resource limits for the federal supplemental security income program.

(b) The secretary shall establish a method of providing notice of the availability of participation in the medicaid buy-in program. The secretary shall develop all forms and notices necessary to implement the provisions of this article, including forms for application to the program, determination of eligibil-
ity and continued participation and notices that advise all eligible buy-in participants of the rights, benefits, obligations and participation requirements of the program, including, but not limited to, notice of fees, premiums, premium adjustments, periodic review, length of time for which benefits may be paid and disqualifying factors.

§9-4D-5. Exceptions to qualifying factors.

(a) An individual who is enrolled in the buy-in program and who no longer meets the eligibility requirements of the basic coverage group due to an improvement in the individual’s medical condition may continue to be eligible for medicaid coverage under the buy-in program if the individual meets the following requirements:

(1) The individual continues to have a severe medically determinable impairment as determined by the department and as defined and recognized by federal law;

(2) The individual is employed and earning a monthly wage that is not less than the federal minimum hourly wage times forty;

(3) The individual does not have income or countable resources in excess of the limits established for the basic coverage group;

(4) The individual is at least sixteen years of age and less than sixty-five years of age;

(5) The individual pays any premiums or other cost sharing required under this chapter; and

(6) The individual meets all other eligibility requirements under this section.
(b) An individual who is enrolled in the buy-in program and who is unable to maintain employment for involuntary reasons, including temporary leave due to a health problem or involuntary termination, may continue to be eligible for Medicaid coverage under the buy-in program if the individual meets the following requirements:

(1) Within thirty days after the date on which the individual becomes unemployed, the individual, or an authorized representative of the individual, submits a written request to the office that the individual's medicaid coverage be continued;

(2) The individual maintains a connection to the workforce during the individual's continued eligibility period by participating in at least one of the following activities:

(A) Enrollment in a state or federal vocational rehabilitation program;

(B) Enrollment or registration with the office of workforce development;

(C) Participation in a transition from school-to-work program;

(D) Participation with an approved provider of employment services;

(E) Provision of documentation from the individual's employer that the individual is on temporary involuntary leave;

(F) The individual does not have income or countable resources in excess of the limits established under this section;

(G) The individual is at least sixteen years of age and less than sixty-five years of age;
(H) The individual pays any premiums or other cost sharing required under this section; and

(I) The individual meets all other eligibility requirements under this section.

(c) The department shall continue medicaid coverage under the buy-in program for an individual described in subsection (b) of this section for up to six months from the date of the individual’s involuntary loss of employment.

(d) If an individual is ineligible for continued coverage under the buy-in program because he or she fails to meet the requirements of subsection (b) of this section or has already fulfilled twelve months of continuing eligibility, the individual shall be required to meet the eligibility requirements of another available medicaid program in order to continue to be eligible for medicaid benefits.

§9-4D-6. Fees, premiums and periodic reviews.

(a) The department shall charge a fifty-dollar enrollment fee to all participants in the medicaid buy-in program. Upon payment of the enrollment fee, the first month’s premium payment is waived. Medicaid coverage begins on the first day of the month following payment of the enrollment fee.

(b) The department shall develop a sliding scale of premiums for individuals participating in the buy-in program. The sliding scale shall:

(1) Be based on the annual gross income of the individual; and

(2) Provide for a minimum premium of fifteen dollars and a maximum monthly premium not to exceed three and one-half percent of the individual’s gross monthly income.
(c) Subject to the minimum and maximum amounts described in this section, the department may annually adjust the scale of premiums charged for participation in the medicaid buy-in program.

(d) The department shall biannually review the amount of the premium that an individual is required to pay under this section.

(e) The department may increase the premium required only after conducting a review.

(f) The department shall decrease the premium that an eligible buy-in participant is required to pay if:

(1) The individual notifies the office of a change in income or family size; and

(2) The sliding scale adopted by the department applied to the individual’s changed circumstances prescribes a premium for the individual that is lower than the premium the individual is paying.

(g) The department shall establish administrative procedures regarding premiums for the buy-in program, including:

(1) The effect of nonpayment of a premium; and

(2) The collection of premiums.

(h) The department shall establish criteria to base the biannual redetermination of disability required for an individual participating in the buy-in program on the individual’s medical evidence, including evidence of physical or mental impairment.

(i) In conducting the biannual redetermination described in this section, the department may not determine that an individ-
(1) Participation in employment;

(2) Earned income; or

(3) Income from self-employment.

§9-4D-7. Benefits of the medicaid buy-in program

(a) Except as otherwise provided in this article, an eligible buy-in participant shall receive the same benefits that he or she would otherwise receive as a recipient of medicaid benefits, including home health care services.

(b) Except as otherwise provided in this article, an eligible buy-in participant is subject to the same obligations and requirements, including cost sharing, that he or she would otherwise be subject to as recipient of medicaid benefits.

§9-4D-8. Analytical criteria and reporting requirements.

(a) The secretary shall establish criteria to determine the effectiveness of the medicaid buy-in program and continued medicaid coverage through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h). The criteria shall include an analysis of the following:

(1) The number of individuals with disabilities who are:

(A) Enrolled in the buy-in program; or

(B) Receiving medicaid through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h);

(2) The amount of state revenues resulting from premiums paid by participants in the buy-in program; and
(3) The amount of state costs incurred as a result of implementing the buy-in program, including administrative costs and costs of providing services.

(b) In addition to the criteria required under subsection (b) of this section, the secretary may establish criteria to determine the following:

(1) Comparative costs of medicaid funded services for participants in the buy-in program and work incentives created through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h) before and after employment;

(2) The number of supplemental security income and social security disability insurance recipients in West Virginia who are no longer dependent on, or who have reduced dependence on, public assistance or health care entitlement services, other than medicaid or the children’s health insurance program, due to participation in the buy-in program or work incentives created through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h);

(3) The number of individuals with severe disabilities who are no longer dependent on, or who have reduced dependence on, public benefits or services, other than medicaid or the children’s health insurance program, due to income or support services received through participation in the buy-in program or work incentives created through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h); and

(4) The change in the number of buy-in program participants or participants in work incentives created through Section 1619 of the federal Social Security Act (42 U. S. C. §1382h) who have health care needs and related services covered through employer based benefit programs.
(c) In evaluating the effectiveness of the state's work incentives initiatives for individuals with disabilities, the secretary:

(1) Shall collaborate with other state agencies on data collection; and

(2) May consult with an independent contractor to collect data on the criteria required by this section.

(d) The department secretary shall provide an annual report of its evaluation of the medicaid buy-in program performed pursuant to the requirements of this section to the Legislature no later than the last day of December of each year, beginning in two thousand four.


(a) The secretary of the department of health and human resources shall establish a medicaid buy-in program advisory council, consisting of representatives from the state medicaid agency, the state rehabilitation agency, the state office of family support, the West Virginia statewide independent living council, the West Virginia state rehabilitation council, the West Virginia developmental disabilities council, the West Virginia mental health planning council and the center for excellence in disabilities at West Virginia university.

(b) The secretary shall submit proposed rules for review and input to the advisory council prior to release for public comment and shall consider any recommendations of the advisory council before adopting final rules.

(c) The secretary shall propose emergency rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this article. Thereafter, the secretary shall propose additional rules for legislative approval in accordance with the provisions
19 of said article three, chapter twenty-nine-a of this code as may
20 be needed to administer and maintain the medicaid buy-in
21 program.

CHAPTER 117

(S. B. 608 — By Senator Prezioso)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the continuance of summary certificate of need reviews for proposed behavioral health services necessary to maintain federal approval of the medicaid mentally retarded/developmentally disabled waiver program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-19. Summary review for certain behavioral health facilities and services.

1 (a) A certificate of need as provided in article two-d, chapter sixteen of this code is not required by an entity propos-
2 ing additional behavioral health care services, but only to the
3 extent necessary to gain federal approval of the medicaid
MR/DD waiver program, if a summary review is performed in accordance with the provisions of this section.

(b) Prior to initiating any summary review, the secretary shall direct the revision of the state mental health plan as required by the provisions of 42 U. S. C. 300x and section four, article one-a, chapter twenty-seven of this code. In developing those revisions, the secretary is to appoint an advisory committee composed of representatives of the associations representing providers, child care providers, physicians and advocates. The secretary shall appoint the appropriate department employees representing regulatory agencies, reimbursement agencies and oversight agencies of the behavioral health system.

(c) If the secretary of the department of health and human resources determines that specific services are needed but unavailable, he or she shall provide notice of the department's intent to develop those services. Notice may be provided through publication in the state register, publication in newspapers or a modified request for proposal as developed by the secretary.

(d) The secretary may initiate a summary review of additional behavioral health care services, but only to the extent necessary to gain federal approval of the medicaid MR/DD waiver program, by recommending exemption from the provisions of article two-d, chapter sixteen of this code to the health care authority. The recommendation is to include the following findings:

(1) That the proposed service is consistent with the state health plan and the state mental health plan;

(2) That the proposed service is consistent with the department's programmatic and fiscal plan for behavioral health services;
(3) That the proposed service contributes to providing services that prevent admission to restrictive environments or enables an individual to remain in a nonrestrictive environment;

(4) That the proposed service contributes to reducing the number of individuals admitted to inpatient or residential treatment programs or services;

(5) If applicable, that the proposed service will be community-based, locally accessible, provided in an appropriate setting consistent with the unique needs and potential of each client and his or her family and located in an area that is unserved or underserved or does not allow consumers a choice of providers; and

(6) That the secretary is determining that sufficient funds are available for the proposed service without decreasing access to or provision of existing services. The secretary may, from time to time, transfer funds pursuant to the general provisions of the budget bill.

(e) The secretary’s findings required by this section shall be filed with the secretary’s recommendation and appropriate documentation. If the secretary’s findings are supported by the accompanying documentation, the proposal does not require a certificate of need.

(f) Any entity that does not qualify for summary review is subject to a certificate of need review.

(g) Any provider of the proposed services denied authorization to provide those services pursuant to the summary review has the right to appeal that decision to the state agency in accordance with the provisions of section ten, article two-d, chapter sixteen of this code.