FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 76th Legislature, 2004.

Second Regular Session, 2004


Bills totaling 2,127 were introduced in the two houses during the session (1,390 House, 623 of which were carryover bills from the 2003 Regular Session, and 737 Senate). The Legislature passed 280 bills, 168 House and 112 Senate.

The Governor vetoed 5 House bills (H. B. 4119, Allowing a phase-in of the transfer of hotel taxing authority when a municipality annexes a hotel to allow the retirement of any debt incurred by the county or to otherwise phase in the transfer of taxing authority to the municipality; H. B. 4308, Providing immunity from civil damages to workers who in good faith provide services or materials, without remuneration, to build or install certain universal accessibility features in accordance with applicable state and federal laws; H. B. 4354, Authorizing county commissions to adopt ordinances to reduce false alarms; H. B. 4377, Assessing a penalty on those physicians who fail to pay the special assessment; and H. B. 4623, Repealing the section of the code relating to expenditure of excess in collections upon approval of governor) and 7 Senate bills (S. B. 160, Extending time to appropriate money from public employees insurance agency reserve fund to bureau of medical services; S. B. 197, Relating generally to distribution of net terminal income of racetrack video
lottery terminals; S. B. 563, Relating to public employees retirement act; S. B. 566, Establishing Unborn Victims of Violence Act; S. B. 616, Relating to environmental protection advisory council; S. B. 636, Relating to employment of members of teachers defined benefit retirement system; and S. B. 694, Establishing Fairness in Competitive Bidding Act). The Legislature amended and again passed H. B. 4308, H. B. 4377 and S. B. 197, leaving a net total of 271 bills, 165 House and 106 Senate, which became law.

There were 200 Concurrent Resolutions introduced during the session, 98 House and 102 Senate, of which 39 House and 23 Senate were adopted. Twenty-six House Joint Resolutions (12 of which were carryover House Joint Resolutions) and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 House Joint Resolution (H. J. R. 114, Veterans Bonus Amendment of 2004) was adopted. The House introduced 21 House Resolutions, and the Senate introduced 45 Senate Resolutions, of which 11 House and 45 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 61 Senate bills failed passage by the House. Six House bills and 7 Senate bills were pending conference. The Senate failed to introduce 3 House bills passed by the House and 3 Senate bills, passed by the Senate, failed to be introduced in the House.

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

First Extraordinary Session, 2004

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, March 21, 2004, contained supplemental appropriation bills for consideration.

The Legislature passed 14 bills, of which 1 was a House bill and 13 were Senate bills.
The Governor vetoed 1 Senate bill (S. B. 1013, Expiring funds to unappropriated balance in general revenue fund to department of military affairs and public safety, division of corrections), leaving a net total of 13 bills, 1 House and 12 Senate, which became law.

Two Concurrent Resolutions were adopted, 1 House and 1 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die 8:40 P.M. the same day.

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Second Extraordinary Session, 2004

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., June 15, 2004, contained 29 items for consideration.

The Legislature passed 13 bills, of which 7 were House bills and 6 were Senate bills.

One House Concurrent Resolution was adopted and the Senate adopted 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die 7:48 P.M. the same day.

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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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## Members of the House of Delegates

### Regular Session, 2004

#### Officers

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

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<td>Jack Yost (D)</td>
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(D) Democrats ................................................. 69
(R) Republicans ............................................. 31

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

1Appointed Nov. 20, 2003, to fill the vacancy created by the death of A. James Manchin.
## MEMBERS OF THE SENATE
### REGULAR SESSION, 2004

### OFFICERS
- President — Earl Ray Tomblin, Chapmanville
- Clerk — Darrell E. Holmes, Charleston
- Sergeant at Arms — Tony DeRaimo, St. Albans
- Doorkeeper — Andrew J. Trail, Charleston

### District | Name | Address | Legislative Service
--- | --- | --- | ---
First | Edwin J. Bowman (D) | Weirton | 72nd-76th
 | Andy McKenzie (R) | Wheeling | 73rd-76th
Second | Larry J. Edgell (D) | New Martinsburg | 74th-76th
 | Jeffrey Y. Kessler (D) | Glen Dale | Appt. 11/97, 73rd; 74th-76th
Third | Donna J. Boley (R) | St. Marys | Appt. 5/14/85, 67th; 68th-76th
 | J. Frank Deem (R) | Vienna | (House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd-76th
Fourth | Karen L. Facemyer (R) | Ripley | (House 71st-74th); 75th-76th
 | Lisa D. Smith (R) | Scott Depot | (House 74th-75th); 76th
Fifth | Robert H. Plymale (D) | Ceredo | 71st-76th
 | Evan H. Jenkins (D) | Huntington | (House 72nd-74th); 76th
Sixth | H. Truman Chafin (D) | Williamson | 66th-76th
 | John Pat Fanning (D) | Ina | 58th-64th; 67th-68th; 73rd-76th
Seventh | Tracy Dempsey (D) | Harts | (House 70th-75th); 76th
 | Earl Ray Tomblin (D) | Chapmanville | (House 62nd-64th); 65th-76th
Eighth | Steve Harrison (R) | Cross Lanes | (House 71st-75th); 76th
 | Vic Sprouse (R) | Charleston | (House 72nd); 73rd-76th
Ninth | Billy Wayne Bailey, Jr. (D) | Pineville | Appt. 1/9/91, 70th; 71st-76th
 | Russ Weeks (R) | Beckley | 76th
Tenth | Anita Skeens Caldwell (D) | Princeton | 75th-76th
 | Jesse O. Guills (R) | Lewisburg | 76th
Eleventh | Shirley Love (D) | Oak Hill | 72nd-76th
 | C. Randy White (D) | Webster Springs | (House 73rd-75th); 76th
Twelfth | Joseph M. Minard (D) | Clarksburg | (House 1/10/83, 66th; 67th-69th; 70th-71st; 75th-76th
 | William R. Sharpe, Jr. (D) | Weston | 55th-64th; 67th-76th
Thirteenth | Michael A. Oliverio, II (D) | Westover | (House 71st); 72nd-76th
 | Roman W. Prezioso, Jr. (D) | Fairmont | (House 69th-72nd); 73rd-76th
Fourteenth | Jon Blair Hunter (D) | Clarksburg | 73rd-76th
 | Sarah M. Minear (R) | Davis | 72nd-76th
Fifteenth | Walt Helmick (D) | Marlinton | (House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-76th
 | Mike Ross (D) | Coalton | 71st-76th
Sixteenth | Herbert S. Snyder (D) | Shenandoah Junction | 73rd-76th
 | John R. Unger, II (D) | Martinsburg | 74th-76th
Seventeenth | Brooks F. McCabe, Jr. (D) | Charleston | 74th-76th
 | Larry L. Rowe (D) | Maiden | (House 73rd-74th); 75th-76th

(D) Democrats .................................................. 24
(R) Republicans ............................................... 10

TOTAL .......................................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2004

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, Kuhn, Long, Paxton, Perry, Poling, Renner, Shaver, Shelton, Stemple, Swartzmiller, Tabb, Canterbury, Duke, Hamilton, Howard, Romine, Sobonya, Sumner and Wakim.
FINANCE
Michael (Chair), Doyle (Vice Chair), Boggs, Browning, Campbell, Cann, Foster, Frederick, Houston, Leach, Mezzatesta, Proudfoot, Stalnaker, Susman, R. M. Thompson, Varner, Warner, H. White, Anderson, Ashley, Border, Carmichael, Evans, Hall and G. White.

GOVERNMENT ORGANIZATION
Beane (Chair), Ennis (Vice Chair), Butcher, Ferrell, Hatfield, Iaquinta, Louisos, Manchin, Manuel, Martin, Perdue, Spencer, Talbott, Tucker, Wright, Yeager, Yost, Azinger, 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.
HOUSE OF DELEGATES COMMITTEES

POLITICAL SUBDIVISIONS
Proudfoot (Chair), Susman (Vice Chair), Brown, Caputo, Campbell, Doyle, Ferrell, Houston, Manchin, Martin, Morgan, Palumbo, Perry, 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
Kuhn (Chair of Veterans Affairs), Shaver (Vice Chair of Veterans Affairs), Browning (Chair of Homeland Security) Swartzmiller (Vice Chair of Homeland Security), Coleman, Butcher, Hrutkay, Iaquinta, 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.
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, 2004

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
Love (Chair), Chafin (Vice Chair), Bailey, Bowman, Minard, Plymale, Harrison, McKenzie and Smith.

ECONOMIC DEVELOPMENT
McCabe (Chair), Oliverio (Vice Chair), Bowman, Chafin, Fanning, Helmick, Kessler, Minard, Plymale, Prezioso, Unger, Facemyer, Guills, McKenzie and Minear.

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.
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
Ross (Chair), Caldwell (Vice Chair), Love, Oliverio, Rowe, White, Deem, Facemyer and McKenzie.

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 the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-21, relating to legal actions against psychologists and psychiatrists appointed by a court to provide expert testimony for child custody evaluations; providing standard for good faith; barring of anonymous administrative complaints; providing method for assigning costs of proceedings; and awarding of attorneys fees.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-21, to read as follows:
ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-21. Creating presumption of good faith for court-appointed licensed psychologists and psychiatrists conducting a child custody evaluation; method for assigning court and legal fees.

(a) A licensed psychologist or licensed psychiatrist who has been appointed by a court to conduct a child custody evaluation in a judicial proceeding shall be presumed to be acting in good faith if the evaluation has been conducted consistent with standards established by the American psychological association’s guidelines for child custody evaluations in divorce proceedings.

(b) No complaint to a licensing or accrediting entity against a court-appointed licensed psychologist or psychiatrist relating to a child custody evaluation shall be considered if it is filed anonymously and does not include the full name, address and telephone number of the complainant.

(c) Any action filed against a licensed psychologist or licensed psychiatrist alleging tortious conduct related to evidence provided while acting as a court-appointed expert in a child custody matter shall contain a recitation of a specific allegation of breaches of American psychological association’s guidelines for child custody evaluations in divorce proceedings. Failure to specifically plead such violations shall be cause for dismissal of the action.

(d) Any licensed psychologist or licensed psychiatrist who is named in a civil action as a defendant because of his or her performance of a child custody evaluation while acting as a court-appointed expert and who prevails due to a finding that he or she acted consistently with the American psychological association’s guidelines shall be entitled to reimbursement of all reasonable costs and attorneys fees expended.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-22, relating to defense of property; providing limited immunity from civil liability; and exceptions.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-22, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-22. Civil immunity to persons resisting criminal activities.

(a) Any person who unlawfully enters upon the property of another for purposes of engaging in criminal conduct assumes the risk for any injury caused to him or her by the reasonable and proportionate acts of the owner or his agent in resisting the commission of the criminal conduct.

(b) The provisions of this section do not apply to the creation of a hazardous or dangerous condition on the property designed to prevent criminal conduct or cause injury to a person engaging in criminal conduct.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2-2a, relating to prescribing proper venue in suits involving West Virginia University or Marshall University.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2-2a, to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2a. Venue for suits and actions involving West Virginia University and Marshall University.

(a) Notwithstanding the provisions of section two of this article, any civil action in which the West Virginia University board of governors, West Virginia University, the West Virginia University Medical School, or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.

(b) Notwithstanding the provisions of section two of this article, any civil action in which Marshall University board of
of Medicine or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.

(c) The exclusive venue provisions of this section are not applicable to:

(1) An action involving an entity or person named in subsections (a) or (b) of this section as garnishee or suggestee; and

(2) A proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property, and where general laws or court rules provide that proper venue is in the county in which the real property affected is situate.

(d) This section shall apply only to such proceedings as are not prohibited by the constitutional immunity of the state from suit under section thirty-five, article VI of the Constitution of the state.

CHAPTER 4

(Com. Sub. for S. B. 209 — By Senators Tomblin, Mr. President, Chafin, Sharpe, Minear, Ross, Unger, McCabe, Rowe, Fanning, Facemyer, Helmick, White, Plymale, Jenkins, Sprouse and Bowman)

[Passed February 26, 2004; in effect July 1, 2004. Approved by the Governor.]
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-6-4a, relating to requiring review of certain state leases and purchases of real property by the joint committee on government and finance; requiring the secretary of administration to provide copies of contracts, agreements and reports; and requiring an inventory and master plan for the utilization of office space for state agencies.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-6-4a, to read as follows:

ARTICLE 6. STATE BUILDINGS.

§5-6-4a. Review of real property contracts and agreements; master plan for office space.

(a) The secretary of administration shall provide to the joint committee on government and finance a copy of a contract or agreement for real property exceeding one million dollars and a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property and the agent involved in the sale, at least thirty days prior to any sale, exchange, transfer, purchase, lease purchase, lease or rental of real property, any refundings of lease purchases, leases or rental agreements, any construction of new buildings and any other acquisition or lease of buildings, office space or grounds by any state agency, including the higher education policy commission, but excepting the transactions of the division of highways for state road purposes pursuant to article two-a, chapter seventeen of this code: Provided, That a contract or agreement for the lease purchase, lease or rental of real property by any state agency, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.
(b) For renewals of contracts or agreements required to be reported by the provisions of this section, the secretary of administration shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property.

(c) Within thirty days after receipt of the contract, agreement or report, the committee shall meet and review the contract, agreement or report.

(d) On or before the first day of July, two thousand six, the secretary of administration shall conduct an inventory of available office space and office space needs and shall develop and present a master plan for the utilization of office space for state agencies to the joint committee on government and finance.

CHAPTER 5

(Com. Sub. for H. B. 4266 — By Mr. Speaker, Mr. Kiss, and Delegates Walters, Trump, Webb, Beane, Cann and Browning)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-29-1 and §5-29-2, all relating to requiring certain state regulatory agencies to study ways and develop plans to expedite the issuance and renewal of licenses, permits and certificates to business entities in good standing; and requiring reports to the Legislature.

Be it enacted by the Legislature of West Virginia:
That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-29-1 and §5-29-2, all to read as follows:

ARTICLE 29. EXPEDITIOUS ISSUANCE OF LICENSES BY REGULATORY AGENCIES.

§5-29-1. Purpose of article.
§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.

§5-29-1. Purpose of article.

The purpose of this article is to provide for more expeditious and efficient issuance of permits, licenses or certificates by state regulatory agencies to business entities that are in good standing in the payment of taxes and other obligations to the state. For the purposes of this article, a business entity in good standing is one that:

1. Has conducted commercial activities in this state for at least two years;
2. Has paid any business tax, workers’ compensation or unemployment compensation premiums due in the preceding two years; and
3. Has not engaged in activities for which any claim of a substantial violation of any statute or rule has occurred in the previous two years.

§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.

(a) The following regulatory agencies shall study, review and develop a plan for expediting the issuance and renewal of permits, licenses and certificates for business entities in good standing:
(1) Division of labor;

(2) The office of miners’ health, safety and training; (3) the division of forestry;

(4) The office of health facilities licensure and certification within the department of health and human resources; and

(5) The department of environmental protection excepting the oil and gas inspectors’ examining board.

(b) On or before the first day of December, two thousand four, each agency to which this article applies shall file a report with the joint standing committee on government organization, setting forth the findings of its study, its plan to expedite the issuance and renewal of permits, licenses and certificates to business entities in good standing, and its recommendations for any legislation required to meet the purposes of this article.

CHAPTER 6

(H. B. 4134 — By Delegates Pethtel, Varner, Stemple, Ennis, Schadler and Beane)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5A-1A-2 of the code of West Virginia, 1931, as amended, relating to deleting reference to the secretary of the department of commerce, labor and environmental services as a member of the employee suggestion award program and replacing the reference with the governor’s chief technology officer; and increasing membership in the program by one senator and one delegate.
Be it enacted by the Legislature of West Virginia:

That §5A-1A-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. CHIEF TECHNOLOGY OFFICER.

§5A-1A-2. Board created; term of members.

There is hereby continued an employee suggestion award board which shall be composed of the secretary of administration or his or her designee, governor's chief technology officer or his or her designee, the president of the Senate or his or her designee, the speaker of the House of Delegates or his or her designee, two members of the House of Delegates from different political parties to be appointed by the speaker of the House of Delegates, two members of the Senate from different political parties to be appointed by the president of the Senate, and the secretary of the department of health and human resources or his or her designee. The terms of the members of the board shall be consistent with the terms of the offices to which they have been elected or appointed.

CHAPTER 7

(S. B. 100 — By Senators Rowe, Caldwell, White and Hunter)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5A-3-10a of the code of West Virginia, 1931, as amended, relating to prohibiting the state and its political subdivisions from contracting with vendors owing a debt to the state or its political subdivisions.
Be it enacted by the Legislature of West Virginia:

That §5A-3-10a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its political subdivisions.

(a) Unless the context clearly requires a different meaning, for the purposes of this section, the terms:

(1) “Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers’ compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

(2) “Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions.

(3) “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.
(4) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(b) No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(d) All bids, contract proposals or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor or a related party to the vendor or prospective vendor does not owe any debt in an amount in excess of one thousand dollars or, if a debt is owed, that the provisions of subsection (c) of this section apply.
AN ACT to amend and reenact §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend said code by adding thereto a new section, designated §5-16-4b; to amend and reenact §5A-1-2 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating to creating a new employee and insurance services division within the department of administration and revising the law governing its component agencies and boards; providing that the division incorporate the consolidated public retirement board, the public employees insurance agency, the board of risk and insurance management, the children’s health insurance agency, the education and state employees grievance board and the personnel division; creating the office of commissioner of the division; providing for the powers and duties of the commissioner; authorizing the commissioner to consolidate or reorganize certain internal functions and operations, transfer funds within the agencies and assess agencies with costs; providing that the commissioner chair certain boards and appoint directors of component state agencies within the division; providing for sunset review of division and office of commissioner; establishing employment requirements for director of public employees insurance agency; and adding members to public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:
That §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that said code be further amended by adding thereto a new section, designated §5-16-4b; that §5A-1-2 of said code be amended and reenacted; that said code be further amended by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and that §29-6-5 and §29-6-6 of said code be amended and reenacted, all to read as follows:

Chapter 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

ARTICLE 10D. Consolidated Public Retirement Board.

§5-10D-1. Consolidated public retirement board continued; members; vacancies; investment of plan funds.

§5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

§5-10D-1. Consolidated public retirement board continued; members; vacancies; investment of plan funds.

(a) The consolidated public retirement board is continued to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system
established in article seven-a, chapter eighteen of this code; the
teachers' defined contribution retirement system created by
article seven-b of said chapter; the West Virginia state police
death, disability and retirement fund created by article two,
chapter fifteen of this code; the West Virginia state police
retirement system created by article two-a of said chapter; the
death, disability and retirement fund for deputy sheriffs created
by article fourteen-d, chapter seven of this code; and the judges'
retirement system created under article nine, chapter fifty-one
of this code.

(b) The membership of the consolidated public retirement
board consists of:

(1) The governor or his or her designee;

(2) The state treasurer or his or her designee;

(3) The state auditor or his or her designee;

(4) The commissioner of the employee and insurance
services division of the department of administration;

(5) Four residents of the state, who are not members,
retirants or beneficiaries of any of the public retirement
systems, to be appointed by the governor, with the advice and
consent of the Senate; and

(6) A member, annuitant or retirant of the public employees
retirement system who is or was a state employee; a member,
annuitant or retirant of the public employees retirement system
who is not or was not a state employee; a member, annuitant or
retirant of the teachers retirement system; a member, annuitant
or retirant of the West Virginia state police death, disability and
retirement fund; a member, annuitant or retirant of the deputy
sheriff's death, disability and retirement fund; and a member,
annuitant or retirant of the teachers' defined contribution
retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees shall be of the same political party.

(d) The consolidated public retirement board has all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten of this chapter; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers’ defined contribution system established pursuant to article seven-b of said chapter; the West Virginia state police death, disability and retirement fund created pursuant to article two, chapter fifteen of this code; the death, disability and retirement fund for deputy sheriffs created pursuant to article fourteen-d, chapter seven of this code; and the judges’ retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may propose for promulgation all rules necessary to effectuate its powers, duties and responsibilities pursuant to article three, chapter twenty-nine-a of this code: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(e) The consolidated public retirement board shall continue to transfer all funds received for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code,
including, but not limited to, all employer and employee contributions, to the West Virginia investment management board: *Provided*, That the employer and employee contributions of the teachers' defined contribution system, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia consolidated public retirement board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia investment management board.

(f) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The consolidated public retirement board shall be a trustee for all public retirement plans, except with regard to the investment of funds: *Provided*, That the consolidated public retirement board shall be a trustee with regard to the investments of the teachers' defined contribution system, the voluntary deferred compensation funds invested pursuant to section five, article ten-b of this chapter and any other assets of the public retirement plans administered by the consolidated public retirement board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(g) The board may employ the West Virginia investment management board to provide investment management consulting services for the investment of funds in the teachers' defined contribution system.

§5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.

(a) The board shall elect from its own number a chairman and vice chairman.

(b) The board shall appoint an executive director of the retirement systems. The executive director shall be the chief
 administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive director shall be fixed by the board subject to the approval of the governor. The executive director shall, with the approval of the board of trustees, employ any administrative, technical and clerical employees required in the proper operation of the systems.

(c) Notwithstanding the provisions of section two, article three of this chapter, the board shall employ and be represented by an attorney licensed to practice law in the state of West Virginia who is not an active member of any of the retirement systems administered by the board.

(d) An actuary, employed by the state or the board pursuant to section four of this article, shall be the actuarial consultant to the board.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

(a) The board shall hold a meeting at least once each three months, and shall designate the time and place of the meeting. Seven voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

(b) The members shall serve as members without compensation for their services as such: Provided, That each member shall be reimbursed, upon approval of the board, for any necessary expenses actually incurred by him or her in carrying out his or her duties. No public employee member may suffer
any loss of salary or wages on account of his or her service as trustee.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

§5-16-4b. Continuation of the public employees insurance agency finance board.

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.

(a) The public employees insurance agency consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the commissioner of the employee and insurance services division of the department of administration. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall be employed pursuant to an employment contract which may have a multi-year term, not to exceed five years per contract. Notwithstanding any other provision of this code to the contrary, the director's salary shall be set by the commissioner of the employee and insurance services division, with the approval of the secretary of the department of administration. The current director shall continue to be eligible to serve as director through the thirtieth day of June, two thousand four. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any
administrative, technical and clerical employees required for the proper administration of the insurance programs provided for in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency. The director may employ a deputy director.

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotia-
tions, provider contracting and payment, designation of covered
and noncovered services, offering of additional coverage
options or cost containment incentives, pursuit of coordination
of benefits and subrogation, or any other actions which would
serve to implement the plan or plans designed by the finance
board. The director is to function as a benefits management
professional and should avoid political involvement in manag-
ing the affairs of the public employees insurance agency.

*§5-16-4. Public employees insurance agency finance board
continued; qualifications, terms and removal of
members; quorum; compensation and expenses;
termination date.

(a) The public employees insurance agency finance board,
is continued and consists of the commissioner of the employee
and insurance services division of the department of administra-
tion and eight members appointed by the governor with the
advice and consent of the Senate for terms of four years and
until the appointment of their successors. Members may be
reappointed for successive terms. No more than five members
(including the commissioner) may be of the same political
party.

(b) Of the eight members appointed by the governor, one
member shall represent the interests of education employees,
one shall represent the interests of public employees, one shall
represent the interests of retired employees, one shall represent
the interests of organized labor and four shall be selected from
the public at large. The governor shall appoint the member
representing the interests of education employees from a list of
three names submitted by the largest organization of education
employees in this state. The governor shall appoint the member
representing the interests of organized labor from a list of three

* CLERK'S NOTE: This section was also amended by H. B. 4531 (Chapter 213),
which passed prior to this act.
names submitted by the state’s largest organization representing labor affiliates. The four members appointed from the public shall each have experience in the financing, development or management of employee benefit programs. All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality.

(c) The commissioner of the employee and insurance services division shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair of at least two members. The director of the public employees insurance agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Five members constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties, as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code; any employee assessments or costs previously authorized by the finance board shall then remain in
§5-16-4b. Continuation of the public employees insurance agency finance board.

The public employees insurance agency finance board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article
1. Department of Administration.
10. Employee and Insurance Services Division.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

*§5A-1-2. Department of administration and office of secretary; secretary; divisions; directors.

(a) The department of administration and the office of secretary of administration are continued in the executive branch of state government. The secretary shall be the chief executive officer of the department and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor.

(b) The department of administration may receive federal funds.

(c) The secretary shall serve at the will and pleasure of the governor. The annual compensation of the secretary shall be as

*CLERK'S NOTE: This section was also amended by S. B. 149 (Chapter 239), which passed prior to this act.
specified in section two-a, article seven, chapter six of this code.

(d) There shall be in the department of administration a finance division, a general services division, an information services and communications division, an employee and insurance services division and a purchasing division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary, except that the commissioner of the employee and insurance services division shall be appointed by the governor with the advice and consent of the Senate as provided in article ten of this chapter. In addition to the divisions enumerated in this subsection, there shall also be in the department of administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.

ARTICLE 10. EMPLOYEE AND INSURANCE SERVICES DIVISION.

§5A-10-1. Division created; purpose and functions; cooperation.

§5A-10-2. Creation of office of commissioner of the employee and insurance services division; qualifications; powers and duties.

§5A-10-3. Continuation of division.

§5A-10-1. Division created; purpose and functions; cooperation.

(a) There is created within the department of administration, an employee and insurance services division. The following agencies of the department of administration are incorporated within the employee and insurance services division:

(1) The consolidated public retirement board provided for in article ten-d, chapter five of this code and the retirement programs administered by the board;

(2) The public employees insurance agency and associated boards provided for in article sixteen, chapter five of this code;
(3) The division of personnel provided for in article six, chapter twenty-nine of this code;

(4) The board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(5) The children's health insurance agency and associated boards provided for in article sixteen-b, chapter five of this code; and

(6) The education and state employees grievance board provided for in article six-a, chapter twenty-nine of this code.

(b) The purpose and function of the division of employee and insurance services is to preserve the integrity of a system of personnel administration for state agencies based on merit principles; to provide to the state employees who are stakeholders, fairness, confidence and security in the administration of state insurance and retirement benefit plans; to provide for long-term fiscal security and enhance the state's ability to assure its fiscal obligations under its insurance, risk and benefit plans; to promote loss control in state programs and agencies; and to coordinate and consolidate technical functions of the component agencies while preserving inviolate their separate trust responsibilities.

(c) The director of the purchasing division and the chief technology officer within the office of the governor shall cooperate and provide assistance in the consolidation, reorganization and integration of functions of the division and its component agencies and programs, and shall expedite all reasonable requests in order to assure efficient and adequate systems support.

(d) Any agency or board incorporated into the division pursuant to subsection (a) of this section which disagrees with
an action of the commissioner may refer the disagreement to the secretary for review.

§5A-10-2. Creation of office of commissioner of the employee and insurance services division; qualifications; powers and duties.

(a) The office of commissioner of the employee and insurance services division is created. On the effective date of this section, the director of the former insurance and retirement division shall serve as acting commissioner of the employee and insurance services division and shall immediately assume the duties of the office. Not later than the thirtieth day of January, two thousand five, the governor shall appoint the commissioner with the advice and consent of the Senate, to serve at the will and pleasure of the governor, at a salary to be established by the governor. The commissioner shall have knowledge in the areas of self-insured risk pools and employee benefit program administration, knowledge of the special trust requirements of benefit programs with respect to stakeholders, and an understanding of the special demands upon government with respect to budgetary constraints, the protection of public funds, and federal and state standards of accountability.

(b) The commissioner may:

(1) Coordinate overall policy within the division;

(2) Propose comprehensive budgets for consideration by the secretary of the department of administration and the governor;

(3) Develop and provide to the governor, the speaker of the House of Delegates and the president of the Senate, on an annual basis, long-range financial forecasts for the insurance and benefit programs administered by the division, which shall include cash-flow projections for future budget years, based on known facts and reasonable, clearly stated actuarial assumptions;
(4) Interact with stakeholders, staff of the component agencies and outside agencies to develop long-term strategies for delivering quality services, reducing unfunded liabilities, and assuring the fiscal viability of programs;

(5) Propose and provide to the governor, the speaker of the House of Delegates and the president of the Senate, on an annual basis, long-term strategic plans to provide for the fiscal security of the programs administered by the agencies within the division and minimize the fiscal burden upon limited state resources;

(6) Employ and discharge, with the approval of the secretary of the department of administration, employees within the office of the commissioner, to serve at the will and pleasure of the commissioner;

(7) Eliminate or consolidate positions, with the approval of the secretary of the department of administration, other than positions of administrators or positions of board members, and name a person to fill more than one position;

(8) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;

(9) Reorganize internal functions or operations;

(10) Transfer within the division, with the approval of the secretary of the department of administration, funds appropriated to the various agencies of the division: Provided, That no funds may be transferred from a claims payment account, retiree benefit account, trust account or any other account or funds specifically exempted by the Legislature from transfer: Provided, however, That authority to transfer funds pursuant to this section expires on the thirtieth day of June, two thousand five;
(11) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligating of public funds as authorized by law;

(12) Acquire by lease or purchase property of whatever kind or character, and convey or dispose of any property of whatever kind or character as authorized by law;

(13) Conduct internal audits;

(14) Supervise internal management;

(15) Recommend to the secretary the promulgation of rules to implement and make effective the powers, authority and duties granted and imposed by the provisions of this article. The rules, unless specifically exempted in accordance with the provisions of this code, shall be proposed in accordance with the provisions of chapter twenty-nine-a of this code;

(16) Delegate duties to administrators in order to facilitate execution of the powers, authority and duties of the commissioner;

(17) Consolidate data, accounting and claims administration systems and propose to the secretary of the department of administration the termination or renegotiation of contracts;

(18) Take any other action involving or relating to internal management not otherwise prohibited by law;

(19) With approval of the secretary of the department of administration, assess all agencies within the employee and insurance services division a reasonable amount to cover the costs of the division; and

(20) Promote combined purchasing of components within the division.
(c) The commissioner shall work cooperatively with the consolidated public retirement board and the public employees insurance agency to acquire and implement combined data systems for the retirement and health plans administered by the consolidated public retirement board and the public employees insurance agency. Beginning on the first day of January, two thousand five, and continuing until the combined data system is fully implemented, the commissioner shall provide to the joint committee on government and finance, or any other committee as the Legislature directs, monthly updates on the development and implementation of the system.

(d) Nothing contained in this section may be construed to limit the powers of the secretary of the department of administration pursuant to chapter five-f of this code, or to enlarge the power and authority granted to any agency or administrator within the division. Nothing contained in this section may be construed to limit the rights of any beneficiary of a retirement or benefit program arising by operation of law or any trust instrument. No power granted to the commissioner may be exercised if to do so would violate or be inconsistent with the separate fiduciary responsibilities with respect to the respective funds under the commissioners’ authority, or with the provisions of any federal law or regulation, any federal-state program or federally delegated program, or jeopardize the approval, existence or funding of any program. The powers granted to the commissioner to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision may not exceed or be interpreted as authority to exceed the powers previously granted by the Legislature to the various administrators or board members of the various agencies or boards that comprise and are incorporated into the division. Nothing contained in this section may be construed to limit the rights of employees within the classified service of the state as provided in subsection (d), section two, article two, chapter five-f of this code.
§5A-10-3. Continuation of division.

1 The division of employee and insurance services and the office of commissioner of the division of employee and insurance services shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5. Division of personnel continued; sections.

§29-6-6. State personnel board continued; members; term; quorum; vacancies; powers and duties.

§29-6-5. Division of personnel continued; sections.

1 (a) The division of personnel is continued within the employee and insurance services division of the department of administration.

4 (b) The division of personnel shall perform the following functions:

6 (1) Applicant services;

7 (2) Classification and compensation;

8 (3) Management development and training;

9 (4) Program evaluation and payroll;

10 (5) Employee services;

11 (6) Employee relations; and
12 (7) Administrative and staff services.

13 (c) The commissioner of the employee and insurance services division shall establish any sections of the division that are necessary to carry out the functions of the division and the purposes of this article. Each section shall be under the control of a section chief to be appointed by the director who shall be qualified by reason of exceptional training and experience in the field of activities of the respective section.

§29-6-6. State personnel board continued; members; term; quorum; vacancies; powers and duties.

(a) There is continued within the division a state personnel board which consists of the commissioner of the employee and insurance services division or his or her designee, who shall serve as an ex officio member and five members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors. No more than four members may be of the same political party. Four members of the board constitute a quorum.

(b) A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of state elected officers.

(c) Citizen members of the board shall each be paid one hundred dollars for each day devoted to the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

(d) The commissioner of the employee and insurance services division of the department of administration or his or
her designee shall serve as chair of the board. The board shall meet at the time and place specified by the call of the chair. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting period.

(e) In addition to other powers and duties invested in it by this article or by any other law, the board shall:

(1) Propose rules for promulgation in accordance with chapter twenty-nine-a of this code to implement the provisions of this article;

(2) Interpret the application of this article to any public body or entity; and

(3) Authorize and conduct any studies, inquiries, investigations or hearings in the operation of this article it considers necessary.

(f) The director or the board may subpoena and require the attendance of witnesses in the production of evidence or documents relevant to any proceeding under this article.

CHAPTER 9

(S. B. 631 — By Senator Snyder)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §19-15-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding
there to a new section, designated §19-15-16a, all relating to the West Virginia fertilizer law; definitions; and political subdivisions not to regulate packaging, labeling, sale, storage, distribution, use or application of fertilizers.

Be it enacted by the Legislature of West Virginia:

That §19-15-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding there to a new section, designated §19-15-16a, all to read as follows:

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.


(a) "Brand" means a term, design or trademark used in connection with one or several grades of regulated product.

(b) "Bulk fertilizer" means fertilizer delivered to the purchaser either in solid or liquid state in a nonpackage form to which a label cannot be attached.

(c) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

(d) "Compost" means a biologically stable material derived from the composting process.

(e) "Custom media" means a horticultural growing medium prepared to exact specifications of the person who will be planting in the medium.

(f) "Department" means the department of agriculture of the state of West Virginia.
(g) "Distribute" means to import, consign, to offer for sale, sell, barter, warehouse or otherwise supply a regulated product in this state.

(h) "Distributor" means any person who distributes a regulated product in this state.

(i) "Embargo" means a written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of any regulated product in any manner until the embargo is released by the commissioner.

(j) "Fertilizer" means any substance containing one or more recognized plant nutrients, including natural organic fertilizer, which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, mari, lime, limestone, wood ashes and gypsum and other products exempted by rule of the commissioner.

(k) "Fertilizer material" means a fertilizer which either:

(1) Contains important quantities of no more than one of the primary plant nutrients: (nitrogen (N), available phosphate (P2O5) and soluble potash (K2O); or

(2) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(3) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(l) "Grade" means the percentage of total nitrogen, available phosphate and soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis: Provided, That specialty fertilizers may be guaranteed
in fractional units of less than one percent of total nitrogen, available phosphate and soluble potash: *Provided, however,* That fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(m) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

1. Total nitrogen (N) .......... percent
2. Available phosphate (P205) .... percent
3. Soluble potash (K201) ....... percent

(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphatic materials, the total available phosphate or degree of fineness may also be guaranteed.

(3) Guarantees for other plant nutrients may be permitted or required by rule of the commissioner and shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

(n) "Horticultural growing medium" means any substance or mixture of substances promoted as or intended to function as a commercial or consumer growing medium for the managed growth of horticultural crops in containers.

(o) "Investigational allowance" means an allowance for variations inherent in the collection, preparation and analysis of an official sample of regulated product.
(p) “Label” means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a regulated product.

(q) “Labeling” means all written, printed or graphic matter, upon or accompanying any regulated product, or advertisements, brochures, posters or electronic announcements used in promoting the sale of regulated products.

(r) “Local legislation” means, but not limited to, any ordinance, motion, resolution, amendment, regulation or rule adopted by a political subdivision.

(s) “Manufacture” means to produce, compound, mix, blend or in any way alter the chemical or physical characteristics of a regulated product.

(t) “Manufacturer” means any person who manufactures a regulated product.

(u) “Mixed fertilizer” means a fertilizer containing any combination or mixture of fertilizer materials.

(v) “Natural organic fertilizer” means materials derived from either plant or animal products containing one or more elements other than carbon, hydrogen and oxygen which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic or anaerobic/aerobic bacterial action or any combination of these. These materials may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis or pelleting.
(w) “Official sample” means any sample of regulated product collected by the commissioner or his or her agent and designated as “official” by the commissioner.

(x) “Percent” or “percentage” means the percentage by weight.

(y) “Person” means an individual, partnership, association, firm or corporation.

(z) “Political subdivision” means any local government entity which includes, but is not limited to, any city, county or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographical area smaller than that of the state.

(aa) “Primary nutrients” means nitrogen (N), available phosphate (P205) and soluble potash (K20).

(bb) “Registrant” means the person who registers regulated products under the provisions of this article.

(cc) “Regulated product” means any product governed by this article, including any fertilizer, specialty fertilizer, soil amendment and horticultural growing medium.

(dd) “Soil amendment” means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing any chemical or physical change in the soil. The following are exempt from the definition of “soil amendment”: Fertilizer, unmanipulated animal manures, horticultural growing medium, agricultural liming materials, unmixed mulch and unmixed peat.
(ee) "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, house plants, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(ff) "Synthetic" means any substance generated from another material or materials by means of a chemical reaction.

(gg) "Ton" means a net weight of two thousand pounds avoirdupois.

(hh) "Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, which has not been processed or conditioned in any manner, including, but not limited to, processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials, other than those which have been used for bedding, sanitary or feeding purposes for animals or fowls or by any other means.


No political subdivision may regulate the registration, packaging, labeling, sale, storage, distribution, use and application of fertilizers; and, in addition, no political subdivision may adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use or application of fertilizers.

Local legislation in violation of this section is void and unenforceable.
AN ACT to amend and reenact §19-21A-4 and §19-21A-7 of the code of West Virginia, 1931, as amended, all relating to the state conservation committee and conservation districts; adding a member to the state conservation committee; designating the administrative officer and the support staff as the West Virginia conservation agency; and increasing the per diem rate for conservation supervisors.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4 and §19-21A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State conservation committee; continuation.
§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

§19-21A-4. State conservation committee; continuation.

1 (a) The state conservation committee is continued. It serves
2 as an agency of the state and is to perform the functions
3 conferred upon it in this article. The committee consists of the
4 following ten members:

5 (1) Four citizen members;
(2) The following ex officio members:

(A) The director of the state cooperative extension service;
(B) The director of the state agricultural and forestry experiment station;
(C) The secretary of the department of environmental protection;
(D) The state commissioner of agriculture, who is the chairperson of the committee;
(E) The director of the division of forestry; and
(F) The president of the West Virginia association of conservation districts.

(b) The governor shall appoint, by and with the consent of the Senate, the four citizens members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

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

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The state conservation committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The
administrative officer and support staff shall be known as the West Virginia conservation agency. The committee shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and
(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the state conservation committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

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

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the state of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and
(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state conservation committee and expended as provided in this article.

§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

(a) The governing body of the district consists of the supervisors, appointed or elected, as provided in this article. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the specialized skilled services which are required of them in the performance of their duties under this section and shall be legal residents and landowners in the district.

(b) The supervisors shall designate a chairperson and may, from time to time, change the designation. The term of office of each supervisor is three years. A supervisor holds office until his or her successor has been elected or appointed. In case a new county or portion of a county is added to a district, the committee may appoint a supervisor to represent it until the next regular election of supervisors for the district takes place. If a vacancy occurs among the elected supervisors of a district, the committee shall appoint a successor from the same county
to fill the unexpired term. The appointment shall be made from a name or list of names submitted by local farm organizations and agencies.

(c) When any county or portion of a county lying within the boundaries of a district has in effect eight hundred or more signed agreements of cooperation with occupiers of land located within the county, then at the next regular election of supervisors the land occupiers within the county or portion of the county are entitled to elect two supervisors to represent the county instead of one for the term and in the manner prescribed in this section. A majority of the supervisors constitutes a quorum and the concurrence of a majority in any matter within their duties is required for its determination.

(d) A supervisor is entitled to expenses and a per diem not to exceed thirty dollars when engaged in the performance of his or her duties.

(e) The supervisors may, with the approval of the state committee, employ a secretary, technical experts and any other officers, agents and employees, permanent and temporary, as they may require and shall determine their qualifications, duties and compensation. The supervisors may delegate to their chairperson, to one or more supervisors or to one or more agents, or employees, those administrative powers and duties they consider proper. The supervisors shall furnish to the state conservation committee, upon request, copies of the ordinances, rules, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities required in the performance of state conservation committee’s duties under this article.

(f) The supervisors shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;
(2) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) Any supervisor may be removed by the state conservation committee upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(h) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county.

CHAPTER 11

(S. B. 574 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §60-2-11 of the code of West Virginia, 1931, as amended, relating generally to powers and duties of the alcohol beverage control commissioner; allowing commissioner to sell liquor warehouse, upon approval of governor and board of public works, when sale is in best interest of state; and making technical corrections.

Be it enacted by the Legislature of West Virginia:
That §60-2-11 of the code of West Virginia, 1931, 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 agency;

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 agency;

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;

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, 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 agency;

(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 agency;

(9) Report to the governor each year all information relative to the operation and functions of the agency. The commissioner 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 enforcement of the orders of the commissioner or the provisions of this chapter.

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CHAPTER 12

(Com. Sub. for H. B. 4022 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

[Passed February 26, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-1-4, §17F-1-5, §17F-1-6, §17F-1-7, §17F-1-8 and §17F-1-9, all relating to the regulation of all-terrain vehicles generally; prohibiting operation on interstate highways and on center-lined roads or roads with more than two lanes; exceptions to prohibition; prohibiting operation with more than one passenger unless allowed under manufacturers’ specifications; prohibiting child passengers unless operator is an adult or has a level two intermediate driver’s license; requiring certain equipment; prohibiting riders under the age of eighteen without a helmet; providing for criminal penalties for violations; requiring safety awareness courses; creating exceptions; providing for regulation by local government authority; requiring rental dealers to provide safety equipment; providing certain exemptions for use on private property; providing exemption for farm and commercial use; and clarifying application of rules of operation.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-1-4, §17F-1-5, §17F-1-6, §17F-1-7, §17F-1-8 and §17F-1-9, all to read as follows:

CHAPTER 17F. ALL-TERRAIN VEHICLES.

ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.

§17F-1-1. Acts prohibited by operator; penalties for violations.
§17F-1-2. Safety awareness courses.
§17F-1-3. Local government authority to regulate.
§17F-1-4. All-terrain vehicle rental dealers required to provide safety equipment.
§17F-1-5. Private property exemption.
§17F-1-6. Exemption for farm, commercial use; current regulations.
§17F-1-7. Applicability of rules of operation.
§17F-1-8. Criminal penalties.
§17F-1-9. Definition of all-terrain vehicle.

§17F-1-1. Acts prohibited by operator; penalties for violations.
(a) No all-terrain vehicle may be operated in this state:

(1) On any interstate highway except by public safety personnel responding to emergencies;

(2) On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:

(A) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(B) The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

(C) The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(D) Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;

(3) With more than one passenger unless more passengers are allowed under manufacturers' recommendations;

(4) With a passenger under the age of eighteen, unless the operator has at a minimum a level two intermediate driver’s license or its equivalent or is eighteen years of age or older;

(5) Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance specifications established by the American national standards institute standard, z 90.1, the United States department of transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users;

(6) Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;
(7) Without a manufacturer-installed or equivalent spark arrestor and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle’s exhaust system; or

(8) Unless operating in compliance with the provisions of section two of this article.

(b) An all-terrain vehicle may, for the sole purpose of getting from one trail, field or area of operation to another, be operated upon the shoulder of any road, street or highway referred to in subdivision (2), subsection (a) of this section, other than an interstate highway, for a distance not to exceed ten miles, if:

(1) The vehicle is operated at speeds of twenty-five miles per hour or less; and

(2) The vehicle is operated at any time from sunset to sunrise, the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.

(c) Operation of an all-terrain vehicle in accordance with subsection (b) shall not constitute operation of a motor vehicle on a road or highway of this state as contemplated by the provisions of section seven of this article.

(d) Notwithstanding any provision of this chapter to the contrary, a municipality, county or other political subdivision of the state may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes.

§17F-1-2. Safety awareness courses.

(a) On and after the first day of September, two thousand four, the commissioner of motor vehicles shall offer a free all-
terrain vehicle rider safety awareness course, and may approve
other all-terrain vehicle rider safety awareness courses, to meet
the reasonably anticipated needs of the public. The commis-
sioner shall offer free safety awareness course materials to
authorized dealers of all-terrain vehicles for use by purchasers
and potential purchasers free of charge.

(b) The commissioner shall issue certificates of completion
to persons who satisfactorily complete the requirements of an
approved course. The commissioner may authorize a dealer of
all-terrain vehicles and other approved providers to issue the
certificates of completion.

(c) On and after the first day of January, two thousand five,
no person under the age of eighteen may operate an all-terrain
vehicle without a certificate of completion of a vehicle rider
awareness course as offered or approved by the commissioner.

(d) The provisions of subsection (c) of this section do not
apply to the operation of an all-terrain vehicle on any private or
public recreational trail or area or affiliated trail or area
operated by a person or entity which has in place a safety
program.

§17F-1-3. Local government authority to regulate.

Notwithstanding any provision of this article to the
contrary:

(1) The governing body of a municipality may regulate in
any manner or prohibit, by lawfully enacted ordinance, the
operation of all-terrain vehicles upon any street, road or avenue
within the municipal corporate limits.

(2) Homeowner associations may petition the county
commission of the county in which the area regulated by the
homeowner association is located for an ordinance to regulate
or prohibit the operation of all-terrain vehicles upon any street,
road or avenue within the area regulated by the homeowner
association. County commissions are hereby authorized, upon
receipt of a petition authorized by the provisions of this section, to enact an ordinance regulating or prohibiting the operation of all-terrain vehicles.

(3) The county commission of any county which has in effect and is operating under a countywide comprehensive plan may by lawfully enacted ordinance regulate or prohibit the operation of all-terrain vehicles on any road in the county, except interstate highways: Provided, That any county which enacts any such ordinance shall notify the West Virginia state police and all law-enforcement agencies in the county of its action in writing, together with a copy of the ordinance.

§17F-1-4. All-terrain vehicle rental dealers required to provide safety equipment.

Any person or entity renting or leasing all-terrain vehicles for recreational purposes must provide protective helmets as defined by the provisions of subdivision (5), subsection (a), section one of this article, to all persons using such vehicles who are under the age of eighteen and offer protective helmets to all persons eighteen and older using the rented or leased vehicles: Provided, That for the provisions of this section to be applicable, the age and identity of the users of the all-terrain vehicle must be disclosed to the person or entity providing the rented or leased vehicle.

§17F-1-5. Private property exemption.

Except as provided by the provisions of subdivisions (3), (4) and (5), subsection (a), section one of this article, and except as provided by the provisions of section two of this article, the provisions of this article do not apply if the all-terrain vehicle is operated exclusively on lands owned or leased by the vehicle owner or on private lands of others with the owner's permission.

§17F-1-6. Exemption for farm, commercial use; current regulations.
(a) Except as provided by the provisions of subdivisions (4) and (5), subsection (a), section one, nothing in this article may be construed to preclude or limit the use or operation of all-terrain vehicles for lawful nonrecreational commercial purposes, including, but not limited to, farm use, oil and gas operations, timbering, surveying and public utilities access.

(b) Nothing in this chapter may be construed to supersede or contravene the provisions of any agreement between the state of West Virginia and any private or governmental entity entered into prior to the effective date of this chapter, or any lawfully promulgated legislative rule, including any emergency legislative rule, regulating the operation of all-terrain vehicles.

§17F-1-7. Applicability of rules of operation.

(a) Every person operating an all-terrain vehicle upon a public road or highway of this state shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of chapter seventeen-c of this code except where inconsistent with the provisions of this article and except as to those provisions of chapter seventeen-c of this code which by their nature can have no application.

(b) Notwithstanding the provisions of subsection (a) of this section, a motor vehicle operator’s license is not required of an operator of an all-terrain vehicle when he or she is operating said vehicle in conformity with the provisions of subdivision (2), subsection (a) or subsection (b), section one of this chapter except when the operator is under the age of eighteen and is transporting a passenger under the age of eighteen.

§17F-1-8. Criminal penalties.

(a) Except as provided in the provisions of subsection (b) of this section and in addition to any other legal remedy for violation of civil or criminal provisions of this code, any person who violates the provisions of this article or municipal or county ordinance enacted pursuant to the provisions of section
three of this article or who owns or has control over an all-
terrain vehicle and knowingly permits it to be used in violation
of the provisions of this article is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than one
hundred dollars.

(b) Any parent, legal guardian or person who has actual
responsibility for a child under eighteen years of age who
knows or should have known the child is operating or is a
passenger on an all-terrain vehicle without a helmet as required
by the provisions of section one of this article is guilty of a
misdemeanor and shall, upon conviction, be subject to the
following penalties:

(1) For a first offense, a fine of not less than fifty dollars
nor more than one hundred dollars or not more than ten hours
of community service, or both;

(2) For a second offense, a fine of not less than one hundred
dollars nor more than two hundred dollars or not more than
twenty hours of community service, or both;

(3) For a third or subsequent offense, a fine of not less than
two hundred dollars nor more than five hundred dollars or not
more than one hundred hours of community service, or both.

§17F-1-9. Definition of all-terrain vehicle.

As used in this chapter, “all-terrain vehicle” or “ATV”
shall mean any motor vehicle, fifty-two inches or less in width,
having an unladen weight of eight hundred pounds or less,
traveling on three or more low pressure tires with a seat
designed to be straddled by the rider, designed for or capable of
travel over unimproved terrain.
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.

1 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 five.

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

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

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

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

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

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

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

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

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

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

TITLE II—APPROPRIATIONS.

§1. Appropriations from general revenue.

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§10. Special revenue appropriations.
§11. State improvement fund appropriations.
§12. Specific funds and collection accounts.
§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 five.
## LEGISLATIVE

### 1 – Senate

**Fund 0165  FY 2005  Org 2100**

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<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>3</td>
<td>Employee Benefits (R) 010 597,712</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses and Contingent Fund (R) 021 700,000</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations (R) 064 450,000</td>
</tr>
<tr>
<td>6</td>
<td>Computer Supplies (R) 101 40,000</td>
</tr>
<tr>
<td>7</td>
<td>Computer Systems (R) 102 250,000</td>
</tr>
<tr>
<td>8</td>
<td>Printing Blue Book (R) 103 150,000</td>
</tr>
<tr>
<td>9</td>
<td>Expenses of Members (R) 399 700,000</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium (R) 913 18,877</td>
</tr>
<tr>
<td>11</td>
<td>Total 6,919,799</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2004 are to remain in full force and effect and are hereby reappropriated to June 30, 2005. Any balances so reappropriated may be transferred and credited to the fiscal year 2005 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 author-
ity 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 2005 Org 2200

1 Compensation of Members (R) . . . 003 $ 2,270,000
The appropriations for the house of delegates for the fiscal year 2004 are to remain in full force and effect and are hereby reappropriated to June 30, 2005. Any balances so reappropriated may be transferred and credited to the fiscal year 2005 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 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 2005 Org 2300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Joint Committee on Government and Finance (R)</td>
<td>104</td>
</tr>
<tr>
<td>2</td>
<td>Legislative Printing (R)</td>
<td>105</td>
</tr>
<tr>
<td>3</td>
<td>Legislative Rule-Making</td>
<td>106</td>
</tr>
<tr>
<td>4</td>
<td>Review Committee (R)</td>
<td>107</td>
</tr>
<tr>
<td>5</td>
<td>Legislative Computer System (R)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Joint Standing Committee on Education (R)</td>
<td>108</td>
</tr>
<tr>
<td>7</td>
<td>Tax Reduction and Federal Funding</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Increased Compliance</td>
<td>642</td>
</tr>
<tr>
<td>9</td>
<td>(TRAFFIC)(R)</td>
<td>913</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium (R)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2004 are to remain in full force and effect and are hereby reappropriated to June 30, 2005. Any balances so reappropriated may be transferred and credited to the fiscal year 2005 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.

**JUDICIAL**

*4—Supreme Court—*

*General Judicial*

<table>
<thead>
<tr>
<th>Fund 0180 FY 2005 Org 2400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services (R) .... 001</td>
</tr>
<tr>
<td>2 Annual Increment (R) ....... 004</td>
</tr>
<tr>
<td>3 Employee Benefits (R) ..... 010</td>
</tr>
<tr>
<td>4 Unclassified (R) ......... 099</td>
</tr>
<tr>
<td>5 Judges’ Retirement System (R) ... 110</td>
</tr>
<tr>
<td>6 BRIM Premium (R) ........... 913</td>
</tr>
<tr>
<td>7 Total ........................</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2002, 2003 and 2004 are to remain in full force and effect and are hereby reappropriated to June 30, 2005. Any balances so reappropriated may be transferred and credited to the fiscal year 2005 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 2005 Org 0100

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,245,000</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Governor</td>
<td>002</td>
<td>95,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>17,745</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>699,040</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>830,386</td>
</tr>
<tr>
<td>6</td>
<td>Jobs for American Graduates</td>
<td>089</td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>77,500</td>
</tr>
<tr>
<td>8</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>5,740</td>
</tr>
<tr>
<td>9</td>
<td>Publication of Papers and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Transition Expenses (R)</td>
<td>465</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
<td>267,409</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$4,237,820</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), Publication of Papers and Transition Expenses (fund 0101, activity 465), Publication of Papers and Transition Expenses—Surplus (fund 0101, activity 359) and Southern Governors’ Association—Surplus (fund 0101, activity 962) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2005 Org 0100

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$424,974</td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>Fund 0104 FY 2005 Org 0100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 010</td>
</tr>
<tr>
<td>2  Annual Increment .......... 004</td>
</tr>
<tr>
<td>3  Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4  Unclassified .............. 099</td>
</tr>
<tr>
<td>5  Family Resource Networks (R) .. 274</td>
</tr>
<tr>
<td>6  Early Parenting Education ... 559</td>
</tr>
<tr>
<td>7  Starting Points Centers and</td>
</tr>
<tr>
<td>8  Parent Education Services (R) 316</td>
</tr>
<tr>
<td>9  Total ..............................</td>
</tr>
</tbody>
</table>

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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0104, fiscal year 2004, activity 274 ($38,899); and fund 0104, fiscal year 2004, activity 316 ($38,899) which shall expire on June 30, 2004.

### 8—Governor's Office—
**Civil Contingent Fund**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund 0105 FY 2005 Org 0100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Business &amp; Economic Development</td>
</tr>
<tr>
<td>2  Stimulus (R) ............... 586</td>
</tr>
<tr>
<td>3  Civil Contingent Fund - Total (R) 114</td>
</tr>
<tr>
<td>4  Total ..............................</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
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 2005 Org 1200**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 2,087,640</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>37,265</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>662,576</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>703,936</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>13,374</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td><strong>$ 3,579,791</strong></td>
</tr>
</tbody>
</table>

10—Treasurer’s Office

(WV Code Chapter 12)

**Fund 0126 FY 2005 Org 1300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 1,667,893</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,563</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>534,401</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>942,889</td>
</tr>
<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>283,029</td>
</tr>
<tr>
<td>7</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>148,549</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0126, fiscal year 2004, activity 009 ($42,549) which shall expire on June 30, 2004.

**11—Department of Agriculture**

(WV Code Chapter 19)

**Fund 0131 FY 2005 Org 1400**

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,596,423</td>
</tr>
<tr>
<td>Salary of Commissioner</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>77,138</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,307,831</td>
</tr>
<tr>
<td>State Farm Museum</td>
<td>055</td>
<td>110,000</td>
</tr>
<tr>
<td>General John McCausland</td>
<td>095</td>
<td>-0-</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>788,483</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>945,905</td>
</tr>
<tr>
<td>Huntington Farmers Market</td>
<td>128</td>
<td>50,000</td>
</tr>
<tr>
<td>Black Fly Control (R)</td>
<td>137</td>
<td>428,606</td>
</tr>
<tr>
<td>Donated Foods Program</td>
<td>363</td>
<td>50,000</td>
</tr>
<tr>
<td>Predator Control</td>
<td>470</td>
<td>140,000</td>
</tr>
<tr>
<td>Bee Research</td>
<td>691</td>
<td>32,421</td>
</tr>
<tr>
<td>Microbiology Program (R)</td>
<td>785</td>
<td>152,905</td>
</tr>
<tr>
<td>Moorefield Agriculture Center (R)</td>
<td>786</td>
<td>995,883</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>114,505</td>
</tr>
<tr>
<td>WV Food Banks</td>
<td>969</td>
<td>100,000</td>
</tr>
<tr>
<td>Animal Identification Program</td>
<td>039</td>
<td>200,000</td>
</tr>
<tr>
<td>Seniors’ Farmers’ Market Nutrition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coupon Program</td>
<td>970</td>
<td>60,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$9,225,100</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy
Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0131, fiscal year 2004, activity 119 ($63,473); fund 0131, fiscal year 2004, activity 137 ($55,000); and fund 0131, fiscal year 2004, activity 786 ($49,706) which shall expire on the June 30, 2004.

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—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2005 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$464,113</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,150</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>175,037</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>331,252</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>2,688,089</td>
</tr>
<tr>
<td>6</td>
<td>Maintenance of Flood Control Projects (R)</td>
<td>522</td>
<td>2,170,438</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>5,090</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$5,842,169</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, activity 120), Soil Conservation Projects—Surplus (fund 0132, activity 269) and Maintenance of Flood Control Projects (fund 0132, activity 522), and Unclassified (fund 0132, activity 099) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005,
with the exception of fund 0132, fiscal year 2004, activity 120 ($157,964) which shall expire on June 30, 2004.

**13—Department of Agriculture—
Meat Inspection**

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2005</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0135</td>
<td></td>
<td>1400</td>
<td>Unclassified - Total</td>
<td>$617,112</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)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2005</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0136</td>
<td></td>
<td>1400</td>
<td>Commissioner’s Awards</td>
<td>$43,650</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Programs &amp; Awards for 4-H</td>
<td>$57,737</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Clubs and FFA/FHA</td>
<td>$43,650</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$58,650</td>
</tr>
</tbody>
</table>

**15—Attorney General**

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

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2005</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0150</td>
<td></td>
<td>1500</td>
<td>Personal Services (R)</td>
<td>$1,907,267</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Salary of Attorney General</td>
<td>$80,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>$46,284</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits (R)</td>
<td>$738,947</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified (R)</td>
<td>$316,716</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Better Government Bureau</td>
<td>$295,054</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>BRIM Premium</td>
<td>$131,565</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$3,515,833</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010) and Unclassified (fund 0150, activity 099) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005 with the exception of fund 0150, fiscal year 2004, activity 001 ($107,746) which shall expire on June 30, 2004.

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 2005 Org 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$607,425</td>
</tr>
<tr>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>70,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>10,900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>226,267</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>124,858</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>43,724</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,083,174</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) and Administrative Law Division Improvements (fund 0155, activity...
(WV Code Chapter 3)

Fund 0160 FY 2005 Org 1601

1 Unclassified—Total ............... 096 $ 10,275

DEPARTMENT OF ADMINISTRATION

18—Department of Administration—Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2005 Org 0201

1 Unclassified ...................... 099 $ 271,097
2 Lease Rental Payments ............ 516 11,463,103
3 Pay Equity Reserve ................. 364 250,000
4 BRIM Premium .................. 913 14,073
5 Total .......................... $11,998,273

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 2005 Org 0205

1 The division of highways, division of motor vehicles, bureau of employment programs, public service commis-
2 sion and other departments, bureaus, divisions, or commis-
3 sions operating from special revenue funds and/or federal
4 funds shall pay their proportionate share of the retirement
5
costs for their respective divisions. When specific appro-
priations 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 2005 Org 0209

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$102,940</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>713</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>27,936</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>140,823</td>
</tr>
<tr>
<td>GAAP Project (R)</td>
<td>125</td>
<td>995,934</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>70,609</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,338,955</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation
for GAAP Project (fund 0203, activity 125) at the close of
the fiscal year 2004 is hereby reappropriated for expendi-
ture during the fiscal year 2005.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2005 Org 0211

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$582,902</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>237,351</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>527,649</td>
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<tr>
<td>Fire Service Fee</td>
<td>126</td>
<td>14,000</td>
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<tr>
<td>Capitol Complex - Capital Outlay</td>
<td>417</td>
<td>-0-</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>98,759</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,474,661</strong></td>
</tr>
</tbody>
</table>

22—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2005 Org 0213
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 2005 Org 0217

<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>$ 31,000</td>
</tr>
</tbody>
</table>

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

24-Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2005 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Retro Payments-Total</td>
<td>652</td>
<td>$ 2,000,000</td>
</tr>
</tbody>
</table>

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

25-Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2005 Org 0219

<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>$ 624,084</td>
</tr>
</tbody>
</table>

APPROPRIATIONS [Ch. 13

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$ 10,928</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$ 196,554</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 3,247</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$ 3,594</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$ 839,667</td>
</tr>
</tbody>
</table>

23-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2005 Org 0217

<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>$ 31,000</td>
</tr>
</tbody>
</table>

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

24-Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2005 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Retro Payments-Total</td>
<td>652</td>
<td>$ 2,000,000</td>
</tr>
</tbody>
</table>

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

25-Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2005 Org 0219

<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>$ 624,084</td>
</tr>
</tbody>
</table>

APPROPRIATIONS [Ch. 13

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$ 10,928</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$ 196,554</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 3,247</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$ 3,594</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$ 839,667</td>
</tr>
</tbody>
</table>
3 Employee Benefits .................. 010 166,359
4 Unclassified .......................... 099 137,334
5 BRIM Premium .......................... 913 2,116
6 Total ................................ $ 938,668

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2005 Org 0220

1 Personal Services ................... 001 $ 219,694
2 Annual Increment ..................... 004 1,900
3 Employee Benefits ................... 010 64,402
4 Unclassified .......................... 099 1,968
5 BRIM Premium .......................... 913 3,735
6 Total ................................ $ 291,699

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2005 Org 0221

1 Personal Services ................... 001 $ 548,011
2 Annual Increment ..................... 004 5,275
3 Employee Benefits ................... 010 192,885
4 Unclassified .......................... 099 315,074
5 Appointed Counsel Fees and Public Defender Corporations .. 127 -0-
7 Appointed Counsel Fees ............. 788 9,795,756
8 Public Defender Corporations ....... 352 12,773,436
9 Appointed Counsel-Public  
10 Defender Conflicts .................. 568 3,265,252
11 BRIM Premium .......................... 913 47,190
12 Total ................................ $26,942,879

Any unexpended balances remaining in the above appropriations for Public Defender Corporations (fund 0226, activity 352), and Appointed Counsel Fees (fund 0226, activity 788) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.
APPROPRIATIONS

28-Committee for the Purchase of Commodities and Services from the Handicapped
(WV Code Chapter 5A)

Fund 0233 FY 2005 Org 0224

1 Unclassified-Total ............... 096 $ 5,046

29-Public Employees Insurance Agency
(WV Code Chapter 5)

Fund 0200 FY 2005 Org 0225

1 The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments, bureaus, divisions, or commissions 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 2005 Org 0228

1 Forensic Medical
2 Examinations (R) ............... 683 $ 100,000
3 Federal Funds/Grant Match (R) .. 749 $88,000
4 Total ................................ $ 188,000

5 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0557, fiscal year 2004, activity 683 ($8,204) which shall expire on June 30, 2004.

31-Children's Health Insurance Agency
(WV Code Chapter 5)

Fund 0588 FY 2005 Org 0230
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0588, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

DEPARTMENT OF EDUCATION

32-State Department of Education-School Lunch Program
(WV Code Chapters 18 and 18A)

Fund 0303 FY 2005 Org 0402

| 1       | Personal Services | 001  | $214,437 |
| 2       | Annual Increment  | 004  | 3,594    |
| 3       | Employee Benefits | 010  | 77,799   |
| 4       | Unclassified      | 099  | 1,660,000|
| 5       | Total             |      | $1,955,830|

33-State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

Fund 0306 FY 2005 Org 0402

| 1       | Personal Services | 001  | $557,252 |
| 2       | Annual Increment  | 004  | 12,350   |
| 3       | Employee Benefits | 010  | 226,888  |
| 4       | Unclassified      | 099  | 141,864  |
| 5       | BRIM Premium      | 913  | 41,436   |
| 6       | Total             |      | $979,790 |

34-State Department of Education
(WV Code Chapters 18 and 18A)

Fund 0313 FY 2005 Org 0402

<p>| 1       | Personal Services | 001  | $2,805,924|
| 2       | Annual Increment  | 004  | 37,695   |
| 3       | Employee Benefits | 010  | 892,172  |
| 4       | Unclassified (R)  | 099  | 3,800,000|</p>
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>WV Education Information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>System (WVEIS)</td>
<td>138</td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>34/1000 Waiver</td>
<td>139</td>
<td>400,000</td>
</tr>
<tr>
<td>8</td>
<td>Traditional Student Increased</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Enrollmt 5yr-12th grade</td>
<td>997</td>
<td>2,600,000</td>
</tr>
<tr>
<td>10</td>
<td>Collaborative Resource Allocation</td>
<td>041</td>
<td>3,631,694</td>
</tr>
<tr>
<td>11</td>
<td>Safe Schools</td>
<td>143</td>
<td>2,000,000</td>
</tr>
<tr>
<td>12</td>
<td>Educational Achievement</td>
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<tr>
<td>13</td>
<td>Incentive</td>
<td>042</td>
<td>5,208,396</td>
</tr>
<tr>
<td>14</td>
<td>Teacher Mentor (R)</td>
<td>158</td>
<td>400,000</td>
</tr>
<tr>
<td>15</td>
<td>National Teacher Certification (R)</td>
<td>161</td>
<td>50,000</td>
</tr>
<tr>
<td>16</td>
<td>HVAC Technicians</td>
<td>355</td>
<td>315,493</td>
</tr>
<tr>
<td>17</td>
<td>Early Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Notification Incentive</td>
<td>366</td>
<td>150,000</td>
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<tr>
<td>19</td>
<td>FBI Checks</td>
<td>372</td>
<td>97,985</td>
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<tr>
<td>20</td>
<td>Foreign Student Education (R)</td>
<td>636</td>
<td>80,113</td>
</tr>
<tr>
<td>21</td>
<td>Bridges Program</td>
<td>394</td>
<td>150,000</td>
</tr>
<tr>
<td>22</td>
<td>State Teacher of the Year</td>
<td>640</td>
<td>38,499</td>
</tr>
<tr>
<td>23</td>
<td>Principals Mentorship</td>
<td>649</td>
<td>50,000</td>
</tr>
<tr>
<td>24</td>
<td>Allowance for Work Based</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Learning</td>
<td>744</td>
<td>120,000</td>
</tr>
<tr>
<td>26</td>
<td>Marshall University Graduate College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Writing Project</td>
<td>807</td>
<td>25,000</td>
</tr>
<tr>
<td>28</td>
<td>Regional Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Service Agencies</td>
<td>972</td>
<td>4,400,000</td>
</tr>
<tr>
<td>30</td>
<td>Sparse Population Allocation</td>
<td>973</td>
<td>625,000</td>
</tr>
<tr>
<td>31</td>
<td>BRIM Premium</td>
<td>913</td>
<td>328,295</td>
</tr>
<tr>
<td>32</td>
<td>Total</td>
<td></td>
<td>$28,206,266</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), S.U.C.C.E.S.S.—Surplus (fund 0313, activity 964), Computer Basic Skills—Surplus (fund 0313, activity 965), 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

35-State Department of Education-
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2005 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</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>3,217,483</td>
</tr>
<tr>
<td>Education of Juveniles Held in Predispositional Juvenile Detention Centers</td>
<td>302</td>
<td>581,478</td>
</tr>
<tr>
<td>Education of Institutionalized Juveniles and Adults</td>
<td>472</td>
<td>11,503,434</td>
</tr>
<tr>
<td>Potomac Center</td>
<td>810</td>
<td>-0-</td>
</tr>
<tr>
<td>Educational Programs at Beckley and Burlington Centers</td>
<td>975</td>
<td>-0-</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$22,574,152</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Surplus (fund 0314, activity 097) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

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

36-State Department of Education-
State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2005 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Current Expenses</td>
<td>022</td>
<td>$125,826,312</td>
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<tr>
<td>Professional Educators</td>
<td>151</td>
<td>731,600,242</td>
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<tr>
<td>Service Personnel</td>
<td>152</td>
<td>243,025,520</td>
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<tr>
<td>Fixed Charges</td>
<td>153</td>
<td>88,788,405</td>
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### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Transportation</td>
<td>154</td>
<td>25,787,620</td>
</tr>
<tr>
<td>Administration</td>
<td>155</td>
<td>3,023,492</td>
</tr>
<tr>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>33,000,000</td>
</tr>
<tr>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,251,051,591</td>
</tr>
<tr>
<td>Less Local Share</td>
<td></td>
<td>(305,560,152)</td>
</tr>
<tr>
<td>Total Basic State Aid</td>
<td></td>
<td>945,491,439</td>
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<tr>
<td>Early Childhood Collaborative</td>
<td>018</td>
<td>34,760,421</td>
</tr>
<tr>
<td>Public Employees’ Insurance Matching</td>
<td>012</td>
<td>177,271,016</td>
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<tr>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>345,376,678</td>
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<tr>
<td>School Building Authority</td>
<td>453</td>
<td>21,561,365</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,524,460,919</td>
</tr>
</tbody>
</table>

#### 37-State Board of Education-Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2005 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 902,344</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>16,099</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>307,091</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,110,000</td>
</tr>
<tr>
<td>Wood Products-Forestry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vocational Program</td>
<td>146</td>
<td>56,220</td>
</tr>
<tr>
<td>Albert Yanni Vocational</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>147</td>
<td>124,263</td>
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<tr>
<td>Vocational Aid</td>
<td>148</td>
<td>14,404,493</td>
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<tr>
<td>Adult Basic Education</td>
<td>149</td>
<td>3,113,039</td>
</tr>
<tr>
<td>Partnership Development/Staff</td>
<td>171</td>
<td>0</td>
</tr>
<tr>
<td>Program Modernization</td>
<td>305</td>
<td>725,000</td>
</tr>
<tr>
<td>Technical and Secondary Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improvement Staff</td>
<td>330</td>
<td>260,871</td>
</tr>
<tr>
<td>GED Testing</td>
<td>339</td>
<td>291,160</td>
</tr>
<tr>
<td>Aquaculture Support</td>
<td>769</td>
<td>80,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$21,390,580</td>
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</tbody>
</table>

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

(WV Code Chapters 18 and 18A)
### Ch. 13] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Fund 0573 FY 2005 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified .......... 099</td>
</tr>
<tr>
<td>5 Total ..................</td>
</tr>
</tbody>
</table>

39-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 0320 FY 2005 Org 0403</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified .......... 099</td>
</tr>
<tr>
<td>5 BRIM Premium ................ 913</td>
</tr>
<tr>
<td>6 Total ..................</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

40-Department of Education and the Arts-
Office of the Secretary

(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Fund 0294 FY 2005 Org 0431</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Governor’s Honor Academy and</td>
</tr>
<tr>
<td>2 School for the Arts (R) .... 030</td>
</tr>
<tr>
<td>3 Governor’s Honor Academy ...... 478</td>
</tr>
<tr>
<td>4 Unclassified (R) ........ 099</td>
</tr>
<tr>
<td>5 Center for Professional Development ...... 115</td>
</tr>
<tr>
<td>6 Center for Professional Development- Principals’ Academy (R) ...... 415</td>
</tr>
<tr>
<td>9 Teacher Education</td>
</tr>
<tr>
<td>10 Partnerships (R) .......... 576</td>
</tr>
<tr>
<td>11 Energy Express .......... 861</td>
</tr>
<tr>
<td>12 BRIM Premium .......... 913</td>
</tr>
<tr>
<td>13 Total ..................</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Governor's Honors Academy and School for the Arts (fund 0294, activity 030), Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Center for Professional Development- Principals' Academy (fund 0294, activity 415) and Teacher Education Partnerships (fund 0294, activity 576) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0294, fiscal year 2004, activity 415 ($35,000); fund 0294, fiscal year 2004, activity 115 ($24,322); fund 0294, fiscal year 2004, activity 576 ($65,000); and fund 0294, fiscal year 2004, activity 099($11,391) which shall expire on June 30, 2004.

41-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2005 Org 0432

| 1  | Personal Services .................. | 001 | $2,144,527 |
| 2  | Annual Increment .................. | 004 | 40,162 |
| 3  | Employee Benefits .................. | 010 | 893,273 |
| 4  | Unclassified ........................ | 099 | 470,000 |
| 5  | Culture and History ................. |     |           |
| 6  | Programming ......................... | 732 | 300,000 |
| 7  | BRIM Premium ........................ | 913 | 61,293 |
| 8  | Total .................................. |     | $3,909,255 |

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
original made, including personal services, current
expenses and equipment.

42-Library Commission
(WV Code Chapter 10)

Fund 0296 FY 2005 Org 0433

<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>$866,543</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>28,100</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>349,668</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>229,809</td>
</tr>
<tr>
<td>5 Services to Blind and Handicapped</td>
<td>181</td>
<td>38,456</td>
</tr>
<tr>
<td>6 EBA Contractual Services</td>
<td>044</td>
<td>50,000</td>
</tr>
<tr>
<td>7 BRIM Premium</td>
<td>913</td>
<td>31,822</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$1,594,398</td>
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</table>

43-Educational Broadcasting Authority
(WV Code Chapter 10)

Fund 0300 FY 2005 Org 0439

<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>$3,030,517</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>61,492</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>1,039,610</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>492,586</td>
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<tr>
<td>5 BRIM Premium</td>
<td>913</td>
<td>69,225</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$4,693,430</td>
</tr>
</tbody>
</table>

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

44-State Board of Rehabilitation-
Division of Rehabilitation Services
(WV Code Chapter 18)

Fund 0310 FY 2005 Org 0932

<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>$6,439,706</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>134,049</td>
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<tr>
<td>Item</td>
<td>Description</td>
<td>Fund</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>------</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Employment Attendant</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Care Program</td>
<td>598</td>
</tr>
<tr>
<td>7</td>
<td>Workshop Development</td>
<td>163</td>
</tr>
<tr>
<td>8</td>
<td>Supported Employment</td>
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</tr>
<tr>
<td>9</td>
<td>Extended Services</td>
<td>206</td>
</tr>
<tr>
<td>10</td>
<td>Ron Yost Personal Assistance Fund (R)</td>
<td>407</td>
</tr>
<tr>
<td>11</td>
<td>Independent Living Services</td>
<td>009</td>
</tr>
<tr>
<td>12</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) is hereby reappropriated for expenditure during the fiscal year 2005 and may be transferred to a special account for the purpose of disbursement or loan. Any unexpended balances remaining in the appropriations for Capital Improvements -Surplus (fund 0310, activity 661), Unclassified - Surplus (fund 0310, activity 097) and Ron Yost Personal Assistant Fund (fund 0310, activity 406) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

45-Department of Health and Human Resources-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2005 Org 0501

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>FY 2005</th>
<th>Org 0501</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$ 137,929</td>
<td></td>
</tr>
</tbody>
</table>

46-Division of Health-
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2005 Org 0506
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Code</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$7,262,502</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>164,981</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,132,691</td>
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<tr>
<td>Level 1, 2 and 3 Trauma Centers</td>
<td>013</td>
<td>675,594</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>2,677,222</td>
</tr>
<tr>
<td>Safe Drinking Water Program</td>
<td>187</td>
<td>506,098</td>
</tr>
<tr>
<td>Pet Scan Support</td>
<td>209</td>
<td>100,000</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>210</td>
<td>45,000</td>
</tr>
<tr>
<td>Basic Public Health</td>
<td></td>
<td></td>
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<tr>
<td>Services Support</td>
<td>212</td>
<td>4,324,216</td>
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<tr>
<td>Early Intervention</td>
<td>223</td>
<td>3,307,043</td>
</tr>
<tr>
<td>Cancer Registry</td>
<td>225</td>
<td>272,671</td>
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<tr>
<td>State EMS Technical Assistance</td>
<td>379</td>
<td>1,404,020</td>
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<tr>
<td>EMS Program for Children</td>
<td>381</td>
<td>49,864</td>
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<tr>
<td>Statewide EMS Program Support</td>
<td>383</td>
<td>554,181</td>
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<tr>
<td>Primary Care Centers</td>
<td></td>
<td></td>
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<tr>
<td>Mortgage Finance</td>
<td>413</td>
<td>621,718</td>
</tr>
<tr>
<td>Black Lung Clinics</td>
<td>467</td>
<td>198,646</td>
</tr>
<tr>
<td>Women’s Right to Know</td>
<td>546</td>
<td>200,000</td>
</tr>
<tr>
<td>Pediatric Dental Services</td>
<td>550</td>
<td>150,000</td>
</tr>
<tr>
<td>Vaccine for Children</td>
<td>551</td>
<td>432,457</td>
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<tr>
<td>Adult Influenza Vaccine</td>
<td>552</td>
<td>65,000</td>
</tr>
<tr>
<td>Tuberculosis Control</td>
<td>553</td>
<td>254,042</td>
</tr>
<tr>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts, and Fees (R)</td>
<td>575</td>
<td>4,614,362</td>
</tr>
<tr>
<td>Epidemiology Support</td>
<td>626</td>
<td>379,593</td>
</tr>
<tr>
<td>Primary Care Support</td>
<td>628</td>
<td>7,254,178</td>
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<tr>
<td>State Aid to Local</td>
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</tr>
<tr>
<td>Health Departments</td>
<td>702</td>
<td>9,257,684</td>
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<tr>
<td>Health Right Free Clinics</td>
<td>727</td>
<td>2,747,836</td>
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<tr>
<td>Osteoporosis Prevention Fund</td>
<td>729</td>
<td>156,696</td>
</tr>
<tr>
<td>Center for End of Life</td>
<td>545</td>
<td>195,000</td>
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<tr>
<td>Tobacco Education Program</td>
<td>906</td>
<td>-0-</td>
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<tr>
<td>CARDIAC Project</td>
<td>375</td>
<td>250,000</td>
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<tr>
<td>Emergency Response Entities Special Projects</td>
<td>822</td>
<td>400,000</td>
</tr>
<tr>
<td>Chief Medical Examiner</td>
<td>045</td>
<td>3,384,423</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>224,757</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$55,262,475</td>
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</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0407, fiscal year 1997, activity 099) and Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0407, fiscal year 2004, activity 575 ($69,213) which shall expire on June 30, 2004.

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.

Included in the above appropriation for Primary Care Centers-Mortgage Finance is $50,000 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $53,140 for the mortgage payment for the Monroe Health Center; $42,564 for the mortgage payment for Roane County Family Health Care, Inc.; $25,000 for the mortgage payment for the Tug River Health Association, Inc.; $48,000 for the mortgage payment for the Primary Care Systems (Clay); $10,800 for the mortgage for the Belington Clinic; $30,000 for the mortgage payment for the Tri-County Health Clinic; $15,000 for the mortgage payments for Valley Health Care (Randolph); $58,560 for the mortgage payment for Valley Health Systems, Inc. (Woman’s Place and Harts Health Clinic); $46,953 for the mortgage payment for Ritchie County Primary Care Association, Inc.; $24,000 for the mortgage payment for Camden-on-Gauley Primary Care Center; $8,000 for the mortgage payment for Northern Greenbrier Health Clinic; $12,696 for the mortgage payment for the Women’s Care, Inc. (Putnam); $25,000 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $20,000 for the mortgage payments for the North Fork Clinic (Pendleton); $40,000 for the mortgage payments for the Pendleton Community Care; $27,000 for the mortgage for South Branch Health Facility (Upper Tract); $38,400 for the mortgage payment for Clay-Battelle Community
79 Health Center; $33,600 for the mortgage payment for Mountaineer Health Clinic in Paw Paw and $13,000 be expended for the mortgage payment for the St. George Medical Clinic.

47-Consolidated Medical Service Fund

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 0525 FY 2005 Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .............. 001 $ 616,833</td>
</tr>
<tr>
<td>2 Annual Increment ............. 004 11,991</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010 252,697</td>
</tr>
<tr>
<td>4 Special Olympics .......... 208 26,074</td>
</tr>
<tr>
<td>5 Behavioral Health Program- Unclassified (R) .... 219 41,179,562</td>
</tr>
<tr>
<td>6 Family Support Act .......... 221 1,092,753</td>
</tr>
<tr>
<td>7 Institutional Facilities ..................</td>
</tr>
<tr>
<td>8 Operations .................. 335 46,712,385</td>
</tr>
<tr>
<td>9 Colin Anderson Community Placement (R) .......... 803 3,264,325</td>
</tr>
<tr>
<td>10 Renaissance Program .......... 804 194,000</td>
</tr>
<tr>
<td>11 BRIM Premium ................ 913 1,152,725</td>
</tr>
<tr>
<td>12 Total ....................... $ 94,503,345</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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0525, fiscal year 2004, activity 219 ($2,064,354); and fund 0525, fiscal year 2004, activity 803 ($2,100,325) which shall expire on June 30, 2004.

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 revenue 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 revenue 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, 2004, the sum of one hundred sixty 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 2005, organization 0506 and fund 5156, fiscal year 2005, 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 2005 Org 0506

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

3 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 2005 Org 0510

1 Personal Services ............... 001 $ 667,467
2 Annual Increment ................ 004 16,000
3 Employee Benefits ............... 010 222,794
4 Unclassified ..................... 099 254,684
5 BRIM Premium .................... 913 20,668
6 Total ............................ $ 1,181,613

50-Division of Human Services
(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2005 Org 0511

1 Personal Services ............... 001 $ 21,465,192
2 Annual Increment ................ 004 648,734
3 Employee Benefits ............... 010 8,449,645
4 Unclassified ..................... 099 16,731,576
5 Child Care Development .......... 144 1,447,463
6 Medical Services Contracts
7 and Office of Managed Care ... 183 2,329,730
8 Medical Services ................ 189 239,070,628
9 Women's Commission ............. 191 133,381
10 Social Services .................. 195 60,105,425
11 Family Preservation Program ... 196 1,565,000
12 Domestic Violence Legal
13 Services Fund ................... 384 150,000
14 James "Tiger" Morton Catastrophic Illness Fund ........ 455 940,000
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Child Protective Services</td>
<td>468</td>
<td>11,917,452</td>
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<td>17</td>
<td>Case Workers</td>
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<td>18</td>
<td>Medical Services Trust</td>
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<td>19</td>
<td>Fund Transfer</td>
<td>512</td>
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<tr>
<td>20</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,471,648</td>
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<td>21</td>
<td>WV Teaching Hospitals</td>
<td></td>
<td></td>
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<tr>
<td>22</td>
<td>Tertiary/Safety Net</td>
<td>547</td>
<td>1,750,000</td>
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<tr>
<td>23</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,581,948</td>
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<tr>
<td>24</td>
<td>Commission for the Deaf and Hard of Hearing</td>
<td>704</td>
<td>263,473</td>
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<td>25</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>2,758,468</td>
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<tr>
<td>26</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>590,841</td>
</tr>
<tr>
<td>27</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>707</td>
<td>22,969,096</td>
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<tr>
<td>28</td>
<td>Child Care-Maintenance of Effort and Match</td>
<td>708</td>
<td>4,409,643</td>
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<tr>
<td>29</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>1,000,000</td>
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<tr>
<td>30</td>
<td>Indigent Burials (R)</td>
<td>851</td>
<td>1,200,000</td>
</tr>
<tr>
<td>31</td>
<td>Hospitals under 100 beds</td>
<td>946</td>
<td>750,000</td>
</tr>
<tr>
<td>32</td>
<td>BRIM Premium</td>
<td>913</td>
<td>882,229</td>
</tr>
<tr>
<td>33</td>
<td>**Total</td>
<td></td>
<td>412,581,572</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$ 411,831,572</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Indigent Burials (fund 0403, activity 851) and Medical Services (fund 0403, activity 189) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0403, fiscal year 2004, activity 189 ($122,818); and fund 0403, fiscal year 2004, activity 851 ($325,000) which shall expire on June 30, 2004.

*CLERK'S NOTE:* The Governor struck language on lines 36 and 37.

**CLERK'S NOTE:** The Governor also reduced the total on line 39 from "$412,581,572" to "411,831,572" to reflect the deletion.
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 chapter sixteen, article five-q, 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.

*The above appropriation for Sole Community/Medicare Dependent Hospitals under 100 beds shall be used as additional state match for cost based reimbursement.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

51-Department of Military Affairs and Public Safety-Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2005 Org 0601

1 Unclassified (R) ............... 099 $ 529,199

*CLERK'S NOTE: The Governor struck language on lines 68, 69 and 70.
Any unexpended balance remaining in the appropriation for Unclassified (fund 0430, activity 099) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

52-Adjutant General-

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2005 Org 0603

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$387,196</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>9,900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>127,063</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>13,186,283</td>
</tr>
<tr>
<td>Mountaineer ChalleNGe Academy</td>
<td>709</td>
<td>1,200,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>45,086</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$14,955,528</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

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

53-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2005 Org 0605

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$122,751</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,744</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

| 3 | Employee Benefits | 010 | 127,119 |
| 4 | Unclassified | 099 | 119,325 |
| 5 | Salaries of Members of West Virginia Parole Board | 227 | 225,000 |
| 7 | BRIM Premium | 913 | 17,511 |
| **8** | **Total** | | **$ 613,450** |

### 54-Office of Emergency Services

(WV Code Chapter 15)

Fund **0443** FY **2005** Org **0606**

| 1 | Personal Services | 001 | **$ 222,636** |
| 2 | Annual Increment | 004 | 5,500 |
| 3 | Employee Benefits | 010 | 84,834 |
| 4 | Unclassified | 099 | 106,841 |
| 5 | Federal Emergency Management Agency Match (R) | 188 | 210,937 |
| 6 | Radiological Emergency Preparedness | 554 | 25,600 |
| 7 | Early Warning Flood System | 877 | 324,264 |
| 8 | BRIM Premium | 913 | **12,598** |
| **9** | **Total** | | **$ 993,210** |

12 Any unexpended balances remaining in the appropriations for Federal Emergency Management Agency Match—Surplus (fund 0443, activity 121), Federal Emergency Management Agency Match (fund 0443, activity 188), Flood Reparations (fund 0443, activity 400) and Homeland Security Grant Match—Surplus (fund 0443, activity 957) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

### 55-Division of Corrections—Central Office

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

Fund **0446** FY **2005** Org **0608**

| 1 | Personal Services | 001 | **$ 357,881** |
| 2 | Annual Increment | 004 | 5,775 |
Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

56-Division of Corrections-
Correctional Units

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

<table>
<thead>
<tr>
<th>Fund 0450 FY 2005 Org 0608</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified ..................</td>
</tr>
<tr>
<td>2 Employee Benefits ..........</td>
</tr>
<tr>
<td>3 Charleston Work Release ....</td>
</tr>
<tr>
<td>4 Beckley Correctional Center ..</td>
</tr>
<tr>
<td>5 Huntington Work Release .....</td>
</tr>
<tr>
<td>6 Anthony Center ..........</td>
</tr>
<tr>
<td>7 Huttonsville Correctional Center</td>
</tr>
<tr>
<td>8 Northern Correctional Facility ..</td>
</tr>
<tr>
<td>9 Inmate Medical Expenses ....</td>
</tr>
<tr>
<td>10 Pruntytown Correctional Center ..</td>
</tr>
<tr>
<td>11 Payments to Federal, County and/or Regional Jails ...........</td>
</tr>
<tr>
<td>12 Corrections Academy .....</td>
</tr>
<tr>
<td>13 Martinsburg Correctional Center ..</td>
</tr>
<tr>
<td>14 Parole Services ........</td>
</tr>
<tr>
<td>15 Special Services .......</td>
</tr>
<tr>
<td>16 St. Mary’s Correctional Facility ..</td>
</tr>
<tr>
<td>17 Denmar Correctional Facility ....</td>
</tr>
<tr>
<td>18 Ohio County ..........</td>
</tr>
<tr>
<td>19 Mt. Olive Correctional Facility ..</td>
</tr>
<tr>
<td>20 Lakin Correctional Facility .....</td>
</tr>
<tr>
<td>21 BRIM Premium ........</td>
</tr>
<tr>
<td>22 Total ..................</td>
</tr>
</tbody>
</table>
The commissioner of corrections shall within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of revenue 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, activity 555) or the Inmate Medical Expenses (fund 0450, activity 535).

From the above appropriation to Unclassified, on July 1, 2004, 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 2005 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$27,590,156</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>198,050</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>6,727,064</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>6,091,191</td>
</tr>
<tr>
<td>Handgun Replacement</td>
<td>289</td>
<td>-0-</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Barracks Maintenance</td>
<td>494</td>
<td>98,068</td>
</tr>
<tr>
<td>and Construction (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trooper Class (R)</td>
<td>521</td>
<td>3,670,885</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
<td>440,088</td>
</tr>
<tr>
<td>Communications and</td>
<td>558</td>
<td>613,285</td>
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<tr>
<td>Other Equipment (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>27,780,136</td>
</tr>
</tbody>
</table>
### 14 Handgun Administration
- Expense: $747,705,444
- Automated Fingerprint Identification System: $898,496,122
- BRIM Premium: $913,673,157
- Total: $81,506,746

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Trooper Class (fund 0453, activity 521) and Communications and Other Equipment (fund 0453, activity 558) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

From the reappropriated balance of the Barracks Maintenance and Construction line item above; at least $500,000 shall be utilized to repair and renovate the Martinsburg Barracks.

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### 58-Division of Veterans' Affairs

(WV Code Chapter 9A)

<table>
<thead>
<tr>
<th>Fund 0456 FY 2005 Org 0613</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001  $872,723</td>
</tr>
<tr>
<td>2  Annual Increment .......... 004  27,330</td>
</tr>
<tr>
<td>3  Employee Benefits .......... 010  387,973</td>
</tr>
<tr>
<td>4  Unclassified .............. 099  50,000</td>
</tr>
<tr>
<td>5  Veterans' Field Offices .... 228  180,000</td>
</tr>
<tr>
<td>6  Veterans' Nursing Home .... 286  750,000</td>
</tr>
<tr>
<td>7  Veterans' Toll Free Assistance Line .......... 328  5,000</td>
</tr>
<tr>
<td>8  Veterans' Reeducation Assistance (R) .......... 329  211,604</td>
</tr>
<tr>
<td>9  Veterans' Grant Program (R) .... 342  150,000</td>
</tr>
<tr>
<td>10 Memorial Day Patriotic Exercise .... 697  20,000</td>
</tr>
<tr>
<td>11 BRIM Premium ............... 913  27,978</td>
</tr>
<tr>
<td>12 Total ...................... $2,682,608</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Veterans' Reeducation Assistance (fund 0456,
17 activity 329), 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

22 The above appropriation for Veterans’ Nursing Home (fund 0456, activity 286) may be transferred to the Veterans’ Nursing Home Support Fund (fund 6703, org 0613) at the discretion of the director of the Division of Veterans’ Affairs.

59-Division of Veterans’ Affairs-
Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2005 Org 0618

<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>
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<td>Annual Increment</td>
<td>004</td>
<td>$15,100</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$312,663</td>
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<td>099</td>
<td>$37,316</td>
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<td>Total</td>
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<td>$1,033,725</td>
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60-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2005 Org 0619

<table>
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<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Safe Schools Hotline - Total</td>
<td>093</td>
<td>$200,000</td>
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</table>

61-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2005 Org 0620

<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>$236,236</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,645</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
<td>099</td>
<td>$129,583</td>
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<td>Statistical Analysis Program</td>
<td>597</td>
<td>$48,265</td>
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<td>Sentencing Commission</td>
<td>976</td>
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### Appropriations

<table>
<thead>
<tr>
<th>7</th>
<th>BRIM Premium</th>
<th>913</th>
<th>1,462</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>497,946</td>
</tr>
</tbody>
</table>

#### 62-Division of Juvenile Services

(WV Code Chapter 49)

**Fund 0570 FY 2005 Org 0621**

<table>
<thead>
<tr>
<th>1</th>
<th>Robert L. Shell Juvenile Center</th>
<th>267</th>
<th>$1,573,072</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Donald R. Kuhn</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Diagnostic Center</td>
<td>283</td>
<td>$2,078,265</td>
</tr>
<tr>
<td>4</td>
<td>Central Office</td>
<td>701</td>
<td>$1,825,015</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>31,436</td>
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<td>6</td>
<td>WV Industrial Home for Youth</td>
<td>979</td>
<td>$10,689,850</td>
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<tr>
<td>7</td>
<td>Davis Center</td>
<td>980</td>
<td>$2,117,417</td>
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<td>8</td>
<td>Eastern Regional Juvenile Center</td>
<td>981</td>
<td>$1,257,152</td>
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<tr>
<td>9</td>
<td>Northern Regional Juvenile Center</td>
<td>982</td>
<td>912,807</td>
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<tr>
<td>10</td>
<td>Juvenile Center</td>
<td>983</td>
<td>$1,602,290</td>
</tr>
<tr>
<td>11</td>
<td>North Central Regional Juvenile Center</td>
<td>984</td>
<td>1,704,494</td>
</tr>
<tr>
<td>12</td>
<td>Southern Regional Juvenile Center</td>
<td>985</td>
<td>1,814,195</td>
</tr>
<tr>
<td>13</td>
<td>Tiger Morton Center</td>
<td>986</td>
<td>1,458,122</td>
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<tr>
<td>14</td>
<td>Donald R. Kuhn Juvenile Center</td>
<td>987</td>
<td>$1,834,552</td>
</tr>
<tr>
<td>15</td>
<td>J.M. “Chick” Buckbee Juvenile Center</td>
<td>988</td>
<td>87,651</td>
</tr>
<tr>
<td>16</td>
<td>Salem Canine</td>
<td>989</td>
<td>83,611</td>
</tr>
<tr>
<td>17</td>
<td>Davis Canine</td>
<td>990</td>
<td>128,857</td>
</tr>
<tr>
<td>18</td>
<td>The Academy</td>
<td>991</td>
<td>$1,742,028</td>
</tr>
<tr>
<td>19</td>
<td>Mt. Hope Juvenile Center</td>
<td>992</td>
<td>1,742,028</td>
</tr>
<tr>
<td>20</td>
<td>Total</td>
<td></td>
<td>$30,940,814</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0570, activity 099) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

From the above appropriation to Unclassified, on July 1, 2004, the sum of fifty thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual pay-
ments 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)

<table>
<thead>
<tr>
<th>Fund 0585 FY 2005 Org 0622</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
<td>$ 864,051</td>
</tr>
<tr>
<td>2 Annual Increment ............ 004</td>
<td>9,350</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
<td>343,713</td>
</tr>
<tr>
<td>4 Unclassified (R) ............ 099</td>
<td>514,518</td>
</tr>
<tr>
<td>5 BRIM Premium ................. 913</td>
<td>6,816</td>
</tr>
<tr>
<td>6 Total .......................</td>
<td>$ 1,738,448</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropria-
tions for Equipment (fund 0585, activity 070) and Unclas-
sified (fund 0585, activity 099) at the close of the fiscal
year 2004 are hereby reappropriated for expenditure
during the fiscal year 2005.

DEPARTMENT OF REVENUE

64-Office of the Secretary
(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 0465 FY 2005 Org 0701</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified - Total ........ 096</td>
<td>$ 622,000</td>
</tr>
</tbody>
</table>

65-Tax Division
(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund 0470 FY 2005 Org 0702</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services (R) ........ 001</td>
<td>$ 11,002,709</td>
</tr>
<tr>
<td>2 Annual Increment ............ 004</td>
<td>259,060</td>
</tr>
<tr>
<td>3 Employee Benefits (R) ........ 010</td>
<td>4,194,362</td>
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<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
</tr>
<tr>
<td>4</td>
<td>Tax Technology Upgrade</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
</tr>
<tr>
<td>6</td>
<td>GIS Development Project</td>
</tr>
<tr>
<td>7</td>
<td>Remittance Processor</td>
</tr>
<tr>
<td>8</td>
<td>Multi State Tax Commission</td>
</tr>
<tr>
<td>9</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), Unclassified-Surplus (fund 0470, activity 097), Unclassified (fund 0470, activity 099), and Tax Technology Upgrade-Surplus (fund 0470, activity 450) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

66-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2005 Org 0703

|   | Unclassified - Total | 096 | $ 1,050,000 |

67-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2005 Org 0709

|   | Unclassified-Total (R) | 096 | $ 644,413 |

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0593, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0593, fiscal year 2004, activity 096 ($18,636) which shall expire on June 30, 2004.

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

(WV Code Chapter 29)
### DEPARTMENT OF TRANSPORTATION

**69-State Rail Authority**

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 0506 FY 2005 Org 0804</th>
<th>1 Unclassified ............... 099 $ 3,096,347</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2 BRIM Premium ............... 913 270,874</td>
</tr>
<tr>
<td></td>
<td>3 Total ..................... $ 3,367,221</td>
</tr>
</tbody>
</table>

**70-Division of Public Transit**

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund 0510 FY 2005 Org 0805</th>
<th>1 Unclassified (R) ............. 099 $ 1,258,342</th>
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<tbody>
<tr>
<td></td>
<td>2 Grant Match (R) .............. 388 1,000,000</td>
</tr>
<tr>
<td></td>
<td>3 Total ........................ $ 2,258,342</td>
</tr>
</tbody>
</table>

4 Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388) and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0510, fiscal year 2004, activity 099 ($37,531); and fund 0510, fiscal year 2004, activity 749 ($29,000) which shall expire on June 30, 2004.

**71-Public Port Authority**

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund 0581 FY 2005 Org 0806</th>
<th>1 Unclassified ............... 099 $ 460,537</th>
</tr>
</thead>
</table>

115
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0581, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0581, fiscal year 2004, activity 096 ($21,040) which shall expire on June 30, 2004.

72-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2005 Org 0807

1 Unclassified (R) ................. 099 $ 1,169,436
2 Civil Air Patrol ................. 234 151,384
3 Total ................................ $ 1,320,820

Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0582, fiscal year 2004, activity 099 ($35,606) which shall expire on June 30, 2004.

BUREAU OF COMMERCE

73-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2005 Org 0305

1 Personal Services ............... 001 $ 1,631,940
2 Annual Increment ............... 004 43,000
3 Employee Benefits ............. 010 736,845
4 Aerial Tanker .................. 047 200,000
5 BRIM Premium .................. 913 208,855
6 Total .......................... $ 2,820,640

Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.
### 74-Geological and Economic Survey

(WV Code Chapter 29)

**Fund 0253 FY 2005 Org 0306**

<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>$1,243,962</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>35,564</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>415,126</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>201,317</td>
</tr>
<tr>
<td>5</td>
<td>Mineral Mapping System (R)</td>
<td>207</td>
<td>1,556,636</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>34,291</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$3,486,896</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207) and Geographic Information System (fund 0253, activity 214) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0253, fiscal year 2004, activity 214 ($8,527); and fund 0253, fiscal year 2004, activity 207 ($65,450) which shall expire on June 30, 2004.

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.

### 75-West Virginia Development Office

(WV Code Chapter 5B)

**Fund 0256 FY 2005 Org 0307**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,354,456</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,180</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>730,222</td>
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<td>4</td>
<td>Energy Village</td>
<td>090</td>
<td>-0-</td>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>2,493,845</td>
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<tr>
<td>6</td>
<td>Partnership Grants (R)</td>
<td>131</td>
<td>2,640,244</td>
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<tr>
<td>7</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td>149,039</td>
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<tr>
<td>No.</td>
<td>Program Name</td>
<td>Funding</td>
<td></td>
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<tr>
<td>-----</td>
<td>--------------------------------------------</td>
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<td>8</td>
<td>Local Economic Development</td>
<td></td>
<td></td>
</tr>
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<td>9</td>
<td>Partnerships (R)</td>
<td>133</td>
<td></td>
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<tr>
<td>10</td>
<td>ARC Assessment</td>
<td>136</td>
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<td>11</td>
<td>Institute for Software Research</td>
<td>217</td>
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<td>12</td>
<td>West Virginia Steel Advisory</td>
<td>230</td>
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<tr>
<td>13</td>
<td>Mid-Atlantic Aerospace</td>
<td></td>
<td></td>
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<tr>
<td>14</td>
<td>Complex (R)</td>
<td>231</td>
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<tr>
<td>15</td>
<td>Guaranteed Work</td>
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<td></td>
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<td>16</td>
<td>Force Grant (R)</td>
<td>242</td>
<td></td>
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<tr>
<td>17</td>
<td>Mingo County Surface</td>
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<td></td>
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<td>18</td>
<td>Mine Project</td>
<td>296</td>
<td></td>
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<td>19</td>
<td>Small Business Financial</td>
<td></td>
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<td>20</td>
<td>Assistance (R)</td>
<td>360</td>
<td></td>
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<td>21</td>
<td>Robert C. Byrd Institute for Advanced/</td>
<td></td>
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<td>22</td>
<td>Flexible Manufacturing-Technology</td>
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<td>23</td>
<td>Outreach and Programs for</td>
<td></td>
<td></td>
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<tr>
<td>24</td>
<td>Environmental and</td>
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<tr>
<td>25</td>
<td>Advanced Technologies</td>
<td>367</td>
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<td>26</td>
<td>Advantage Valley</td>
<td>389</td>
<td></td>
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<tr>
<td>27</td>
<td>Chemical Alliance Zone</td>
<td>390</td>
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</tr>
<tr>
<td>28</td>
<td>WV High Tech Consortium</td>
<td>391</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Charleston Farmers Market (R)</td>
<td>476</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Industrial Park Assistance (R)</td>
<td>480</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Leverage Technology and Small Business Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Program (R)</td>
<td>525</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>International Offices (R)</td>
<td>593</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>WV Manufacturing</td>
<td></td>
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<tr>
<td>35</td>
<td>Extension Partnership</td>
<td>731</td>
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</tr>
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<td>36</td>
<td>Small Business Work Force (R)</td>
<td>735</td>
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<td>37</td>
<td>Polymer Alliance</td>
<td>754</td>
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<tr>
<td>38</td>
<td>National Institute of Chemical Studies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Local Economic Development Assistance (R)</td>
<td>819</td>
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</tr>
<tr>
<td>40</td>
<td>Community College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Workforce Development (R)</td>
<td>878</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Hardwood Alliance Zone</td>
<td>992</td>
<td></td>
</tr>
</tbody>
</table>
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), Local Economic Development Assistance—Surplus (fund 0256, activity 266), 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0256, fiscal year 2004, activity 131 ($152,922); fund 0256, fiscal year 2004, activity 133 ($109,132); fund 0256, fiscal year 2004, activity 231 ($5,696); fund 0256, fiscal year 2004, activity 242 ($78,375); fund 0256, fiscal year 2004, activity 476 ($2,610); fund 0256, fiscal year 2004, activity 480 ($64,134); fund 0256, fiscal year 2004, activity 525 ($20,835); fund 0256, fiscal year 2004, activity 593 ($22,504); fund 0256, fiscal year 2004, activity 735 ($15,344); fund 0256, fiscal year 2004, activity 819 ($171,208); and fund 0256, fiscal year 2004, activity 878 ($20,950) which shall expire on June 30, 2004.

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
85 authorities participating in the certified development
86 community program developed under the provisions of
87 section three, article two, chapter five-b of the code. The
88 West Virginia development office shall award the funding
89 assistance through a matching grant program, based upon
90 a formula whereby funding assistance may not exceed
91 thirty thousand dollars per county served by an economic
92 development corporation or authority.

76-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2005 Org 0308

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 1,605,054</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>25,072</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>666,904</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>565,789</td>
</tr>
<tr>
<td>5 BRIM Premium</td>
<td>913</td>
<td>49,987</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$ 2,912,806</td>
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</tbody>
</table>

77-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2005 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 6,741,356</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>220,037</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>3,280,120</td>
</tr>
<tr>
<td>4 Gypsy Moth Suppression Program –</td>
<td>014</td>
<td>45,500</td>
</tr>
<tr>
<td>5 Wildlife Management Areas</td>
<td>099</td>
<td>19,089</td>
</tr>
<tr>
<td>7 Litter Control Conservation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Officers</td>
<td>564</td>
<td>150,000</td>
</tr>
<tr>
<td>9 Upper Mud River Flood Control</td>
<td>654</td>
<td>150,000</td>
</tr>
<tr>
<td>10 Law Enforcement</td>
<td>806</td>
<td>759,589</td>
</tr>
<tr>
<td>11 BRIM Premium</td>
<td>913</td>
<td>326,638</td>
</tr>
<tr>
<td>12 Total</td>
<td></td>
<td>$ 11,692,329</td>
</tr>
</tbody>
</table>

13 Any revenue derived from mineral extraction at any
14 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.

78-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2005 Org 0314

1 Personal Services ............... 001 $ 3,643,406
2 Annual Increment ............... 004 70,750
3 Employee Benefits ............. 010 1,391,000
4 Unclassified .................. 999 676,068
5 WV Diesel Equipment
6 Commission ................... 712 38,034
7 BRIM Premium ................ 913 61,503
8 Total ........................... $ 5,885,761

79-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2005 Org 0319

1 Personal Services ............... 001 $ 110,950
2 Annual Increment ............... 004 600
3 Employee Benefits ............. 910 28,736
4 Unclassified .................. 999 29,115
5 Total ........................... $ 169,401

80-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2005 Org 0320

1 Unclassified-Total ............. 096 $ 63,352

DEPARTMENT OF ENVIRONMENTAL PROTECTION

81-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2005 Org 0311
### 82-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2005 Org 0313

<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>$ 3,716,672</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$ 64,009</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$ 1,253,967</td>
</tr>
<tr>
<td>West Virginia’s Contribution to the Potomac River Basin</td>
<td>091</td>
<td>$ 38,493</td>
</tr>
<tr>
<td>West Virginia’s Contribution to the Ohio River Valley Water Sanitation Commission</td>
<td>092</td>
<td>$ 109,992</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$ 971,225</td>
</tr>
<tr>
<td>Dam Safety</td>
<td>607</td>
<td>$ 213,997</td>
</tr>
<tr>
<td>Office of Water Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Enforcement Activity</td>
<td>855</td>
<td>$ 1,155,645</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$ 31,620</td>
</tr>
<tr>
<td>Welch DEP Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing Operation</td>
<td>993</td>
<td>$ 83,720</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 7,639,340</td>
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</tbody>
</table>

### 83-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2005 Org 0325

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$ 79,390</td>
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<td>BRIM Premium</td>
<td>913</td>
<td>$ 3,124</td>
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<td>Total</td>
<td></td>
<td>$ 82,514</td>
</tr>
</tbody>
</table>

### BUREAU OF SENIOR SERVICES

84-Bureau of Senior Services
### APPROPRIATIONS

(WV Code Chapter 29)

#### Fund 0420 FY 2005 Org 0508

| 1 | Personal Services          | 001 | $ 125,099 |
| 2 | Annual Increment           | 004 | 2,350     |
| 3 | Employee Benefits          | 010 | 61,168    |
| 4 | Unclassified               | 099 | 344,277   |
| 5 | Silver Haired Legislature  | 202 | 15,000    |
| 6 | Area Agencies Administration| 203 | 78,685    |
| 7 | Alzheimers Respite Care    | 565 | 250,000   |
| 8 | BRIM Premium               | 913 | 6,389     |
| 9 | Total                      |     | $ 882,968 |

### HIGHER EDUCATION POLICY COMMISSION

85-Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

#### Fund 0589 FY 2005 Org 0441

| 1 | Unclassified                | 099 | $ 2,000,000 |
| 2 | WVNET                       | 169 | 1,952,662   |
| 3 | West Virginia Council for Community and Technical Education (R) | 392 | -0- |
| 4 | Vice Chancellor for Health Sciences -Rural Health Initiative Program and Site Support (R) | 595 | -0- |
| 5 | BRIM Premium                | 913 | 66,509     |
| 6 | Total                       |     | $ 4,019,171 |

10 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), West Virginia Council for Community and Technical Education (fund 0589, activity 392) and HEAPS Grant Program (fund 0589, activity 867) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal
year 2005, with the exception of fund 0589, fiscal year 2004, activity 595, organization 0441 ($27,976); fund 0343, fiscal year 2004, activity 595, organization 0463 ($21,906); fund 0347, fiscal year 2004, activity 595, organization 0471 ($75,000); fund 0589, fiscal year 2004, activity 601, organization 0441 ($1,400); fund 0347, fiscal year 2004, activity 601, organization 0471 ($86,122); and fund 0589, fiscal year 2004, activity 392, organization 0441 ($8,808) which shall expire on June 30, 2004.

86-Higher Education Policy Commission-
System-
Control Account

(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Fund 0586 FY 2005 Org 0442</th>
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<tbody>
<tr>
<td>1 Marshall Medical School .... 173 $ 12,841,156</td>
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<tr>
<td>2 WVU - School of Health Sciences 174 41,670,694</td>
</tr>
<tr>
<td>3 WVU School of Health Sciences - Charleston Division .... 175 3,732,313</td>
</tr>
<tr>
<td>4 WVU School of Health Sciences Eastern Division .......... 056 1,600,000</td>
</tr>
<tr>
<td>5 Primary Health Education Medical School Program Support (R) ... 177 2,165,141</td>
</tr>
<tr>
<td>6 New River Community and Technical College of Bluefield State College ...... 358 0-</td>
</tr>
<tr>
<td>7 Bluefield State College ........ 408 3,205,566</td>
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<tr>
<td>8 Concord College .................. 410 8,294,215</td>
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<tr>
<td>9 Eastern West Virginia Community and Technical College .......... 412 0-</td>
</tr>
<tr>
<td>10 Fairmont State College ............ 414 11,214,165</td>
</tr>
<tr>
<td>11 Fairmont State Community and Technical College ........ 421 0-</td>
</tr>
<tr>
<td>12 Glendale State College ............ 428 5,493,196</td>
</tr>
<tr>
<td>13 Shepherd College .................. 432 8,522,724</td>
</tr>
<tr>
<td>14 West Liberty State College .... 439 8,570,738</td>
</tr>
<tr>
<td>15 Shepherd Community and Technical College ........ 434 0-</td>
</tr>
<tr>
<td></td>
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<tr>
<td>---</td>
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<tr>
<td>24</td>
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<tr>
<td>25</td>
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<tr>
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<td>34</td>
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<td>35</td>
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<tr>
<td>36</td>
</tr>
<tr>
<td>37</td>
</tr>
<tr>
<td>38</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 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0586, fiscal year 2004, activity 177, organization 0442 ($392); fund 0347, fiscal year 2004, activity 177, organization 0471 ($50,000); and fund 0343,

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 an additional $800,000 for the Blanchette Rockefeller Project.

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, $80,000 for a veterinarian, and $100,000 for the rifle team.

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 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-West Virginia Council for Community and Technical College Council-Control Account

(WV Code Chapter 18B)

Fund FY 2005 Org 0442

1 WV Council for CTC Education *(R) 392 $ 650,000
2 New River Community and Technical College of Bluefield State College 358 5,315,219
3 Eastern West Virginia Community and Technical College 412 1,967,728
4 Fairmont State Community and Technical College 421 7,394,285
5 Shepherd Community and Technical College 434 2,307,838
6 West Virginia State Community and Technical College 445 2,734,186
7 Southern West Virginia Community and Technical College 446 7,658,467
8 West Virginia Northern Community and Technical College 447 5,729,485

* CLERK'S NOTE: The Governor struck the designation “(R)” in Item No. 87, line 1.
<table>
<thead>
<tr>
<th></th>
<th>Institution</th>
<th>Appropriations</th>
<th>16 West Virginia University -</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Parkersburg</td>
<td>471</td>
<td>8,035,367</td>
</tr>
<tr>
<td>18</td>
<td>West Virginia University Institute</td>
<td></td>
<td>3,200,538</td>
</tr>
<tr>
<td>19</td>
<td>for Technology Community and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Technical College</td>
<td>486</td>
<td>5,220,038</td>
</tr>
<tr>
<td>21</td>
<td>Marshall University Community and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Technical College</td>
<td>487</td>
<td>5,220,038</td>
</tr>
<tr>
<td>23</td>
<td>Total</td>
<td></td>
<td>$50,213,151</td>
</tr>
</tbody>
</table>

*Any unexpended balances remaining in the appropriation for the West Virginia Council for Community and Technical Education (fund 0599, activity 392) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0355, fiscal year 2004, activity 488 ($1,050) which shall expire June 30, 2004.*

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 Applectread Program.

The institutions operating with 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.

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*CLERK'S NOTE: The Governor struck language on line 24 through line 30.*
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 2004 are hereby reappropriated for expenditure
during the fiscal year 2005.

89-Higher Education Policy Commission—
Legislative—
Funding Priorities
Control Account
(WV Code Chapter 18B)

Fund 0591 FY 2005 Org 0441

Any unexpended balances remaining in the appropriations for Higher Education—Special Projects (fund 0591,
activity 488), 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 2004 are hereby reappropriated for
expenditure during the fiscal year 2005, with the exception
of fund 0355, fiscal year 2004, activity 488, organization
0482 ($1,050) which shall expire on June 30, 2004.

The above appropriation shall be allocated only to the
State's post-secondary institutions with compacts ap-
proved by the Higher Education Policy Commission, as
stated in §18B-1A-5.

MISCELLANEOUS BOARDS AND COMMISSIONS

90-Workers’ Compensation Commission
(WV Code Chapter 23)

Fund 0594 FY 2005 Org 0322

Unclassified - Total - Transfer . . 402 $ 5,000,000
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 five.

DEPARTMENT OF TRANSPORTATION

91-Division of Motor Vehicles

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

Fund 9007 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>Jefferson County Regional Office</td>
<td>613</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

92-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2005 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
</tr>
<tr>
<td>Maintenance</td>
<td>237</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>272</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>275</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>276</td>
</tr>
<tr>
<td>General Operations</td>
<td>277</td>
</tr>
</tbody>
</table>
9 Interstate Construction .......... 278 70,000,000
10 Other Federal Aid Programs .... 279 300,700,000
11 Appalachian Programs .......... 280 200,000,000
12 Nonfederal Aid Construction .... 281 25,000,000
13 Highway Litter Control .......... 282 1,775,000
14 PSC Weight Enforcement ........ 345 4,566,000
15 Total ........................... $1,045,241,000

The above appropriation for PSC Weight Enforcement (activity 345) shall be transferred to the Public Service Commission Fund (fund 8623).

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.

Total TITLE II, Section 2-
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 five.

**LEGISLATIVE**

*93-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2005 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $214,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004 $5,000</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010 $73,500</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099 $51,000</td>
</tr>
<tr>
<td>5 Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>6 Payment Fund (R)</td>
<td>334 $2,921,500</td>
</tr>
<tr>
<td>7 Total</td>
<td>$3,265,000</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 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

*94-Tax Reduction and Federal Funding Increased Compliance*

(WV Code Chapter 4)

Fund 1732 FY 2005 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total—</td>
<td></td>
</tr>
<tr>
<td>2 Transfer</td>
<td>402 $0</td>
</tr>
</tbody>
</table>
Ch. 13] APPROPRIATIONS 133

*From the above appropriation for Unclassified—Total Transfer a total of $6,624,593.38 shall be transferred to the general revenue fund.

EXECUTIVE

95-Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2005 Org 0100

1 Unclassified ........................... 099 $ 1,872,961
2 EPSCoR Undergraduate Scientific Instrumentation Program ..... 829 150,000
4 Total .................................... $ 2,022,961

96-Auditor's Office—Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2005 Org 1200

1 Personal Services ..................... 001 $ 209,629
2 Annual Increment ..................... 004 7,500
3 Employee Benefits ................. 010 67,081
4 Unclassified ........................... 999 395,416
5 Total .................................... $ 679,626

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

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

97-Auditor's Office—Securities Regulation Fund

*Clerk's Note: The Governor struck language in Item No. 94, lines 3, 4 and 5.
### Fund 1225 FY 2005 Org 1200

1. Personal Services .................. 001 $ 1,011,298
2. Annual Increment ................... 004 8,700
3. Employee Benefits .................. 010 332,940
4. Unclassified ........................ 099 1,168,017
5. Total ............................... $ 2,520,955

### 98-Auditor’s Office-
Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2005 Org 1200

1. Unclassified-Total ................. 096 $ 747,368
2. Fifty percent of the deposits made into this fund shall be
3. transferred to the Treasurer’s Office-Technology Support
4. and Acquisition(fund 1329, org 1300) for expenditure for
5. the purposes described in West Virginia Code §12-3-10c.

### 99-Auditor’s Office-
Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2005 Org 1200

1. Unclassified-Total ................. 096 $ 600,000

### 100-Auditor’s Office-
Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2005 Org 1200

1. Personal Services .................. 001 $ 1,769,646
2. Annual Increment ................... 004 30,000
3. Employee Benefits .................. 010 568,489
4. Unclassified ........................ 099 431,865
5. Total ............................... $ 2,800,000
### 101-Treasurer's Office - Technology Support and Acquisition

(WV Code Chapter 12)

**Fund 1329 FY 2005 Org 1300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$475,000</td>
</tr>
</tbody>
</table>

### 102-Department of Agriculture - Agriculture Fees Fund

(WV Code Chapter 19)

**Fund 1401 FY 2005 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$936,844</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$10,550</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$317,340</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,313,366</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,578,100</td>
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</tbody>
</table>

### 103-Department of Agriculture - West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

**Fund 1408 FY 2005 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$50,304</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$800</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$14,128</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$476,306</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>$541,538</td>
</tr>
</tbody>
</table>

### 104-Department of Agriculture - General John McCausland Memorial Farm

(WV Code Chapter 19)

**Fund 1409 FY 2005 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$80,133</td>
</tr>
</tbody>
</table>
2 The above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

105-Department of Agriculture-Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2005 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$1,028,903</td>
</tr>
</tbody>
</table>

106-Department of Agriculture-Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2005 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$3,040,000</td>
</tr>
</tbody>
</table>

107-Attorney General-Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2005 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$216,640</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,650</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$70,081</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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<td>$178,285</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$466,656</td>
</tr>
</tbody>
</table>

108-Attorney General-Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2005 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$227,284</td>
</tr>
</tbody>
</table>

109-Attorney General-Preneed Funeral Guarantee Fund
Fund 1514 FY 2005 Org 1500

1 Unclassified-Total ................. 096 $ 775,000

110–Secretary of State-
Service Fees and Collection Account

Fund 1612 FY 2005 Org 1600

1 Personal Services ................. 001 $ 968,032
2 Annual Increment ................. 004 9,950
3 Employee Benefits ................. 010 237,600
4 Unclassified .................... 099 1,138,431
5 Total ................................ $ 2,354,013

111–Secretary of State-
State Election Fund

Fund 1614 FY 2005 Org 1600

1 Any unexpended balance remaining in the appropriation
for Unclassified - Total (fund 1614, activity 096) at the
close of the fiscal year 2004 is hereby reappropriated for
expenditure during the fiscal year 2005.

DEPARTMENT OF ADMINISTRATION

112–Office of the Secretary-
Tobacco Settlement Fund

Fund 2041 FY 2005 Org 0201

1 Tobacco Settlement Fund-
2 Transfer ......................... 902 $ 25,400,000
3 The above appropriation for Tobacco Settlement Fund-
4 Transfer shall be transferred to the Division of Health
5 (fund 5124, org 0506) for expenditure.
113-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2005 Org 0210

1 Personal Services ................. 001 $ 10,327,242
2 Annual Increment ................. 004 132,300
3 Employee Benefits ................. 010 3,334,251
4 Unclassified .................. 099 6,571,771
5 Total ........................... $ 20,365,564

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

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the 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.

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

114-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2005 Org 0222

1 Personal Services ................. 001 $ 2,586,137
2 Annual Increment ................. 004 54,850
3 Employee Benefits ................. 010 851,083
4 Unclassified .................. 099 872,975
5 Total ........................... $ 4,365,045
The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.

115-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2005 Org 0228

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

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 2521, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, except for fund 2521, activity 096 (fiscal years 2002 and 2003) which shall expire on June 30, 2004.

DEPARTMENT OF EDUCATION

116-State Board of Education-
Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2005 Org 0402

1 Unclassified-Total (R) ............. 096 $ 505,000

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3937, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

117-State Department of Education-
School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2005 Org 0402

1 Personal Services ................. 001 $ 661,719
2 Annual Increment ................. 004 $ 7,350
3 Employee Benefits ............... 010 $ 230,170
4 Unclassified .......................... 099 264,099
5 Total ................................ .......................... $ 1,163,338

The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

118-State Department of Education-
FFA-FHA Camp and Conference Center

(WV Code Chapter 13)

Fund 3960 FY 2005 Org 0402

1 Personal Services ................. 001 $ 800,000
2 Annual Increment ............... 004 12,800
3 Employee Benefits ............. 010 280,693
4 Unclassified .................... 099 906,507
5 Total .............................. $ 2,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

119-Office of the Secretary-
Lottery Education Fund Interest Earnings-
Control Account

(WV Code Chapter 29)

Fund 3508 FY 2005 Org 0431

1 EPSCoR - Total ................. 651 $ 300,000

Any unexpended balances remaining in the appropriations 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

120-Division of Culture and History-
Public Records and Preservation Revenue Fund

(WV Code Chapter 5A)
### Fund 3542 FY 2005 Org 0432

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

121-State Board of Rehabilitation
Division of Rehabilitation Services
West Virginia Rehabilitation Center
Special Account

(WV Code Chapter 18)

### Fund 8664 FY 2005 Org 0932

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,802,182</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>163</td>
<td>$450,000</td>
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<tr>
<td>Workshop-Supported</td>
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<td></td>
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<tr>
<td>Employment</td>
<td>484</td>
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<td>Total</td>
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<td>$3,302,182</td>
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</table>

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

122-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

### Fund 5425 FY 2005 Org 0505

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$235,246</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,861</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$96,500</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$107,591</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$444,198</td>
</tr>
</tbody>
</table>

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

123-WV Board of Medicine

(WV Code Chapter 30)

### Fund 5106 FY 2005 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$1,170,080</td>
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</tbody>
</table>
124-Division of Health-
Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2005 Org 0506

1 ABCA Tobacco Retailer Education
2 Program-Transfer ............ 239 $ 200,000
3 Institutional Facilities
4 Operations (R) ............... 335 19,549,408
5 Tobacco Education Program (R) .. 906 5,650,592
6 Total ........................ $ 25,400,000

Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335) and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

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 revenue 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 revenue an itemized report of expenditures made during the preceding six-month period.

Additional funds have been appropriated in fund 0525, fiscal year 2005, organization 0506, and fund 5156, fiscal year 2005, 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, 2004, the sum of one hundred sixty 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-Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2005 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$263,211</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$8,553</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$113,319</td>
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<tr>
<td>Unclassified</td>
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<td>$100,354</td>
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<tr>
<td>Total</td>
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<td>$485,437</td>
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</tbody>
</table>

126-Division of Health-Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2005 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,420,000</td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operations (R)</td>
<td>335</td>
<td>$38,671,470</td>
</tr>
<tr>
<td>Medical Services Trust Fund-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, except for fund 5156, activity 040 (fiscal year 2003) which shall expire on June 30, 2004.

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 2005, organization 0506) and the tobacco settlement expenditure fund (fund 5124, fiscal year 2005, 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, 2004, the sum of one hundred sixty 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.
127-Division of Health-
Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2005 Org 0506

<table>
<thead>
<tr>
<th></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>$502,830</td>
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<tr>
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<td>Annual Increment</td>
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<td>10,310</td>
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<td>Employee Benefits</td>
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<td>4</td>
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<td>$836,796</td>
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</table>

128-Division of Health-
Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2005 Org 0506

<table>
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<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>3,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
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<td>96,362</td>
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<td>Total</td>
<td></td>
<td>$373,012</td>
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</tbody>
</table>

129-Division of Health-
Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2005 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>1,380</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>20,574</td>
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<td>4</td>
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<td>2,996,821</td>
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<td></td>
<td>$3,074,846</td>
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</table>

130-Division of Health-
Lead Abatement Fund

(WV Code Chapter 16)
### APPROPRIATIONS

**Fund 5204 FY 2005 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

**131-Division of Health-West Virginia Birth to Three Fund**

(WV Code Chapter 16)

**Fund 5214 FY 2005 Org 0506**

<table>
<thead>
<tr>
<th>Description</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>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>192,276</td>
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<td>099</td>
<td>20,303,724</td>
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<tr>
<td>Total</td>
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<td>$21,000,000</td>
</tr>
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</table>

**132-West Virginia Health Care Authority**

(WV Code Chapter 16)

**Fund 5375 FY 2005 Org 0507**

<table>
<thead>
<tr>
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<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,010,764</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>22,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>601,545</td>
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<tr>
<td>Hospital Assistance</td>
<td>025</td>
<td>600,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>3,346,482</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,581,291</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.

**133-Division of Human Services-Health Care Provider Tax**

(WV Code Chapter 11)

**Fund 5090 FY 2005 Org 0511**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$144,535,538</td>
</tr>
</tbody>
</table>
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.

134-Division of Human Services-
Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2005 Org 0511

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

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 5094, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

135-Division of Human Services-
Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2005 Org 0511

1 Unclassified ................. 099 $ 27,877,927
2 Eligibility Expansion ........... 582 1,958,066
3 Public Employees Insurance
4 Reserve Fund-Transfer ........... 903 7,000,000
5 Total ........................ $ 36,835,993

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.

*From the above appropriation, Public Employees Insurance Reserve Fund-Transfer, $1,000,000 shall be expended for the Sole Community Hospitals and Medicare Dependent Hospitals who have under 100 beds. These funds shall be used as additional state match to establish cost-based reimbursement.

136-Division of Human Services-
James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2005 Org 0511

1 Unclassified-Total ............... 096 $ 1,700,000

137-Family Protection Services Board-
Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2005 Org 0511

1 Unclassified-Total ............... 096 $ 622,245

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

138-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 2005 Org 0601

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

*CLERK'S NOTE: The Governor struck language in Item No. 135, line 16 through line 21.
### 139-State Armory Board-
**General Armory Fund**

(WV Code Chapter 15)

**Fund 6057 FY 2005 Org 0603**

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified-Total ..................</th>
<th>096</th>
<th>$480,000</th>
</tr>
</thead>
</table>

### 140-West Virginia Division of Corrections-
**Parolee Supervision Fees**

(WV Code Chapter 62)

**Fund 6362 FY 2005 Org 0608**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services ..................</th>
<th>001</th>
<th>$116,774</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment ...................</td>
<td>004</td>
<td>1,651</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ..................</td>
<td>010</td>
<td>52,130</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified .......................</td>
<td>099</td>
<td>234,989</td>
</tr>
<tr>
<td>5</td>
<td>Total ..................................</td>
<td></td>
<td>405,544</td>
</tr>
</tbody>
</table>

### 141-West Virginia State Police-
**Motor Vehicle Inspection Fund**

(WV Code Chapter 17C)

**Fund 6501 FY 2005 Org 0612**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services ..................</th>
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</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment ...................</td>
<td>004</td>
<td>12,650</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ..................</td>
<td>010</td>
<td>380,623</td>
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<tr>
<td>4</td>
<td>Unclassified .......................</td>
<td>099</td>
<td>491,797</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium .......................</td>
<td>913</td>
<td>247,888</td>
</tr>
<tr>
<td>6</td>
<td>Total ..................................</td>
<td></td>
<td>2,245,075</td>
</tr>
</tbody>
</table>

7 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.

### 142-West Virginia State Police-
**Drunk Driving Prevention Fund**

(WV Code Chapter 15)

**Fund 6513 FY 2005 Org 0612**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services ..................</th>
<th>001</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment ...................</td>
<td>004</td>
<td>1,651</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ..................</td>
<td>010</td>
<td>52,130</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified .......................</td>
<td>099</td>
<td>234,989</td>
</tr>
<tr>
<td>5</td>
<td>Total ..................................</td>
<td></td>
<td>405,544</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium .......................</td>
<td>913</td>
<td>247,888</td>
</tr>
<tr>
<td>7</td>
<td>Total ..................................</td>
<td></td>
<td>2,245,075</td>
</tr>
</tbody>
</table>
150 APPROPRIATIONS [Ch. 13

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

143-West Virginia State Police-
Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2005 Org 0612

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

144-West Virginia State Police-
Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2005 Org 0612

Any unexpended balance remaining in the appropriation for Unclassified (fund 6519, activity 099) at the close of the
6 fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

### 145-West Virginia State Police-Central Abuse Registry Fund

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>099</th>
<th>204,989</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 BRIM Premium</td>
<td>913</td>
<td></td>
<td>15,182</td>
</tr>
<tr>
<td>3 Total</td>
<td></td>
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<td>220,171</td>
</tr>
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### 146-West Virginia State Police-Bail Bond Enforcer Fund

(WV Code Chapter 15)

<table>
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<tr>
<th></th>
<th></th>
<th>096</th>
<th>3,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 147-Division of Veterans’ Affairs-Veterans’ Facilities Support Fund

(WV Code Chapter 19A)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>096</th>
<th>3,100,000</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td></td>
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<td></td>
</tr>
</tbody>
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### 148-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>001</th>
<th>1,213,846</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td></td>
<td>16,550</td>
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<td>3 Employee Benefits</td>
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</tr>
<tr>
<td>4 Debt Service</td>
<td>040</td>
<td></td>
<td>9,000,000</td>
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<tr>
<td>5 Unclassified</td>
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<td></td>
<td>672,230</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td></td>
<td>11,309,000</td>
</tr>
</tbody>
</table>
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 during fiscal year 2005. 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.

149-Division of Veterans’ Affairs-
Veterans’ Home

(WV Code Chapter 19A)

Fund 6754 FY 2005 Org 0618

| 1 | Unclassified-Total | 096 | $ 466,000 |

150-Fire Commission-
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2005 Org 0619

| 1 | Personal Services | 001 | $ 1,900,000 |
| 2 | Annual Increment | 004 | 18,000 |
| 3 | Employee Benefits | 010 | 672,000 |
| 4 | Unclassified | 099 | 644,722 |
5  BRIM Premium ................  913  50,000  
6  Total  .......................  $ 3,284,722  

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2004 is hereby available for expenditure as part of the fiscal year 2005 appropriation.

151-Division of Criminal Justice Services-WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2005 Org 0620

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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</table>

152-Criminal Justice Services-Court Security Fund

(Executive Order)

Fund 6804 FY 2005 Org 0620

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>$1,050,000</td>
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</tbody>
</table>

DEPARTMENT OF REVENUE

153-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2005 Org 0303

<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>
<td>$1,537,881</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,000</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>430,695</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>680,988</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,663,564</td>
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</tbody>
</table>

154-Tax Division-Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2005 Org 0702

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$17,274</td>
</tr>
</tbody>
</table>
154  APPROPRIATIONS  [Ch. 13

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>5,870</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>9,633</td>
<td></td>
</tr>
</tbody>
</table>
| 5 | Total                                            |      |        | $32,927

155-Tax Division-
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2005 Org 0702

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$830,304</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>17,500</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>308,900</td>
<td></td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>322,186</td>
<td></td>
</tr>
</tbody>
</table>
| 5 | Total                                            |      |        | $1,478,890

156-State Budget Office-
Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2005 Org 0703

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Employees Insurance Reserve</td>
<td></td>
<td></td>
<td>$7,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Fund - Transfer</td>
<td>903</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 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.

157-Insurance Commissioner-
Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2005 Org 0704

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$556,330</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,000</td>
<td></td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>152,738</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>487,742</td>
<td></td>
</tr>
</tbody>
</table>
| 5 | Total                                            |      |        | $1,199,810

158-Insurance Commissioner-
Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2005 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$331,028</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,050</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>92,344</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>103,149</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$530,571</td>
</tr>
</tbody>
</table>

159-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2005 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,996,953</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>42,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>977,860</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,338,194</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$5,355,007</td>
</tr>
</tbody>
</table>

6 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.

160-Racing Commission-
Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2005 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses-Total</td>
<td>245</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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

5 No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.
### 161-Racing Commission-
#### Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2005 Org 0707

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$66,444</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>24,152</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>47,358</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$138,954</td>
</tr>
</tbody>
</table>

### 162-Racing Commission-
#### General Administration

(WV Code Chapter 19)

Fund 7305 FY 2005 Org 0707

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,770,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>459,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>532,796</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,783,046</td>
</tr>
</tbody>
</table>

### 163-Racing Commission-
#### Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2005 Org 0707

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

### 164-Alcohol Beverage Control Administration-
#### Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2005 Org 0708

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$224,718</th>
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</thead>
<tbody>
<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>88,780</td>
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</table>
To the extent permitted by law, four classified exempt positions shall be provided from Personal Services line item for field auditors.

165-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2005 Org 0708

1 Personal Services .................. 001 $ 3,585,014
2 Annual Increment .................. 004 79,000
3 Employee Benefits ................. 010 1,341,893
4 Unclassified (R) .................... 099 1,855,070
5 Total ................................ $ 6,860,977

Any unexpended balance remaining in Unclassified (fund 7352, activity 099) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

From the above appropriation an amount of $500,000 shall be used for the Tobacco/Alcohol Education Program.

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

166-Division of Motor Vehicles-
Driver's License Reinstatement Fund

(WV Code Chapter 17B)
### Fund 8213 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,500</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>202,704</td>
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<td>4 Unclassified</td>
<td>099</td>
<td>276,708</td>
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<td>5 Total</td>
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<td>$925,722</td>
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</tbody>
</table>

**167-Division of Motor Vehicles - Driver Rehabilitation**

(WV Code Chapter 17C)

Fund 8214 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$182,194</td>
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</tbody>
</table>

**168-Division of Motor Vehicles - Insurance Certificate Fees**

(WV Code Chapter 20)

Fund 8215 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$621,000</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>15,850</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>275,533</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>31,078</td>
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<td>5 Total</td>
<td></td>
<td>$943,461</td>
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</table>

**169-Division of Motor Vehicles - Motorboat Licenses**

(WV Code Chapter 20)

Fund 8216 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$397,704</td>
</tr>
</tbody>
</table>

**170-Division of Motor Vehicles - Returned Check Fees**

(WV Code Chapter 17)

Fund 8217 FY 2005 Org 0802

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$16,000</td>
</tr>
</tbody>
</table>
### 171-Division of Motor Vehicles-
#### Dealer Recovery Fund

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8220</td>
<td>2005</td>
<td>0802</td>
<td>096</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

### 172-Division of Highways-
#### A. James Manchin Fund

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8319</td>
<td>2005</td>
<td>0803</td>
<td>096</td>
<td>$3,625,000</td>
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</table>

### BUREAU OF COMMERCE

#### 173-Division of Forestry

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Personal Services</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3081</td>
<td>2005</td>
<td>0305</td>
<td>001</td>
<td>$343,845</td>
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</table>

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Annual Increment</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>004</td>
<td>$7,250</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Employee Benefits</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>010</td>
<td>$146,854</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>099</td>
<td>$452,519</td>
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</table>

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>099</td>
<td>$950,468</td>
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</tbody>
</table>

#### 174-Division of Forestry-
#### Timberland Enforcement Operations

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3082</td>
<td>2005</td>
<td>0305</td>
<td>096</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

### 175-Division of Forestry-
#### Severance Tax Operations

(WV Code Chapter 11)
### Fund 3084 FY 2005 Org 0305

1. Unclassified-Total ............... 096 $2,953,665

### 176-Geological and Economic Survey

(WV Code Chapter 29)

### Fund 3100 FY 2005 Org 0306

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$7,683</td>
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<td>$177,249</td>
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<tr>
<td>Total</td>
<td></td>
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</tbody>
</table>

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

### Fund 3144 FY 2005 Org 0307

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$730,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3144, activity 647) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

### Fund 3162 FY 2005 Org 0307

1. Unclassified-Total (R) ............... 096 $730,000

Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3162, activity 096) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.
### 179-Division of Labor-
*Contractor Licensing Board Fund*

(WV Code Chapter 21)

**Fund 3187 FY 2005 Org 0308**

<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>$940,540</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$13,090</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$395,070</td>
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<td>4</td>
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<td>$542,986</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,891,686</td>
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</tbody>
</table>

### 180-Division of Labor-
*Elevator Safety Act*

(WV Code Chapter 21)

**Fund 3188 FY 2005 Org 0308**

<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>$162,700</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,723</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$68,067</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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<td>$83,571</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$316,061</td>
</tr>
</tbody>
</table>

### 181-Division of Labor-
*Crane Operator Certification Fund*

(WV Code Chapter 21)

**Fund 3191 FY 2005 Org 0308**

<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>$115,031</td>
</tr>
</tbody>
</table>

### 182-Division of Labor-
*Amusement Rides/Amusement Attraction Safety Fund*

(WV Code Chapter 21)

**Fund 3192 FY 2005 Org 0308**

<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>$101,135</td>
</tr>
</tbody>
</table>
183-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2005 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wildlife Resources</td>
<td>023</td>
<td>$6,074,534</td>
</tr>
<tr>
<td>2</td>
<td>Administration</td>
<td>155</td>
<td>1,656,690</td>
</tr>
<tr>
<td>3</td>
<td>Capital Improvements and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Land Purchase (R)</td>
<td>248</td>
<td>1,260,000</td>
</tr>
<tr>
<td>5</td>
<td>Radio System-Law Enforcement</td>
<td>058</td>
<td>265,000</td>
</tr>
<tr>
<td>6</td>
<td>Law Enforcement</td>
<td>806</td>
<td>6,074,534</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$15,330,758</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Point of Sale Licensing System (fund 3200, activity 043) and Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

184-Division of Natural Resources - Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2005 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$20,000</td>
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</table>

185-Division of Natural Resources - Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2005 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>001</td>
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<td>004</td>
<td>1,700</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>83,470</td>
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<tr>
<td>186-Division of Natural Resources- Planning and Development Division</td>
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<tr>
<td>---------------------------------------------------------------</td>
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<tr>
<td>(WV Code Chapter 20)</td>
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<tr>
<td>Fund 3205 FY 2005 Org 0310</td>
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<tr>
<td>1 Personal Services ........................................ 001 $ 234,568</td>
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<td>2 Annual Increment ........................................... 004 6,400</td>
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<td>3 Employee Benefits ........................................... 010 89,039</td>
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<table>
<thead>
<tr>
<th>187-Division of Natural Resources- Whitewater Study and Improvement Fund</th>
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<tr>
<td>(WV Code Chapter 20)</td>
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<tr>
<td>Fund 3253 FY 2005 Org 0310</td>
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<tr>
<td>1 Unclassified-Total ........................................... 096 $ 185,000</td>
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<table>
<thead>
<tr>
<th>188-Division of Natural Resources- Recycling Assistance Fund</th>
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<tbody>
<tr>
<td>(WV Code Chapter 20)</td>
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<tr>
<td>Fund 3254 FY 2005 Org 0310</td>
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<tr>
<td>1 Personal Services ............................................ 001 $ 233,206</td>
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<tr>
<td>2 Annual Increment ............................................. 004 3,255</td>
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<td>3 Employee Benefits ............................................. 010 107,520</td>
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<td>5 Total .......................................................... $ 2,644,000</td>
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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 2004 is hereby reappropriated for expenditure during the fiscal year 2005.
1 Unclassified - Total .................. 096 $ 20,000

190-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2005 Org 0314

1 Personal Services .................. 001 $ 400,300
2 Employee Benefits ................. 010 138,000
3 Unclassified ....................... 099 851,700
4 WV Mining Extension Service .... 026 150,000
5 Total ............................. $ 1,540,000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

191-Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2005 Org 0312

1 Personal Services .................. 001 $ 631,515
2 Annual Increment .................. 004 3,250
3 Employee Benefits ................ 010 191,400
4 Unclassified ....................... 099 1,893,883
5 Total ............................. $ 2,720,048

192-Division of Environmental Protection-
Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2005 Org 0313

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

193-Division of Environmental Protection-
Special Reclamation Trust Fund

(WV Code Chapter 22A)

Fund 3321 FY 2005 Org 0313
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<td>004</td>
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**194-Division of Environmental Protection-Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

Fund 3322 FY 2005 Org 0313

<table>
<thead>
<tr>
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<tr>
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**195-Division of Environmental Protection-Oil and Gas Operating Permits**

(WV Code Chapter 22B)

Fund 3323 FY 2005 Org 0313

<table>
<thead>
<tr>
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<th>code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>326,253</td>
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<td>521,185</td>
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**196-Division of Environmental Protection-Mining and Reclamation Operations Fund**

(WV Code Chapter 22)

Fund 3324 FY 2005 Org 0313

<table>
<thead>
<tr>
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<tr>
<td>1</td>
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**197-Division of Environmental Protection-Underground Storage Tanks-Administrative Fund**
### 198-Division of Environmental Protection-
*Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

**Fund 3325 FY 2005 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$326,988</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$3,575</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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### 199-Division of Environmental Protection-
*Solid Waste Reclamation and Environmental Response Fund*

(WV Code Chapter 20)

**Fund 3331 FY 2005 Org 0313**

<table>
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<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>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$7,775</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$177,428</td>
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<td>Unclassified</td>
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<td>$940,408</td>
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<td><strong>$1,624,096</strong></td>
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</table>

### 200-Division of Environmental Protection-
*Solid Waste Enforcement Fund*

(WV Code Chapter 20)

**Fund 3332 FY 2005 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$238,196</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,900</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$73,084</td>
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<td>4</td>
<td>Unclassified</td>
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<td><strong>$1,008,156</strong></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td><strong>$1,321,336</strong></td>
</tr>
</tbody>
</table>

**1 Personal Services .............. 001 $ 326,988**

**2 Annual Increment ............ 004 3,575**

**3 Employee Benefits ............ 010 127,429**

**4 Unclassified .................. 099 73,415**

**5 Total ....................... $ 531,407**

**1 Personal Services .............. 001 $ 498,485**

**2 Annual Increment ............ 004 7,775**

**3 Employee Benefits ............ 010 177,428**

**4 Unclassified .................. 099 940,408**

**5 Total ....................... $ 1,624,096**

**1 Personal Services .............. 001 $ 238,196**

**2 Annual Increment ............ 004 1,900**

**3 Employee Benefits ............ 010 73,084**

**4 Unclassified .................. 099 **1,008,156**

**5 Total ....................... $ 1,321,336**

**1 Personal Services .............. 001 $ 1,596,773**

---

**Fund 3333 FY 2005 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,596,773</td>
</tr>
</tbody>
</table>
Ch. 13

APPROPRIATIONS

2 Annual Increment ................... 004  23,700
3 Employee Benefits .................. 010  552,718
4 Unclassified ......................... 099  1,237,849
5 Total .................................. $  3,411,040

201-Division of Environmental Protection-
Fees and Operating Expenses

(WV Code Chapter 16)

Fund 3336 FY 2005 Org 0313

1 Personal Services .................... 001  $ 3,780,910
2 Annual Increment .................... 004  32,875
3 Employee Benefits ................... 010  1,129,486
4 Unclassified .......................... 099  2,040,172
5 Total .................................. $  6,983,443

202-Division of Environmental Protection-
Environmental Laboratory
Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2005 Org 0313

1 Personal Services .................... 001 $ 128,772
2 Annual Increment .................... 004  2,150
3 Employee Benefits ................... 010  48,532
4 Unclassified .......................... 099  192,388
5 Total .................................. $  371,842

203-Division of Environmental Protection-
Stream Restoration Fund

Fund 3349 FY 2005 Org 0313

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

204-Division of Environmental Protection-
Mountaintop Removal Fund

(WV Code Chapter 22)
Fund 3490  FY 2005  Org 0313

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

205-Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371  FY 2005  Org 0315

1 Personal Services ............... 001 $ 154,869
2 Annual Increment ............... 004 2,000
3 Employee Benefits ............... 010 32,226
4 Unclassified .................... 099 45,862
5 Total ....................... $ 234,957

HIGHER EDUCATION POLICY COMMISSION

206-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 2005  Org 0442

1 Debt Service (R) ............... 040 $ 4,822,241
2 General Capital Expenditures (R) 306 500,000
3 Total ....................... $ 5,322,241

4 Any unexpended balances remaining in the appropria-
5 tions at the close of fiscal year 2004 are hereby
6 reappropriated for expenditure during the fiscal year 2005
7 with the exception of fund 4902, fiscal year 1987, activity
8 338 which shall expire on June 30, 2004.

9 The total amount of this appropriation shall be paid from
10 the special capital improvement fund created in section
11 eight, article ten, chapter eighteen-b of the code. Projects
12 are to be paid on a cash basis and made available from the
13 date of passage.
The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at the institutions.

207-Higher Education Policy Commission-
   System-
   Tuition Fee Capital Improvement Fund
   (Capital Improvement and Bond Retirement Fund)
   Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2005 Org 0442

1. Debt Service (R) ............... 040 $ 13,774,581
2. General Capital Expenditures (R) 306 500,000
3. Facilities Planning
   and Administration (R) ........ 386 387,975
4. Total ......................... $ 14,662,556


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

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

208-Higher Education Policy Commission-
   1977 State System Registration Fee Refund Revenue
   Construction Fund
1 Capital Outlay - Total 321 $ 10,000

2 Any unexpended balance remaining in the appropriation
3 at the close of the fiscal year 2004 is hereby reappropriated
4 for expenditure during the fiscal year 2005.

5 The appropriation shall be paid from available unex-
6 pended cash balances and interest earnings accruing to the
7 fund. The appropriation shall be expended at the discre-
8 tion of the Higher Education Policy Commission and the
9 funds may be allocated to any institution within the
10 system.

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

209-Higher Education Policy Commission-
Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2005 Org 0442

1 Any unexpended balance remaining in the appropriation
2 at the close of the fiscal year 2004 is hereby reappropriated
3 for expenditure during the fiscal year 2005, with the
4 exception of fund 4906, fiscal year 2000, activity 511 which
5 shall expire on June 30, 2004.

6 The appropriation shall be paid from available unex-
7 pended cash balances and interest earnings accruing to the
8 fund. The appropriation shall be expended at the discre-
9 tion of the Higher Education Policy Commission and the
10 funds may be allocated to any institution within the
11 system.

12 The total amount of this appropriation shall be paid from
13 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.

210-Health Sciences-
West Virginia University Health Sciences Center
(WV Code Chapters 18 and 18B)
Fund 4179 FY 2005 Org 0463

1 Unclassified-Total (R) .............. 096 $ 15,359,466

Any unexpended balance remaining in the appropriation for the West Virginia University Health Sciences Center at the close of fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

211-Higher Education Policy Commission-
Fairmont State College
(WV Code Chapters 18 and 18B)
Fund 4457 FY 2005 Org 0484

1 Any unexpended balance remaining in the appropriation at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

MISCELLANEOUS BOARDS AND COMMISSIONS

212-Workers’ Compensation Fund
(WV Code Chapter 23)
Fund 3440 FY 2005 Org 0322

1 Personal Services .................. 001 $ 31,400,673
2 Annual Increment .................. 004 501,653
3 Employee Benefits ................ 010 11,825,710
4 Unclassified (R) ................... 099 22,531,695
5 Employer Excess Liability Fund .. 226 117,197
6 Total ............................... $ 66,376,928

Any unexpended balances remaining in the appropriations for Unclassified (fund 3440, activity 099) and Tech-
Appropriations

9 nology Improvements (fund 3440, activity 599) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

213-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2005 Org 0509

1 Personal Services ................. 001 $ 46,024
2 Annual Increment .................. 004 700
3 Employee Benefits ................ 010 16,663
4 Unclassified. .................... 099 36,613
5 Total ................................ $ 100,000

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.

214-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2005 Org 0706

1 Personal Services ................. 001 $ 161,262
2 Annual Increment .................. 004 4,300
3 Employee Benefits ................ 010 58,713
4 Unclassified ..................... 099 81,890
5 Total ................................ $ 306,165

215-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2005 Org 0906

1 Unclassified-Total ............... 096 $ 363,090

216-WV Board of Examiners for Registered Professional Nurses
### Fund 8520 FY 2005 Org 0907

<table>
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<tr>
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<th>Description</th>
<th>Code</th>
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</tr>
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<tr>
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**217-Public Service Commission**

(WV Code Chapter 24)

### Fund 8623 FY 2005 Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
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<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>130,000</td>
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<td>010</td>
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<td>Unclassified</td>
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<td>2,313,705</td>
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<td>Weight Enforcement Program</td>
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<td>4,566,000</td>
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<td>6</td>
<td>Debt Payment/Capital Outlay</td>
<td>520</td>
<td>350,000</td>
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<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
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The total amount of this appropriation except for the PSC Weight Enforcement appropriation (activity 345) shall be paid from a special revenue fund out of collection for special license fees from public service corporations as provided by law. The amount appropriated to the PSC Weight Enforcement (activity 345) shall be paid from the state road fund as provided by law.

The Public Service Commission is authorized to spend up to $500,000, 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, 1998.

**218-Public Service Commission-Gas Pipeline Division**

(WV Code Chapter 24B)

### Fund 8624 FY 2005 Org 0926

<table>
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<th>Description</th>
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<td>Annual Increment</td>
<td>004</td>
<td>5,556</td>
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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.

219-Public Service Commission-Motor Carrier Division
(WV Code Chapter 24A)

Fund 8625 FY 2005 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>001</th>
<th>004</th>
<th>010</th>
<th>099</th>
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<td>Employee Benefits</td>
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<td>$2,745,107</td>
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</table>

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

220-Public Service Commission-Consumer Advocate
(WV Code Chapter 24)

Fund 8627 FY 2005 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>001</th>
<th>004</th>
<th>010</th>
<th>099</th>
<th>913</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$505,577</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td></td>
<td></td>
<td></td>
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<td>6,650</td>
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<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>147,177</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>275,573</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,570</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>$938,547</td>
<td></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.

221-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2005 Org 0927

1 Personal Services ................. 001 $ 360,695
2 Annual Increment ................. 004 6,200
3 Employee Benefits ............... 010 115,700
4 Unclassified ..................... 099 236,826
5 Total .......................... $ 719,421

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

222-WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2005 Org 0930

1 Unclassified-Total ............... 096 $ 60,000

223-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2005 Org 0935

1 Unclassified-Total ............... 096 $ 104,650

224-WV Board of Licensed Dietitians

Fund 8680 FY 2005 Org 0936

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

225-Massage Therapy Licensure Board

(WV Code Chapter 30)
176 APPROPRIATIONS

Fund 8671 FY 2005 Org 0938

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

2 Total TITLE II, Section 3-Other Funds $ 679,853,194

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

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

226-Education, Arts, Sciences and Tourism-
Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2005 Org 0211

Activity Lottery
Funds

1 Debt Service-Total ................. 310 $ 10,000,000

227-West Virginia Development Office-
Division of Tourism

(WV Code Chapter 5B)
Fund 3067 FY 2005 Org 0304

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2005 Activity</th>
<th>FY 2005 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>Tourism-Telemarketing Center</td>
<td>463</td>
<td>90,000</td>
</tr>
<tr>
<td>3</td>
<td>Tourism-Advertising</td>
<td>618</td>
<td>3,597,930</td>
</tr>
<tr>
<td>4</td>
<td>WV Film Office</td>
<td>498</td>
<td>102,139</td>
</tr>
<tr>
<td>5</td>
<td>Motor Sports Council</td>
<td>513</td>
<td>90,000</td>
</tr>
<tr>
<td>6</td>
<td>Tourism-Unclassified</td>
<td>662</td>
<td>4,185,765</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>8,065,834</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), Tourism-Unclassified-Lottery Surplus (fund 3067, activity 773), Stonewall Jackson State Park (fund 3067, activity 959) and Hatfield—McCoy Recreational Trail (fund 3067, activity 960) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

228-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2005 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2005 Activity</th>
<th>FY 2005 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gypsy Moth Suppression</td>
<td>017</td>
<td>45,500</td>
</tr>
<tr>
<td>2</td>
<td>Program for State Parks</td>
<td>017</td>
<td>45,500</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>2,228,603</td>
</tr>
<tr>
<td>4</td>
<td>Pricketts Fort State Park</td>
<td>324</td>
<td>98,280</td>
</tr>
<tr>
<td>5</td>
<td>Non-Game Wildlife</td>
<td>527</td>
<td>445,470</td>
</tr>
<tr>
<td>6</td>
<td>State Parks and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Recreation Advertising</td>
<td>619</td>
<td>622,440</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia Stream</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Partners Program</td>
<td>637</td>
<td>81,900</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>3,522,193</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, activity 099), State Recreation Area Improvements (fund 3267, activity 307),
14 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 860), Computerized Lodging Reservation System (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 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

229-State Department of Education
(WV Code Chapters 18 and 18A)

Fund 3951 FY 2005 Org 0402

1 Safe Schools ....................... 143 $ -0-
2 Unclassified ....................... 099 3,407,000
3 Technology Infrastructure
4 Network .......................... 351 20,500,000
5 READS Program .................... 365 -0-
6 MATH Program ..................... 368 300,000
7 Vocational Education
8 Equipment Replacement ........... 393 -0-
9 Assessment Program ............... 396 6,430,943
10 Employment Programs Rate Relief 401 878,189
11 Teacher Reimbursement ......... 573 150,000
12 Teacher Relocation .............. 574 10,000
13 Technology Repair and
14 Modernization ................... 298 1,000,000
15 National Science Foundation
16 Match/WV Science ................. 578 300,000
17 Three Tier Funding .............. 411 1,000,000
18 Educational Program Allowance . 996 250,000
19 Total ....................... $ 34,226,132

20 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), Technology and Telecommunications Initiative (fund 3951,
25 activity 596), Technology Demonstration Project (fund 3951, activity 639) and Educational Development (fund 3951, activity 823) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

30 The above appropriation for Technology Infrastructure Network shall be expended on the following programs and technology; Computer Basic Skills, S.U.C.C.E.S.S., WVEIS, Technology Repair and Modernization, Technology and Telecommunications Initiative and other programs in the field that will benefit the Counties. No more then 40% of the total appropriation shall be allotted to Computer Basic Skills and S.U.C.C.E.S.S. Prior to the completion and presentation of the Technology Study to the Joint LOCEA Committee, no more than 50% of the total appropriation shall be spent. The study is to be completed by January 15, 2005.

230-State Department of Education-
School Building Authority-
Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2005 Org 0402

1 Debt Service-Total .............. 310 $ 18,000,000

231-Department of Education and the Arts-
Office of the Secretary-
Control Account-
Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2005 Org 0431

1 WV Humanities Council .......... 168 $ 350,000
2 Commission for National
3 Community Service .............. 193 160,050
4 Technical Preparation Program .. 440 450,000
5 Arts Programs (R) ............... 500 40,000
180 APPROPRIATIONS

6 College Readiness (R) ........... 579 209,000
7 LATA Access (R) ................. 580 360,000
8 Hospitality Training .............. 600 480,000
9 Challenger Learning Center ...... 862 55,000
10 Special Olympic Games .......... 966 25,000
11 Center for Excellence in
12 Disabilities .................... 967 100,000
13 Total ........................... $ 2,220,050

14 Any unexpended balances remaining in the appropria-
15 tions for Unclassified (fund 3508, activity 099), Arts
16 Programs (fund 3508, activity 500), College Readiness
17 (fund 3508, activity 579), LATA Access (fund 3508, activity
18 580) and WV2001 Project (fund 3508, activity 836) at the
19 close of fiscal year 2004 are hereby reappropriated for
20 expenditure during the fiscal year 2005.

232-Division of Culture and History-
Lottery Education Fund
(WV Code Chapter 29)

Fund 3534 FY 2005 Org 0432

1 Huntington Symphony ............ 027 $ 75,000
2 Martin Luther King, Jr.
3 Holiday Celebration ............. 031 10,800
4 Fairs and Festivals .............. 122 2,000,000
5 Archeological Curation/Capital
6 Improvements (R) ............... 246 50,337
7 Historic Preservation
8 Grants (R) ...................... 311 450,000
9 West Virginia Public Theater .... 312 250,000
10 Tri-County Fair Association ..... 343 125,000
11 George Tyler Moore Center for the
12 Study of the Civil War ............ 397 70,000
13 Theater Arts of West Virginia ... 464 420,000
14 Grants for Competitive
15 Arts Program (R) .............. 624 810,000
16 Contemporary American
17 Theater Festival ................ 811 120,000
18 Independence Hall (R) .............. 812 50,000
19 Mountain State Forest Festival ...... 864 75,000
20 Total .................................. $ 4,506,137

21 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 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

233-Library Commission-
Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2005 Org 0433

1 Books and Films .................... 179 $ 500,000
2 Services to Libraries .............. 057 500,000
3 Grants to Public Libraries ...... 182 7,348,884
4 Services to State Institutions .. 180 -0-
5 Digital Resources .................. 309 219,992
6 Libraries-Special Projects ...... 625 500,000
7 Infomine Network ................... 884 1,126,769
8 Total ................................. $ 10,195,645

234-Educational Broadcasting Authority-
Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2005 Org 0439

1 Mountain Stage .................... 249 $ 163,800
2 Star Schools ......................... 509 220,675
3 Total ................................. $ 384,475

4 Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at
the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

235-Bureau of Senior Services -
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2005 Org 0508

<table>
<thead>
<tr>
<th>Local Programs Service</th>
<th>Delivery Costs</th>
<th>200</th>
<th>$2,475,250</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-Home Services for</td>
<td>Senior Citizens</td>
<td>224</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Nutrition Services for the Elderly</td>
<td>337</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Senior Citizen Centers and Programs (R)</td>
<td>462</td>
<td>$2,900,000</td>
</tr>
<tr>
<td></td>
<td>Direct Services</td>
<td>481</td>
<td>$2,800,000</td>
</tr>
<tr>
<td></td>
<td>Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens</td>
<td>539</td>
<td>$13,000,000</td>
</tr>
<tr>
<td></td>
<td>Senior Services Medicaid</td>
<td>871</td>
<td>$10,300,000</td>
</tr>
<tr>
<td></td>
<td>Legislative Initiatives for the Elderly</td>
<td>904</td>
<td>$4,709,000</td>
</tr>
<tr>
<td></td>
<td>Long Term Care Ombudsman</td>
<td>905</td>
<td>$321,325</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$38,469,575</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

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.

236-Higher Education Policy Commission -
Lottery Education -
### Appropriations

**Higher Education Policy Commission-Control Account**

(WV Code Chapters 18B and 18C)

<table>
<thead>
<tr>
<th>Fund 4925 FY 2005 Org 0441</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
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<td>31</td>
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<tr>
<td>32</td>
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<tr>
<td>33</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations at the close of fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005.

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.

237-Lottery Commission-
General Purpose Account

Fund 7206 FY 2005 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total-Transfer</td>
<td>$ 65,000,000</td>
</tr>
</tbody>
</table>

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.

238-Economic Development Authority-
Economic Development Project Fund
### Fund 3167 FY 2005 Org 0307

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service-Total</td>
<td>310</td>
<td>$19,000,000</td>
</tr>
</tbody>
</table>

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 subsection (f), section eighteen, article twenty-two, chapter twenty-nine of the code.

### Fund 4295 FY 2005 Org 0441

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total-Transfer (R)</td>
<td>402</td>
<td>$27,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation at the close of fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

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

### Fund 3514 FY 2005 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total-Transfer (R)</td>
<td>402</td>
<td>$19,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation at the close of fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund for appropriation under West Virginia Code §18-9D-6.
241-West Virginia Infrastructure Council

Fund 3390 FY 2005 Org 0316

1 Unclassified-Total-
2 Transfer (R) .................. 402 $ 40,000,000
3 Any unexpended balance remaining in the appropriation
4 at the close of the fiscal year 2004 is hereby reappropriated
5 for expenditure during the fiscal year 2005.
6 The above appropriation for Unclassified-Total-Transfer(activity 402) shall be transferred to the West Virginia
7 Infrastructure Fund (fund 3384, org 0316) created by
8 chapter thirty-one, article fifteen-a, section nine of the
9 code.

242-Higher Education Improvement Fund

Fund 4297 FY 2005 Org 0441

1 Unclassified-Total (R) ......... 096 $ 10,000,000
2 Any unexpended balance remaining in the appropriation
3 at the close of the fiscal year 2004 is hereby reappropriated
4 for expenditure during the fiscal year 2005.

243-State Park Improvement Fund

Fund 3277 FY 2005 Org 0310

1 Unclassified-Total (R) ......... 096 $ 5,000,000
2 Any unexpended balance remaining in the appropriation
3 at the close of the fiscal year 2004 is hereby reappropriated
4 for expenditure during the fiscal year 2005.

244-Lottery Commission-
Refundable Credit

Fund 7207 FY 2005 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-one, 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.

245-Lottery Commission-Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2005 Org 0705

1 Unclassified-Total-Transfer . . . . . 402 $22,800,000

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.

246-Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2005 Org 2300

1 Any unexpended balance remaining in the appropriation at the close of fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

The above appropriation for Tax Reduction and Federal Funding Increased Compliance (TRAFFIC)-Total (fund 1735, 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 ............... $ 217,800,000
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 five.

LEGISLATIVE

247-Crime Victims Compensation Fund
(WV Code Chapter 14)

Fund 8738 FY 2005 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total 096</td>
<td>$1,263,500</td>
</tr>
</tbody>
</table>

JUDICIAL

248-Supreme Court—Consolidated Federal Funds

Fund 8867 FY 2005 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total 096</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

EXECUTIVE

249-Governor's Office-Governor's Cabinet on Children and Families
(WV Code Chapter 5)

Fund 8792 FY 2005 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total 096</td>
<td>$450,000</td>
</tr>
</tbody>
</table>

250-Governor's Office-Office of Economic Opportunity
(WV Code Chapter 5)
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8797</td>
<td>2005</td>
<td>0100</td>
<td>251-Governor's Office-Commission for National and Community Service (WV Code Chapter 5)</td>
</tr>
<tr>
<td>8800</td>
<td>2005</td>
<td>0100</td>
<td>252-Auditor's Office-National White Collar Crime Center (WV Code Chapter 12)</td>
</tr>
<tr>
<td>8807</td>
<td>2005</td>
<td>1200</td>
<td>253-Department of Agriculture (WV Code Chapter 19)</td>
</tr>
<tr>
<td>8736</td>
<td>2005</td>
<td>1400</td>
<td>254-Department of Agriculture-Meat Inspection (WV Code Chapter 19)</td>
</tr>
<tr>
<td>8737</td>
<td>2005</td>
<td>1400</td>
<td>255-Department of Agriculture-State Conservation Committee (WV Code Chapter 19)</td>
</tr>
<tr>
<td>8783</td>
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<td>1400</td>
<td>255-Department of Agriculture-State Conservation Committee (WV Code Chapter 19)</td>
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256-Secretary of State-
(WV Code Chapter 3)
Fund 8854 FY 2005 Org 1600
1 Unclassified-Total *(R) ............ 096 $ 14,500,000

DEPARTMENT OF ADMINISTRATION
257-West Virginia Prosecuting Attorney’s Institute
(WV Code Chapter 7)
Fund 8834 FY 2005 Org 0228
1 Unclassified-Total ............... 096 $ 199,468

258-Children’s Health Insurance Agency
(WV Code Chapter 5)
Fund 8838 FY 2005 Org 0230
1 Unclassified-Total ............... 096 $ 33,817,646

DEPARTMENT OF EDUCATION
259-State Department of Education
(WV Code Chapters 18 and 18A)
Fund 8712 FY 2005 Org 0402
1 Unclassified-Total ............... 096 $160,000,000

260-State Department of Education-
School Lunch Program
(WV Code Chapters 18 and 18A)
Fund 8713 FY 2005 Org 0402
1 Unclassified-Total ............... 096 $ 85,000,000

* CLERK'S NOTE: The Governor struck the designation “(R)” in Item No. 256, line 1.
261-State Board of Education-Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2005 Org 0402

1 Unclassified-Total ............... 096 $ 21,000,000

262-State Department of Education-Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2005 Org 0402

1 Unclassified-Total ............... 096 $ 77,000,000

263-State Department of Education-Education Grant

Fund 8748 FY 2005 Org 0402

1 Unclassified-Total ............... 096 $ 50,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

264-Department of Education and the Arts-Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2005 Org 0431

1 Unclassified-Total ............... 096 $ 1,051,571

265-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2005 Org 0432

1 Unclassified-Total ............... 096 $ 2,500,000

266-Library Commission

(WV Code Chapter 10)
Fund 8720 FY 2005 Org 0433

1 Unclassified-Total ............... 096 $ 1,932,637

267-Educational Broadcasting Authority
(WV Code Chapter 10)

Fund 8721 FY 2005 Org 0439

1 Unclassified-Total ............... 096 $ 1,800,000

268-State Board of Rehabilitation-
Division of Rehabilitation Services
(WV Code Chapter 18)

Fund 8734 FY 2005 Org 0932

1 Unclassified-Total ............... 096 $ 46,323,075

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

269-Consolidated Medical Service Fund
(WV Code Chapter 16)

Fund 8723 FY 2005 Org 0506

1 Unclassified-Total ............... 096 $ 7,308,797

270-Division of Health-
Central Office
(WV Code Chapter 16)

Fund 8802 FY 2005 Org 0506

1 Unclassified-Total ............... 096 $ 73,734,131

271-Division of Health-
West Virginia Safe Drinking Water Treatment
(WV Code Chapter 16)

Fund 8824 FY 2005 Org 0506

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

#### 272-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2005 Org 0507

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#### 273-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2005 Org 0510

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#### 274-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2005 Org 0511

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### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 275-Adjutant General-State Militia

(WV Code Chapter 15)

Fund 8726 FY 2005 Org 0603

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<tr>
<td>Unclassified-Total</td>
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#### 276-Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2005 Org 0606

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<tbody>
<tr>
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</table>

#### 277-Division of Corrections

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

Fund 8836 FY 2005 Org 0608

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<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
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</table>
194 APPROPRIATIONS

278-West Virginia State Police
(WV Code Chapter 15)
Fund 8741 FY 2005 Org 0612
1 Unclassified-Total .............. 096 $ 1,208,527

279-Division of Veterans’ Affairs
(WV Code Chapter 9A)
Fund 8858 FY 2005 Org 0613
1 Unclassified-Total .............. 096 $ 10,000,000

280-Division of Veterans’ Affairs-
Veterans’ Home
(WV Code Chapter 9A)
Fund 8728 FY 2005 Org 0618
1 Unclassified-Total .............. 096 $ 1,203,780

281-Division of Criminal Justice Services
(WV Code Chapter 15)
Fund 8803 FY 2005 Org 0620
1 Unclassified-Total .............. 096 $ 14,915,835

282-Division of Juvenile Services
(WV Code Chapter 49)
Fund 8855 FY 2005 Org 0621
1 Unclassified-Total .............. 096 $ 331,000

DEPARTMENT OF REVENUE

283-Tax Division
(WV Code Chapter 11)
DEPARTMENT OF TRANSPORTATION

284-Division of Motor Vehicles
(WV Code Chapter 17B)

Fund 8787 FY 2005 Org 0802

1 Unclassified-Total ............. 096 $ 9,819,900

285-Division of Public Transit
(WV Code Chapter 17)

Fund 8745 FY 2005 Org 0805

1 Unclassified-Total ............. 096 $ 11,602,638

286-Public Port Authority
(WV Code Chapter 17)

Fund 8830 FY 2005 Org 0806

1 Unclassified-Total ............. 096 $ 2,660,000

BUREAU OF COMMERCE

287-Division of Forestry
(WV Code Chapter 19)

Fund 8703 FY 2005 Org 0305

1 Unclassified-Total ............. 096 $ 2,249,448

288-Geological and Economic Survey
(WV Code Chapter 29)

Fund 8704 FY 2005 Org 0306

1 Unclassified-Total ............. 096 $ 550,000
289-West Virginia Development Office
(WV Code Chapter 5B)
Fund 8705 FY 2005 Org 0307
1 Unclassified-Total ................. 096 $ 9,595,134

290-Division of Labor
(WV Code Chapters 21 and 47)
Fund 8706 FY 2005 Org 0308
1 Unclassified-Total ................. 096 $ 540,822

291-Division of Natural Resources
(WV Code Chapter 20)
Fund 8707 FY 2005 Org 0310
1 Unclassified-Total ................. 096 $ 8,534,200

292-Division of Miners' Health, Safety and Training
(WV Code Chapter 22)
Fund 8709 FY 2005 Org 0314
1 Unclassified-Total ................. 096 $ 590,765

BUREAU OF EMPLOYMENT PROGRAMS
293-Bureau of Employment Programs
(WV Code Chapter 21A)
Fund 8835 FY 2005 Org 0323
1 Unclassified ..................... 099 $ 512,657
2 Reed Act 2002 -
3 Unemployment Compensation 622 2,374,000
4 Reed Act 2002 -
5 Employment Services .......... 630 1,371,000
6 Total ......................... $ 4,257,657
Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the above appropriation to Unclassified shall be used by the bureau of employment programs for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

294-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2005 Org 0313

1 Unclassified-Total ............... 096 $ 98,015,470

BUREAU OF SENIOR SERVICES

295-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2005 Org 0508

1 Unclassified-Total ............... 096 $ 14,550,000

MISCELLANEOUS BOARDS AND COMMISSIONS

296-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2005 Org 0913

1 Unclassified-Total ............... 096 $ 87,500

297-Public Service Commission-
Motor Carrier Division

(WV Code Chapter 24A)
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 2005.
<table>
<thead>
<tr>
<th>Fund 8746 FY 2005 Org 0307</th>
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</thead>
<tbody>
<tr>
<td>1  Unclassified-Total 096 $28,330,852</td>
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302-West Virginia Development Office - Workforce Investment Act

<table>
<thead>
<tr>
<th>Fund 8848 FY 2005 Org 0307</th>
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<tbody>
<tr>
<td>1  Unclassified-Total 096 $49,832,357</td>
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303-Division of Health - Maternal and Child Health

<table>
<thead>
<tr>
<th>Fund 8750 FY 2005 Org 0506</th>
</tr>
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<tbody>
<tr>
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304-Division of Health - Preventive Health

<table>
<thead>
<tr>
<th>Fund 8753 FY 2005 Org 0506</th>
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<td>1  Unclassified-Total 096 $2,237,034</td>
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305-Division of Health - Substance Abuse Prevention and Treatment

<table>
<thead>
<tr>
<th>Fund 8793 FY 2005 Org 0506</th>
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<tr>
<td>1  Unclassified-Total 096 $11,557,304</td>
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306-Division of Health - Community Mental Health Services

<table>
<thead>
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<td>1  Unclassified-Total 096 $3,314,733</td>
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307-Division of Health - Abstinence Education Program

<table>
<thead>
<tr>
<th>Fund 8825 FY 2005 Org 0506</th>
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<td>1  Unclassified-Total 096 $976,837</td>
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308-Division of Human Services-
Energy Assistance

Fund 8755 FY 2005 Org 0511

1 Unclassified-Total .............. 096 $21,100,942

309-Division of Human Services-
Social Services

Fund 8757 FY 2005 Org 0511

1 Unclassified-Total .............. 096 $15,000,000

310-Division of Human Services-
Temporary Assistance Needy Families

Fund 8816 FY 2005 Org 0511

1 Unclassified-Total .............. 096 $175,000,000

311-Division of Human Services-
Child Care and Development

Fund 8817 FY 2005 Org 0511

1 Unclassified-Total .............. 096 $38,080,000

312-Division of Criminal Justice Services-
Juvenile Accountability Incentive

Fund 8829 FY 2005 Org 0620

1 Unclassified-Total .............. 096 $2,400,000

313-Division of Criminal Justice Services-
Local Law Enforcement

Fund 8833 FY 2005 Org 0620

1 Unclassified-Total .............. 096 $607,494
2 Total TITLE II, Section 7-
3 Federal Block Grants $367,316,444
Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2005, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $3,621,385, special revenue fund in the amount of $162,427, state road funds in the amount of $433,954, and non-general revenue fund in the amount of $326,944 for payment of claims against the state.

Sec. 9. Appropriations from surplus accrued.—The following items are hereby appropriated from the state excess lottery revenue fund, and are to be available for expenditure during the fiscal year 2005 out of surplus funds only, as determined by the director of the lottery, accrued from the fiscal year ending the thirtieth day of June, 2004, 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 from the fiscal year ending the thirtieth day of June two thousand four.

In the event that surplus revenues available from the fiscal year ending the thirtieth day of June, two thousand four, 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 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 and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

*314—Joint Expenses

(WV Code Chapter 4)

*CLERK’S NOTE: The Governor struck all of Item Nos. 314, 315 and 317.
APPROPRIATIONS [Ch. 13

Fund—FY 2005 Org 2300

1 Tax Reduction and Federal Funding Increased
2 Compliance (TRAFFIC)........... 642 $ 5,000,000

315—Workers’ Compensation Commission
(WV Code Chapter 23)

Fund—FY 2005 Org 0322

1 Self-Insured Security Pool......... 033 $ 5,000,000

316—Governor’s Office
(WV Code Chapter 5)

Fund FY 2005 Org 0100

1 Publication of Papers and
2 Transition Expenses ............... 465 $ 325,000

317—Adjutant General—State Militia
(WV Code Chapter 15)

Fund—FY 2005 Org 0603

1 Armory Capital Improvements... 325 $ 2,000,000

318—Division of Corrections—Correctional Units
(WV Code Chapters 25, 28, 49 and 62)

Fund FY 2005 Org 0608

1 Payments to Federal, County and/or
2 Regional Jails ..................... 555 $ 3,887,620

319—Tax Division
(WV Code Chapter 11)
Fund FY 2005 Org 0702

1 Remittance Processor ............ . 570 $ 200,000

320-West Virginia State Police
(WV Code Chapter 15)

Fund FY 2005 Org 0612

1 Handgun Replacement ............ . 289 $ 400,000

321-Division of Health-
Central Office
(WV Code Chapter 16)

Fund FY 2005 Org 0506

1 Chief Medical Examiner -
2 Capital Improvements ............ 035 $ 1,050,000

*322-Division of Culture and History
(WV Code Chapter 29)

Fund FY 2005 Org 0432

1 State Museum ................ 036 $ 1,000,000

323-Governor's Office-
Civil Contingent Fund
(WV Code Chapter 5)

1 Flood Reparations ............ 400 $ 400,000

2 From the above appropriation, $300,000 shall be
3 allocated to Wyoming County and $100,000 shall be
4 allocated to Greenbrier County.

324-West Virginia Development Office
(WV Code Chapter 5D)

*CLERK'S NOTE: The Governor struck all of the Item Nos. 322, 323, 324, 325 and 326.
Sec. 10. Special revenue appropriations.--There are hereby appropriated for expenditure during the fiscal year two thousand five 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 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:

* CLERK’S NOTE: The Governor also reduced the total appearing in TITLE II, Section 9, Surplus Accrued, from "$39,507,271" to "$5,862,620".
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 five, 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 five 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, equip-
ment 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 appro-
priated for expenditure in accordance with section sixteen,
article nine-a, chapter eighteen of the code.

TITLE III-ADMINISTRATION.

§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 appropriations and
reappropriations shall be to the succeeding or later spend-
ing unit created, unless otherwise indicated.

Sec. 2. Legislative intent.-It is the intent of the Legisla-
ture 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 recommenda-
tions 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.

CHAPTER 14
(H. B. 4348 — By Delegates Michael, Boggs, Warner, Border, R. M. Thompson, H. White and Proudfoot)

[Passed February 23, 2004; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the treasurer’s office - banking services fund 1322, fiscal year 2004, organization 1300, for the fiscal year ending June 30, 2004, in the amount of $4,400,000 from the treasurer’s office - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300.

WHEREAS, The Legislature finds that the account balance in the treasurer’s office - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300, 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 four, to the treasurer’s office - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300, be decreased by expiring the amount of $4,400,000 to the balance of the state treasurer - banking services fund, fund 1322, fiscal year 2004, organization 1300, during the fiscal year two thousand four.
The purpose of this bill is to expire the sum of $4,400,000 from the state treasurer - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300, to the balance of the state treasurer - banking services fund, fund 1322, fiscal year 2004, organization 1300, for the fiscal year ending the thirtieth day of June, two thousand four, to be available for expenditure during the fiscal year two thousand four.

CHAPTER 15

(H. B. 4546 — By Delegates Michael, Doyle, Leach, Campbell, Susman, Stalnaker and Proudfoot)

[Passed March 11, 2004; 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 four, to the department of health and human resources - family protection services board - domestic violence legal services fund, fund 5455, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - family protection services board - domestic violence legal services fund, fund 5455, fiscal year 2004, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 5455, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

135—Family Protection Services Board— Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2004 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
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</thead>
<tbody>
<tr>
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The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.

CHAPTER 16

(H. B. 4547 — By Delegates Michael, Browning, Proudfoot, Houston, Carmichael, Susman and Frederick)

[Passed March 11, 2004; 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 four, to the bureau of commerce - division of miners' health, safety and training, fund 8709, fiscal year 2004, organization 0314, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8709, fiscal year 2004, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

1  TITLE II — APPROPRIATIONS.
2  Sec. 6. Appropriations of federal funds.
3  BUREAU OF COMMERCE
4  286—Division of Miners’ Health,
5  Safety and Training
6  (WV Code Chapter 22)
7  Fund 8709 FY 2004 Org 0314
8  Activity Federal
9                           Funds
10  1 Unclassified - Total . . . . . . . . . . . . 096  $ 400,000
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 the fiscal year two thousand four.

CHAPTER 17

(H. B. 4548 — By Delegates Michael, Warner, Ashley, Browning, Carmichael, Cann and Proudfoot)

[Passed March 11, 2004; 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 four, to the department of transportation - division of motor vehicles - driver’s license reinstatement fund, fund 8213, fiscal year 2004, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 2004, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 8213, fiscal year 2004, organization 0802, be supplemented and amended by increasing the total appropriation as follows:
TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

162—Division of Motor Vehicles—

Driver’s License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2004 Org 0802

<table>
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<th>Other Funds</th>
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</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 four.

CHAPTER 18

(H. B. 4549 — By Delegates Michael, Leach, Campbell, Foster, Susman, Anderson and Hall)

[Passed March 11, 2004; 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 four, to the bureau of com-
merce - division of labor - elevator safety act, fund 3188, fiscal year 2004, organization 0308, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce - division of labor - elevator safety act, fund 3188, fiscal year 2004, organization 0308, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 3188, fiscal year 2004, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>099</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure during the fiscal year two thousand four.

CHAPTER 19

(H. B. 4550 — By Delegates Michael, Leach, Campbell, Hall, Proudfoot, Stalnaker and Evans)

[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human resources - division of health - central office, fund 8802, fiscal year 2004, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8802, fiscal year 2004, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.
Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES

264—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2004 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassifed - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand four.

CHAPTER 20

(H. B. 4551 — By Delegates Michael, Doyle, Leach, Stalnaker, Campbell, Ashley and Cann)

[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human
resources - division of human services, fund 8722, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8722, fiscal year 2004, organization 0511, 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 HEALTH AND HUMAN RESOURCES

4 268—Division of Human Services

5 (WV Code Chapters 9, 48 and 49)

6 Fund 8722 FY 2004 Org 0511

7

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-
CHAPTER 21

(H. B. 4748 — By Delegates Michael, Doyle, Leach, Campbell, Stalnaker, Warner and Proudfoot)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state excess lottery revenue fund, to the lottery commission - refundable credit, fund 7207, fiscal year 2004, organization 0705, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, to fund 7207, fiscal year 2004, organization 0705, be supplemented and amended to read as follows:

1  TITLE II — APPROPRIATIONS.

2  Sec. 5. Appropriations from state excess lottery revenue fund.

3  240—Lottery Commission—

4  Refundable Credit

5  Fund 7207 FY 2004 Org 0705

6  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 provided by §11-21-21 and §29-22-18a 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 commissioner's request.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand four, by amending language with no additional funds being appropriated.

CHAPTER 22

(H. B. 4749 — By Delegates Michael, Anderson, Boggs, Cann, Frederick, Ashley and Warner)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2004, organization 0803, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand four.

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 2004, 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 2004 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>$1,250,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, and increase existing items in the aforesaid account for the designated spending unit, for expenditure during the fiscal year ending the thirtieth day of June, two thousand four.

CHAPTER 23

(H. B. 4750 — By Delegates Anderson, Ashley, Border, Carmichael, Evans, Hall and G. White)

[Passed March 13, 2004; 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 four, to the department of education - state department of education, fund 8712, fiscal year 2004, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8712, fiscal year 2004, organization 0402, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>1</th>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Sec. 6. Appropriations of federal funds.</td>
</tr>
<tr>
<td>3</td>
<td>DEPARTMENT OF EDUCATION</td>
</tr>
<tr>
<td>4</td>
<td>254—State Department of Education</td>
</tr>
<tr>
<td>5</td>
<td>(WV Code Chapters 18 and 18A)</td>
</tr>
<tr>
<td>6</td>
<td>Fund 8712 FY 2004 Org 0402</td>
</tr>
<tr>
<td>7</td>
<td>Act- Federal</td>
</tr>
<tr>
<td>8</td>
<td>ivity Funds</td>
</tr>
<tr>
<td>9</td>
<td>Unclassified- Total ............... 096 $30,000,000</td>
</tr>
</tbody>
</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 four.

CHAPTER 24

(H. B. 4751 — By Delegates Michael, Doyle, Leach, Boggs, Browning, Cann and Houston)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of military affairs and public safety - adjutant general - state militia, fund 8726, fiscal year 2004, organization 0603, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8726, fiscal year 2004, organization 0603, be supplemented and amended by increasing the total appropriation as follows:
TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

269—Adjutant General — State Militia

(WV Code Chapter 15)

Fund 8726 FY 2004 Org 0603

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$30,000,000</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 fiscal year two thousand four.

CHAPTER 25

(H. B. 4752 — By Delegates Michael, Doyle, H. White, Stalnaker, Boggs, Carmichael and Cann)

[Passed March 13, 2004; 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 four, to the department of tax and revenue - division of banking, fund 3041, fiscal year 2004,
organization 0303, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - division of banking, fund 3041, fiscal year 2004, organization 0303, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 3041, fiscal year 2004, organization 0303, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$25,000</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 four.
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 four, to the department of transportation - division of motor vehicles, fund 8787, fiscal year 2004, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing and new programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four, 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 four, to fund 8787, fiscal year 2004, organization 0802, 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 TRANSPORTATION
## Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Act-</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</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 four.

### Chapter 27

(H. B. 4755 — By Delegates Michael, Leach, Browning, R. M. Thompson, H. White and Cann)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to a new item of appropriation designated to the coal heritage highway authority, fund 8861, fiscal year 2004, organization 0942, supplementing and amending chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill.
WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 291a—Coal Heritage Highway Authority

5 (WV Code Chapter 29)

6 Fund 8861 FY 2004 Org 0942

7 Activity Federal

8

9 1 Unclassified - Total ............... 096 $ 27,000

10 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand four, by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending unit for expenditure during the fiscal year two thousand four.
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 four, to the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2004, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 2004, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 8517, fiscal year 2004, organization 0906, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS
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 four.

CHAPTER 29

(H. B. 4757—By Delegates Michael, Doyle, Warner, Houston, Anderson, R. M. Thompson and Cann)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of military affairs and public safety - division of criminal justice services, fund 8803, fiscal year 2004, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.
WHEREAS, The governor has established the availability of federal funds for continuing and new programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 four, to fund 8803, fiscal year 2004, organization 0620, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II — APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 6. Appropriations of federal funds.</td>
</tr>
<tr>
<td>DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY</td>
</tr>
<tr>
<td>274—Division of Criminal Justice Services</td>
</tr>
<tr>
<td>(WV Code Chapter 15)</td>
</tr>
<tr>
<td>Fund 8803 FY 2004 Org 0620</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified - Total</th>
<th>096</th>
<th>2,703,001</th>
</tr>
</thead>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-said account for the designated spending unit for expenditure during fiscal year two thousand four.
CHAPTER 30

(H. B. 4758 — By Delegates Michael, Doyle, H. White, Campbell, Boggs and Proudfoot)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of military affairs and public safety - division of criminal justice services - juvenile accountability incentive, fund 8829, fiscal year 2004, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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 four, 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 four, to fund 8829, fiscal year 2004, organization 0620, 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 appropriations in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand four.
year ending the thirtieth day of June, two thousand four, 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 four, to fund 8797, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

EXECUTIVE

245—Governor’s Office—

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2004 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</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 the fiscal year two thousand four.
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 four, to the department of agriculture - donated food fund, fund 1446, fiscal year 2004, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2004, organization 1400, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; 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 four, to fund 1446, fiscal year 2004, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 EXECUTIVE
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 four, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2004, organization 0606, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.
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 four, 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 four, to fund 8727, fiscal year 2004, organization 0606, 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

4 AFFAIRS AND PUBLIC SAFETY

5 270—Office of Emergency Services

(WV Code Chapter 15)

6 Fund 8727 FY 2004 Org 0606

7

8 Act-

9 ivity

Federal

Funds

10 1 Unclassified - Total ................ 096 $ 10,000,000

11 The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-said account for the designated spending unit for expenditure during fiscal year two thousand four.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education and the arts - state board of rehabilitation - division of rehabilitation services, fund 0310, fiscal year 2004, organization 0932, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and

WHEREAS, It appears from the governor's statement 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 four; 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 four, to fund 0310, fiscal year 2004,
organization 0932, 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 EDUCATION AND THE ARTS

4 44—State Board of Rehabilitation—

5 Division of Rehabilitation Services

6 (WV Code Chapter 18)

7 Fund 0310 FY 2004 Org 0932

8

9

10 Activity

11 5 Unclassified - Surplus ............ 097 $ 421,000

12 The purpose of this supplemental appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.

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CHAPTER 35

(S. B. 713 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of two million five hundred thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, to the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218, be decreased by expiring the amount of two million five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during fiscal year two thousand five.

The purpose of this bill is to expire the sum of two million five hundred thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, to be available for appropriation during fiscal year two thousand five.
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 five, in the amount of five hundred thousand dollars from the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2005, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2005, 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 five, to the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2005, organization 0704, be decreased by expiring the amount of five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during fiscal year two thousand five.

9 The purpose of this bill is to expire the sum of five hundred thousand dollars from the insurance commissioner — insurance
commission fund, fund 7152, fiscal year 2005, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, to be available for appropriation during fiscal year two thousand five.

CHAPTER 37

(S. B. 715 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of one million two hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2005, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2005, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, to the public service commission, fund 8623, fiscal year 2005, 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
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 2005, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, to be available for appropriation during the fiscal year two thousand five.

CHAPTER 38

(H. B. 4415 — By Delegates Warner, Beane, Boggs, Frederick, Stalnaker, Proudfoot and Foster)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §6-9-7 of the code of West Virginia, 1931, as amended, relating to giving the state auditor, as the chief inspector, flexibility in determining when to conduct audits on local government offices and when to conduct a review on them.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief
inspector to perform the service, to examine into all financial
affairs of every local governmental office or political subdivi-
sion and all boards, commissions, authorities, agencies or other
offices created under authority thereof. An examination shall be
made annually, if required, to comply with the Single Audit Act
and when otherwise required by law or contract. When that act
does not apply, unless otherwise required by law or by contract,
the examination shall be made at least once a year, if practica-
ble. Furthermore, the chief inspector shall furnish annually to
the Legislature a list of each local government office or
political subdivision and all boards, commissions, authorities,
agencies or other offices created under authority thereof and the
year of its most recent completed audit.

(b) When required for compliance with regulations for
federal funds received or expended by county boards of
education the chief inspector or his or her designee, including
any certified public accountant approved by the chief inspector
shall conduct and issue an audit report within the time specified
in controlling federal regulations. Examinations of other local
governments shall be conducted and audit or review reports
issued in accordance with uniform procedures of the chief
inspector.

(c) A county board of education may elect, by the first day
of May of the fiscal year to be audited, to have its annual
examination performed by a certified public accountant
approved by the chief inspector to perform the examinations.
When this election is made, a copy of the order of the county
board making the election shall be filed with the chief inspector
and the state board of school finance. The county board of
education is allowed to contract with any certified public
accountant on the chief inspector's then current list of approved
certified public accountants, unless the state board of school
finance or the prosecuting attorney of the county in which the
board is located timely submits to the chief inspector a written
request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(d) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the state register and send a copy to the state board of education, the state board of school finance and to local governments who request a copy.

(e) A county board of education, when procuring the services of a certified public accountant on the chief inspector's list, shall follow the procurement standards prescribed by the grants management common rule, OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments" in effect for the fiscal year being examined, or in any replacement circular or regulation of the office of management and budget and in addition shall follow those standards as determined by the office of chief inspector.

(f) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant's examination and audit or review report, the certified public
accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the federal audit clearing house. The certified public accountant shall send one copy of the certified report to the state board of school finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) If a local government office is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than three
hundred thousand dollars during the fiscal year the chief
inspector may choose to perform either a review or audit on the
local government office and may in his or her discretion
determine the frequency of such review or audit.

(i) The chief inspector or any authorized assistant may issue
subpoenas and compulsory process, direct the service thereof
by any sheriff, compel the attendance of witnesses and the
production of books and papers at any designated time and
place, selected in their respective county, and administer oaths.

(j) If any person refuses to appear before the chief inspector
or his or her authorized assistant when required to do so, refuses
to testify on any matter or refuses to produce any books or
papers in his or her possession or under his or her control, he or
she is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not more than one hundred dollars and impris-
oned in the county or regional jail not more than six months.

(k) A person convicted of willful false swearing in an
examination is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than one hundred dollars and
imprisoned in the county or regional jail not more than six
months.

(l) Except as otherwise provided in this section, a copy of
the certified report of each examination shall be filed in the
office of the commissioner, chief inspector with the governing
body of the local government and with other offices as pre-
scribed in uniform procedures of the chief inspector.

(m) If any examination discloses misfeasance, malfeasance
or nonfeasance in office on the part of any public officer or
employee, a certified copy of the report shall be filed by the
chief inspector with the proper legal authority of the agency, the
prosecuting attorney of the county wherein the agency is
located and with the attorney general for such legal action as is
proper. At the time the certified audit report is filed, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the attorney general in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.

(n) If the proper legal authority or prosecuting attorney, within nine months of receipt of the certified audit report and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(o) A local government that is not a county board of education may elect, by the first day of May of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: *Provided, That* the audit of a local government may be performed by the chief inspector at his or her discretion. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit: *Provided, however, That* the chief inspector may elect to conduct the audit of a local unit of government
CHAPTER 39

(Com. Sub. for H. B. 4168 — By Delegates R. M. Thompson, Perry, Frich, Iaquinta, G. White and Hrutkay)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §31-17-2 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all relating to mortgage loans; exempting mortgage loan closing costs from consumer sales and service tax levied on brokerage fees, additional charges and finance charges; requiring that funds are available for settlement of a real estate mortgage transaction; defining applicability of the law; providing definition of terms used; establishing duty of lender; maintaining validity of loan documents; and providing a penalty for violations of the article.

Be it enacted by the Legislature of West Virginia:

That §31-17-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all to read as follows:

Chapter

   46A. West Virginia Consumer Credit and Protection Act.
CHAPTER 31. CORPORATIONS.

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-2. License required for lender, broker or loan originator; exemptions.

(a) No person shall engage in this state in the business of lender, broker or loan originator unless and until he or she shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall engage in business in this state unless it is registered with the secretary of state to transact business in this state.

(b) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on the first day of January, two thousand four.

(c) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;
(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improve-ments for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state.

Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commis-sioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(d) A person or entity designated in subsection (c) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(e) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.
CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.

§46A-6K-1. Applicability.

This article applies to the settlement of loans secured by deeds of trust on owner-occupied residential dwellings with accommodations for not more than four families. This article does not apply to construction loans or any other loans which, by agreement of the parties, provide for the disbursement of the proceeds in stages.


(a) “Collected funds” or “good funds” means moneys used to fund the disbursement of settlement proceeds deposited and irrevocably credited to a settlement agent’s account.

(b) “Disbursement of loan funds” means the delivery of the loan funds by the lender to the settlement agent in the form of:

1. Cash;
2. Wired funds;
3. Certified check;
4. Checks issued by the United States treasury, the state of West Virginia or an instrumentality of the United States or state of West Virginia;
(5) Cashier’s check or teller’s check or other similar draft or obligation of a federally insured bank, savings bank, savings and loan association or credit union or of any holding company or wholly owned subsidiary of the foregoing;

(6) Checks issued by a licensed lender qualified to do business in West Virginia which has posted the surety bond required by subsection (b), section four, article seventeen, chapter thirty-one of this code;

(7) Checks issued by an insurance company licensed and regulated by the West Virginia insurance commission, which checks are drawn on a federally insured financial institution;

(8) Checks drawn on the escrow account of an attorney licensed to practice law in West Virginia or on the escrow account of a real estate broker licensed in West Virginia; or

(9) Personal check or checks in an aggregate amount not exceeding five thousand dollars per loan closing.

(c) “Disbursement of settlement proceeds” means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto.

(d) “Lender” means any person regularly engaged in making loans secured by deeds of trust to secure debt on West Virginia real estate. A person is considered to be regularly engaged in making loans if he or she makes more than five such loans in any one calendar year.

(e) “Loan closing” means that time agreed upon by the borrower, lender, seller, if applicable, and settlement agent when the execution by the borrower and delivery of the loan documents to the settlement agent occur.
(f) “Loan documents” means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction.

(g) “Loan funds” means the gross or net proceeds of the loan to be disbursed by or on behalf of the lender at loan closing.

(h) “Parties”, as used in this subsection, means the seller, purchaser, borrower, lender and the settlement agent, as applicable.

(i) “Settlement” means the time when the settlement agent has received the duly executed deed, loan funds, loan documents and other documents and funds required to carry out the terms of the contract between the parties.

(j) “Settlement agent” means the person authorized by law to be responsible for conducting the settlement and disbursement of the settlement proceeds.


The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent; however, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause disbursement of loan funds to the settlement agent, unless the loan is rescinded by the customer. All funds disbursed by the lender to the settlement agent must be collected. The lender is not entitled to receive or charge any interest on the loan until disbursement of loan funds and loan closing has occurred.

1 Failure to comply with the provisions of this article does not affect the validity or enforceability of any loan documents executed.

§46A-6K-5. Penalty.

1 Any persons suffering losses due to the failure of the lender or the settlement agent to disburse settlement proceeds as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of section three of this article plus reasonable attorneys' fees incurred in the collection thereof.

CHAPTER 40

(S. B. 286 — By Senator Minard)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §31A-2-8 of the code of West Virginia, 1931, as amended, relating to the assessment of regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

That §31A-2-8 of the code of West Virginia, 1931, 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 or bank holding company and pay into a special revenue account in the state treasury for the division of banking assessments as follows:

(1) For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding thirtieth day of June and the thirty-first day of December, respectively, as follows:
(2) For each regulated consumer lender, an annual assessment payable on the first day of July, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

### Total Outstanding Balances

<table>
<thead>
<tr>
<th>Over Million</th>
<th>But Not Over Million</th>
<th>This Amount</th>
<th>Of Excess Plus</th>
<th>Over Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$2</td>
<td>$0</td>
<td>0.001645020</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>20</td>
<td>3,290</td>
<td>0.000205628</td>
<td>2</td>
</tr>
<tr>
<td>20</td>
<td>100</td>
<td>6,991</td>
<td>0.000164502</td>
<td>20</td>
</tr>
<tr>
<td>100</td>
<td>200</td>
<td>20,151</td>
<td>0.000106926</td>
<td>100</td>
</tr>
<tr>
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<td>30,844</td>
<td>0.000090476</td>
<td>200</td>
</tr>
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</tr>
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</tr>
<tr>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
<td>0.000052670</td>
<td>20,000</td>
</tr>
</tbody>
</table>

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.
In addition to the assessment provided in this subdivision, the commissioner shall charge and collect from each regulated consumer lender the actual and necessary costs and expenses incurred in connection with any examination of a regulated consumer lender.

(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:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount Plus Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$100,000</td>
<td>100</td>
</tr>
<tr>
<td>100,000</td>
<td>500,000</td>
<td>300</td>
</tr>
<tr>
<td>500,000</td>
<td>1,000,000</td>
<td>500</td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>500 .000400 1,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,100 .000200 5,000,000</td>
</tr>
<tr>
<td>10,000,000</td>
<td>-</td>
<td>3,100 .000100 10,000,000</td>
</tr>
</tbody>
</table>

(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 Decem-
ber, 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 commis-
sioner 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 41

(S. B. 506 — By Senators Minard and Jenkins)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §31A-4-2 of the code of West Virginia, 1931, as amended, relating to the use of "bank" in its name by a licensed insurance company.

Be it enacted by the Legislature of West Virginia:

That §31A-4-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

(a) No person doing business in this state, except a banking institution, a person authorized by the commissioner under the terms of this section or an insurer licensed pursuant to article three, chapter thirty-three of this code under a name including the terms set forth herein as of the thirty-first day of December, two thousand three, may use or advertise in connection with such business, or as a designation or title thereof, the term "bank", "banker", "banking", "banking company", "industrial bank", "savings bank" or "trust company" and the insurance commissioner shall notify the commissioner of each insurer so
licensed. No person doing business in this state except a
banking institution or a person authorized by the commissioner
under this article may engage in the banking or trust business in
this state. A nonbanking subsidiary of a bank holding company
or a nonbanking subsidiary of a banking institution having a
bank branch or bank main office in this state that provides trust
services pursuant to section fourteen of this article may use the
term "trust company" in its title and advertising. A trust entity
owned jointly by federally insured depository institutions
located within this state and authorized by the commissioner to
operate in this state may use the term "trust company" in its title
and advertising.

(b) It is unlawful for any such person other than banking
institutions, as herein excepted, to advertise or hold himself,
itsel or themselves, as the case may be, out to the public in any
manner indicating, directly, indirectly or by implication, that
any of them is engaged in the banking or trust business or is
authorized and approved to engage therein in this state. A
nonbanking subsidiary of a bank holding company or
nonbanking subsidiary of a banking institution having a bank
branch or bank main office in this state that provides trust
services pursuant to section fourteen of this article may hold
itself out to the public as engaged in the trust business. A trust
entity owned jointly by federally insured depository institutions
located within this state and authorized by the commissioner to
operate in this state may hold itself out to the public as engaged
in the trust business.

(c) The commissioner may authorize a person to utilize the
term "bank" or "banc" in connection with nonprofit organiza-
tions or medical businesses where the term would have a
common meaning separate and apart from a financial institution
and would not result in confusion to the public (e.g., food bank;
medical databank); and in connection with bank holding
companies or their nonbanking affiliates where the term denotes
45 the entities' common affiliation and would not result in confu-
46 sion to the public.

47 (d) Any violation of the provisions of this section constit-
48 tutes a misdemeanor offense, punishable as provided in section
49 fifteen, article eight of this chapter.

50 (e) The commissioner of banking or any one or more
51 banking institutions, acting individually or jointly, may petition
52 the circuit court of the county in which any violation of the
53 provisions of this section occur or are threatened to occur for
54 injunction or other appropriate judicial remedies for enforce-
55 ment of the provisions hereof and the prevention of further or
56 continued violations thereof.

CHAPTER 42

(Com. Sub. for H. B. 4294 — By Delegates Cann, Fragale, 
Iaquinta, Stalnaker, Perry and Varner)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §61-3-39h of the code of West 
Virginia, 1931, as amended, relating to removing the requirement 
that funds expended from the worthless check fund to pay for 
additional deputy clerks be proportionate to the time expended on 
worthless check cases.

Be it enacted by the Legislature of West Virginia:

That §61-3-39h of the code of West Virginia, 1931, as amended, 
be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

In any prosecution under sections thirty-nine or thirty-nine-a of this article the costs as may otherwise be imposed against the drawer of any check, draft or order shall be imposed on the person initiating the prosecution if payment of the check, draft or order is accepted by the payee or holder thereof after the filing of a complaint for warrant; if the payee or holder had reason to believe that the check, draft or order would be dishonored or if the same was postdated; or if the matter is dismissed for failure to prosecute.

Costs collected by magistrate court for issuance of notice as authorized by section thirty-nine-g of this article may not be paid into the special county fund created by the provisions of section four, article three, chapter fifty of this code, but shall be accounted for separately and retained by the county in a fund designated the “worthless check fund,” until the sheriff shall issue warrants in furtherance of the allowable expenses specifically provided for by this section. Such costs may not be included in any calculation of the amount of funds to be retained by the county under the provisions of section four, article three, chapter fifty of this code.

A county may, after agreement with the court administrator’s office of the Supreme Court of Appeals, appropriate and spend from the worthless check fund herein established such sums as shall be necessary to pay or defray the expenses of providing a deputy sheriff to serve warrants for worthless check offenses and to pay or defray the expenses of providing additional deputy clerks in the office of the magistrate court clerk. After payment of these expenses, or after a determination that these services are not necessary, a county may appropriate and spend from the fund the sums necessary to defray the expenses of providing bailiff and service of process services by the sheriff, to defray the cost of acquiring or renting magistrate
court offices and providing utilities and telephones therefor to defray the cost of complying with section thirty-nine-i herein and to defray the expenses of such other services which are to be provided to magistrate courts by the county.

CHAPTER 43

(S. B. 199 — By Senators Bowman, Minear, Hunter, Sharpe, Caldwell and Rowe)

[Passed March 5, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5-14-4 of the code of West Virginia, 1931, as amended, relating to correcting the statutory inconsistency of appointments to the commission for the deaf and hard-of-hearing in relation to the terms and number of appointees.

Be it enacted by the Legislature of West Virginia:

That §5-14-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-4. Terms of office; quorum.

Members of the commission who do not serve ex officio shall be appointed for the following terms: Three members shall be appointed for a term of three years; three for a term of two years; and three for a term of one year. When a vacancy occurs, an appointment shall be made for the unexpired term. The members shall annually elect a chairman. A majority of the members constitutes a quorum for the transaction of business.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-6c, relating to directing the children’s health insurance board to study all available means to develop a plan modification to permit participation by families with income levels between two hundred percent and three hundred percent of the federal poverty level; findings; premium; and report to Legislature.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-6c, to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6c. Modified benefit plan for children of families of low income between two hundred and three hundred percent of the poverty level.

1 The Legislature finds:

2 (1) That there exists a number of families of low to moderate income without access to affordable health insurance coverage, whose children are denied plan participation because their family income exceeds two hundred percent of the federal poverty level;
(2) That this exclusion imposes a heavy burden on many families by forcing them to elect whether to spend money on their children’s health care or for their food, clothing and educational needs;

(3) That a plan should be developed and considered whereby children in families with an income between two hundred and three hundred percent of the federal poverty level would contribute approximately twenty to twenty-five percent of the actual cost of coverage resulting in no additional cost to state government; and

(4) That, while the primary goal of any plan will be the improvement of health care for these children, a successful plan for extending this coverage will benefit the state by improving the economy by allowing parents of these children to spend more for goods and services and by lowering future medical expenditures, uncompensated care and the other long-term adverse economic effects related to having a segment of the adult population which has been deprived of adequate medical care during childhood.

The board is directed to conduct a study of all available means to develop a viable, modified plan to enroll the children of those families having a level of income between two hundred and three hundred percent of the federal poverty level and to consider that such a plan should charge an affordable premium and may be phased in over a two-year period.

The board is further directed to study total program costs related to the implementation of a viable modified plan to expand coverage with the design requiring no additional state dollars and to study the long term effect on the state budget.

The board is directed to report its findings and recommendations to the Joint Committee on Government and Finance at its monthly meeting of August, two thousand four.
AN ACT to amend and reenact §13-2C-21 of the code of West Virginia, 1931, as amended, relating generally to the allocation and carry forward of unused state private activity bond volume cap.

Be it enacted by the Legislature of West Virginia:

That §13-2C-21 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code or under article eighteen, chapter thirty-one of this code, during any calendar year may not exceed the ceiling established by
Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391, et seq., of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; and (iii) that it is in the best interest of this state and its citizens to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects. It is hereby further determined and declared as a matter of legislative finding: (i) That the production of bituminous coal in this state has resulted in coal waste which is stored in areas generally referred to as gob piles; (ii) that gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in gob piles to produce alternative forms of energy needs to be encouraged; (iv) that Section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of private activity bonds; and (v) that it is in the best interest of this state and its citizens to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects.

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

(1) For the calendar year two thousand one, fifty million dollars and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia housing development fund described in subdivision (1) of this subsection shall be retained by the West Virginia development office and shall be referred to in this section as the "state allocation";

(3) Thirty-five percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the development office on or before the first day of November of each calendar year: Provided, however, That on the fifteenth day of November of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section; and
(4) Ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first day of November of each calendar year: Provided, however, That on the fifteenth day of November of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first day of November of each calendar year: Provided further, That on the fifteenth day of November of each calendar year the uncommitted portion of this part of the
state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation may be made for any project until the governmental body seeking the reservation submits a notice of reservation of funds as provided in subsection (e) of this section. The governmental body shall first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of the inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the development office. The notice shall include information required by the development office pursuant to any rule of the council for community and economic development. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of:

(i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or

(ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent the project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the executive director of the development office: Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time considered expedient by it may submit its notice of reservation of funds which shall include the following information:
145 (1) The date of the notice of reservation of funds;
146 (2) The identity of the governmental body issuing the
147 bonds;
148 (3) The date of inducement and the prospective date of
149 issuance;
150 (4) The name of the entity for which the bonds are to be
151 issued;
152 (5) The amount of the bond issue or, if the amount of the
153 bond issue for which a reservation of funds has been made has
154 been increased, the amount of the increase;
155 (6) The type of issue; and
156 (7) A description of the project for which the bonds are to
157 be issued.
158
159 (f) The development office shall accept the notice of
160 reservation of funds no earlier than the first calendar workday
161 of the year for which a reservation of funds is sought: Provided,
162 That a notice of reservation of funds with respect to a project
163 described in subdivision (4), subsection (b) of this section or an
164 energy producing project that is eligible for a reservation of
165 funds for a year subsequent to the year in which the notice of
166 reservation of funds is submitted may contain an application for
167 funds from a subsequent year’s state allocation. Upon receipt
168 of the notice of reservation of funds, the development office
169 shall immediately note upon the face of the notice the date and
170 time of reception.
171
172 (g) If the bond issue for which a reservation has been made
173 has not been finally closed within one hundred twenty days of
174 the date of the reservation to be made by the committee, or the
175 thirty-first of December following the date of reservation if
sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the bond issue has not been received by the development office within that time, then the reservation shall expire and be considered to have been forfeited and the funds reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after the first day of November in any calendar year, the reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the development office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the notice relates may not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund which shall be considered to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.
(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to the project until the first day of October in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be considered forfeited and the funds reserved are released as provided in said subsection.

CHAPTER 46

(H. B. 4295 — By Delegates Cann, Varner, Stalnaker and Perry)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §13-2G-14 of the code of West Virginia, 1931, as amended, relating to exempting state bonds from taxation; and clarifying language in this statute.

Be it enacted by the Legislature of West Virginia:

That §13-2G-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2G. STATE REFUNDING BOND ACT.


All bonds of the state, a state agency or state authority issued hereunder shall be exempt from all state, county, and municipal taxes, and the exemption includes income, inheritance and property taxes.
AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to reducing the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§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 for the fiscal year beginning on the first day of July, two thousand four, no credits are authorized: 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 divided pursuant to election of the entity's partners, members, shareholders or owners.

(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 catego-
ries 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;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000; and
(6) More than $1,000,000.

CHAPTER 48

(H. B. 4451 — By Delegates Cann, Pethtel, Perry,
Palumbo, Browning, Poling and Walters)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §5E-1-16 and §5E-1-17 of the code of
West Virginia, 1931, as amended, relating to the West Virginia
capital company act; and clarifying that the economic develop-
ment authority and tax commissioner are authorized to require
certain examination and compliance actions.

Be it enacted by the Legislature of West Virginia:

That §5E-1-16 and §5E-1-17 of the code of West Virginia, 1931,
as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.
§5E-1-16. Examination.

(a) Annually each qualified capital company and center shall cause its books and records to be audited by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. In addition to the performance of a financial audit, the audit shall address the methods of operation and conduct of the business of the West Virginia capital company or center to determine compliance with this article and that the funds received by the company have been invested within the time limits required by this article. Upon completion, a copy of the audit report shall be certified and sent to the authority.

(b) The authority may examine, under oath, any of the officers, directors, agents, employees or investors of a West Virginia capital company or center regarding the affairs and business of the company or center. The authority may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may at once be reported to the circuit court of the county in which the company or center is located or the persons subpoenaed reside and the circuit court shall enforce obedience to the subpoena or subpoena duces tecum in the manner provided by law for compliance with a subpoena or subpoena duces tecum issued by a circuit court of this state.

(c) In addition to the audits herein required, the authority and the tax commissioner may jointly audit any capital company or number of capital companies or centers in any year on a random basis, or for cause, or for any other basis the authority or the tax commissioner may select. The tax commissioner may also audit any company or business in which a capital company has made an investment, or which a capital company proposes
to invest, on a random audit selection basis, or for cause, or on any other basis the tax commissioner may select. Nothing herein shall be construed to prohibit the tax commissioner from conducting any audit relating to the administration or enforcement of the tax laws of this state which the tax commissioner may, in his or her discretion, determine to be appropriate.

§5E-1-17. Failure to comply.

(a) If the examination conducted pursuant to section sixteen of this article discloses that a West Virginia capital company or center is not in compliance with the provisions of this article, the authority may exercise any of the powers necessary and appropriate to protect the authority’s interest.

(b) The authority shall give a West Virginia capital company or center written notice of any inadequacies in its compliance with the provisions of this article, and specify a period of time the company has to redress such inadequacies. Failure within said time period to make corrections will result in further action by the authority pursuant to this section.

CHAPTER 49

(S. B. 480 — By Senator Caldwell)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-19-6 of the code of West Virginia, 1931, as amended, relating to exempting nonprofit licensed nursing homes from registration under the solicitation of charitable funds act.
Be it enacted by the Legislature of West Virginia:

That §29-19-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

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

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

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

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

3. Hospitals and licensed nursing homes which are nonprofit and charitable;

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

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U. S. C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U. S. C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fund-raising event for the benefit of a named charitable organization where all or part of the funds collected are donated to the named charitable organization: Provided, That the named charitable organization receiving the funds is registered pursuant to this article, reports each of these donations individually and certifies that no funds were withheld by the organization that solicited the funds;

(7) Any charitable organization that does not employ a professional solicitor or fund-raiser and does not intend to solicit and receive and does not actually raise or receive contributions from the public in excess of twenty-five thousand dollars during a calendar year.

Charitable organizations which do not intend to solicit and receive in excess of twenty-five thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of twenty-five thousand dollars.
AN ACT to amend and reenact §49-1-5 of the code of West Virginia, 1931, as amended, relating to restricting courts from requiring conditions on the out-of-home placement of children inconsistent with existing licensing regulations.

Be it enacted by the Legislature of West Virginia:

That §49-1-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-5. Limitation on out-of-home placement.

Before any child may be directed for placement in a particular facility or for services of a child welfare agency licensed by the department, a court shall make inquiry into the bed space of the facility available to accommodate additional children and the ability of the child welfare agency to meet the particular needs of the child. A court shall not order the placement of a child in a particular facility if it has reached its licensed capacity or order conditions on the placement of the child which conflict with licensure regulations applicable to the facility promulgated pursuant to the provisions of article two-b of this chapter and articles one-a, nine and seventeen, chapter twenty-seven of this code. Further, a child welfare agency is not required to accept placement of a child at a particular facility if
the facility remains at licensed capacity or is unable to meet the particular needs of the child. A child welfare agency is not required to make special dispensation or accommodation, reorganize existing child placement, or initiate early release of children in placement to reduce actual occupancy at the facility.

CHAPTER 51

(Com. Sub. for H. B. 4037 — By Delegates Williams, Renner, Perry, Tabb, Long, Paxton and Sumner)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §49-5-17 of the code of West Virginia, 1931, as amended, relating to providing certain juvenile justice records to public school officials and limiting disclosure of certain records.

Be it enacted by the Legislature of West Virginia:

That §49-5-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-17. Confidentiality of juvenile records.

(a) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's records shall automatically be
disclosed to certain school officials, subject to the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include and are limited to cases in which:

(A) The juvenile has been charged with an offense which:

(i) Involves violence against another person;

(ii) Involves possession of a dangerous or deadly weapon;

or

(iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile’s case has proceeded to a point where one or more of the following has occurred:

(i) A judge, magistrate or referee has determined that there is probable cause to believe that the juvenile committed the offense as charged;

(ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;

(iii) A judge, magistrate or referee has placed the juvenile into an improvement period in accordance with section nine of this article; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.
(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile’s case to the county superintendent of schools in the county in which the juvenile attends school and to the principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

(i) Copies of the arrest report;

(ii) Copies of all investigations;

(iii) Copies of any psychological test results and any mental health records;

(iv) Copies of any evaluation reports for probation or facility placement; and

(v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

(B) The disclosure of the juvenile’s psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection;

(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the Act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the Act and, if applicable, any action that is required to obtain the record; and
(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school, and shall automatically disclose all records of a juvenile’s case to that person.

(5) If the juvenile does not attend school at the time the juvenile’s case is pending, the person designated by the circuit court shall not transmit the juvenile’s records to any school. However, the person designated by the circuit court shall transmit the juvenile’s records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court shall not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist, and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge shall have discretion in determining whether to disclose the juvenile records, and shall consider whether the other state’s law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with the provisions of subdivision (7) of this subsection.
(7) The person designated by the circuit court shall transmit the juvenile’s records to the appropriate school official under cover of a letter emphasizing the confidentiality of such records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile’s records and cover letter.

(8) Juvenile records must be treated as absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile’s records shall be noted on the juvenile’s permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile’s psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile’s records are transmitted may disclose the contents of such records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile’s records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile’s records to the juvenile’s new school in the same manner as provided in
subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile’s school on the basis of a finding of probable cause, the circuit court shall not forward those records to the juvenile’s new school. However, this shall not affect records related to other prior or future offenses. If the juvenile has graduated or quit school, or will otherwise not be attending another school, the circuit court shall retain the juvenile’s records and handle them as otherwise provided in this article.

(10) Under no circumstances shall one school transmit a juvenile’s records to another school.

(11) Under no circumstances shall juvenile records be automatically transmitted to a college, university or other post-secondary school.

(12) No one shall suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, such person shall have the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties, in accordance with subsection (e) of this section.

(13) If a judge, magistrate or referee has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold
print that there has been no determination of delinquency and
that our legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school
psychologist or psychologists to receive the juvenile’s psycho-
logical test results and any mental health records. The psycholo-
gist designated shall review the juvenile’s psychological test
results and any mental health records, and, in the psychologist’s
professional judgment, may disclose to the principal of the
school that the juvenile attends and other school employees
who would have a need to know the psychological test results,
mental health records and any behavior that may trigger
violence or other disruptive behavior by the juvenile. Other
school employees includes, but is not limited to, any teacher
who teaches a class in which the subject juvenile is enrolled and
the regular driver of a school bus in which the subject juvenile
is regularly transported to or from school.

(c) Notwithstanding the provisions of subsection (a) of this
section, juvenile records may be disclosed, subject to the
following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdic-
tion of the circuit court pursuant to the provisions of subsection
(c) or (d), section ten of this article, the juvenile records shall be
open to public inspection.

(2) If a juvenile case is transferred to the criminal jurisdic-
tion of the circuit court pursuant to the provisions of subsection
(e), (f) or (g), section ten of this article, the juvenile records
shall be open to public inspection only if the juvenile fails to
file a timely appeal of the transfer order, or the Supreme Court
of Appeals refuses to hear or denies an appeal which has been
timely filed.

(3) If a juvenile is fourteen years of age or older and a court
has determined there is a probable cause to believe the juvenile
committed an offense set forth in subsection (g), section ten of this article, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of said chapter, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court exercising criminal jurisdiction over the juvenile which requests such records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile’s parents or legal guardian, or the juvenile’s counsel;

(D) The officials of a public institution to which the juvenile is committed if they require such records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only
220 upon the condition that information which would identify the
221 subject juvenile or the juvenile's family shall not be disclosed.

222 (d) Any records open to public inspection pursuant to the
223 provisions of this section are subject to the same requirements
224 governing the disclosure of adult criminal records.

225 (e) Any person who willfully violates this section is guilty
226 of a misdemeanor and, upon conviction thereof, shall be fined
227 not more than one thousand dollars, or confined in the county
228 or regional jail for not more than six months, or both fined and
229 confined, and shall be liable for damages in the amount of three
230 hundred dollars or actual damages, whichever is greater.

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CHAPTER 52

(Com. Sub. for H. B. 4649 — By Delegates Amores,
Fleischauer, Craig and Schadler)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a
of the code of West Virginia, 1931, as amended, all relating to
child welfare; providing for a child advocacy center participation
in multidisciplinary investigative teams; providing for uniform
comprehensive assessments of children; preference to in-state
placement; including in team, child, the juvenile's attorney,
appropriate school official, court-appointed special advocate
when available, and a representative from the licensed domestic
violence program serving the county, when appropriate and
available; requiring team preference of in-state placement;
requiring court preference of in-state placement; and requiring
that reasons for out-of-state placement be in order.
Be it enacted by the Legislature of West Virginia:

That §49-5D-2, §49-5D-3 and §49-5D-3a of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the department of health and human resources, a local law-enforcement officer employed by a law-enforcement agency in the county and, where appropriate to the particular case under consideration and available, a child advocacy center representative, and a representative from the licensed domestic violence program serving the county. The department of health and human resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor’s request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may
contribute to the team’s efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect, and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative 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 child. The team shall assure that all information received and developed in connection with the provisions of this article remains 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-3. Multidisciplinary treatment planning process.

(a)(1) 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 circum-
stances which justify taking the child immediately into custody
without a judicial proceeding. In developing an individualized
service plan for a child, the team shall utilize a uniform
comprehensive assessment of the child. The department shall
adopt a standard uniform comprehensive assessment instrument
or protocol to be used by treatment teams.

(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. If the team determines that an out-of-
home placement will best serve the needs of the child, the team
shall first consider placement at facilities or programs located
within the state. The team may only recommend placement in
an out-of-state facility if it concludes, after considering the best
interests and overall needs of the child, that there are no
available and suitable in-state facilities which can satisfactorily
meet the specific 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 child, the parent or parents of the
child, the child’s attorney, the guardian ad litem, if any, the
prosecuting attorney or his or her designee and where appropri-
ate to the particular case under consideration and available, a
court-appointed special advocate, an appropriate school official
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 coordi-
nate 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
69 requested in writing by the team as allowable by law or upon
70 receipt of a certified copy of the circuit court’s order directing
71 said agencies to release information in its possession relating to
72 the child. The team shall assure that all information received
73 and developed in connection with the provisions of this article
74 remain confidential. For purposes of this section, the term
75 “confidential” shall be construed in accordance with the
76 provisions of section one, article seven of this chapter.

§49-5D-3a. Recommendation of team to the court; hearing re­
quirement; required findings.

1 (a) In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child pursuant to
3 the provisions of section three of this article, the court shall
4 review the proposed service plan to determine if implementa-
5 tion of the plan is in the child’s best interests. If the
6 multidisciplinary team cannot agree on a plan or if the court
7 determines not to adopt the team’s recommendations, it shall,
8 upon motion or sua sponte, schedule and hold within ten days
9 of such determination, and prior to the entry of an order placing
10 the child in the custody of the department or in an out-of-home
11 setting, a hearing to consider evidence from the team as to its
12 rationale for the proposed service plan. If, after a hearing held
13 pursuant to the provisions of this section, the court does not
14 adopt the teams’s recommended service plan, it shall make
15 specific written findings as to why the team’s recommended
16 service plan was not adopted.

17 (b) In any case in which the court decides to order the child
18 placed in an out-of-state facility or program it shall set forth in
19 the order directing the placement the reasons why the child was
20 not placed in an in-state facility or program.
CHAPTER 53

(H. B. 4055 — By Delegate Staton)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8A-1, §49-8A-2, §49-8A-3 and §49-8A-4, all relating to the supervision and return of juvenile offenders, juvenile runaways and other juveniles; authorizing and directing the governor to execute an interstate compact for the supervision and return of juvenile offenders, juvenile runaways and other juveniles; purpose; definitions; creation of the interstate commission for juveniles; powers and duties; bylaws; immunity; defense and indemnification; promulgation of rules; dispute resolution; annual assessment on member states; state council for interstate juvenile supervision; effective date; withdrawal from compact; default of a compact state; fines; suspension; termination; severability; binding effect of compact; and appointment of compact administrator.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §49-8A-1, §49-8A-2, §49-8A-3 and §49-8A-4, all to read as follows:

ARTICLE 8A. THE INTERSTATE COMPACT FOR JUVENILES.

§49-8A-1. Execution of interstate compact for juveniles.

§49-8A-2. State council for interstate juvenile supervision.


§49-8A-4. Notification of the effective date of the interstate compact for juveniles.

§49-8A-1. Execution of interstate compact for juveniles.
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, and substantially as follows:

ARTICLE I. PURPOSE.

(a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 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, through means of joint and cooperative action among the compacting states:

(1) To ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) To ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) To return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
(4) To make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) To provide for the effective tracking and supervision of juveniles;

(6) To equitably allocate the costs, benefits and obligations of the compacting states;

(7) To establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(8) To ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) To establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) To establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(11) To monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) To coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
(13) To coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) 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 therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(b) "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 juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(c) "Compacting state" means any state which has enacted the enabling legislation for this compact.
“Commissioner” means the voting representative of each compacting state appointed pursuant to article III of this compact.

“Court” means any court having jurisdiction over delinquent, neglected, or dependent children.

(Deputy compact administrator” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

“Interstate commission” means the interstate commission for juveniles created by Article III of this compact.

“Juvenile” means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

1. Accused delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;

2. Adjudicated delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

3. Accused status offender – a person charged with an offense that would not be a criminal offense if committed by an adult;

4. Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
(i) Nonoffender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(j) “Noncompacting state” means any state which has not enacted the enabling legislation for this compact.

(k) “Probation or parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(l) “Rule” means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(m) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

(a) The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, 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 appointed by the appropriate appointing authority in each
state pursuant to the rules and requirements of each compacting
state and in consultation with the state council for interstate
juvenile supervision created hereunder. The commissioner shall
be the compact administrator, deputy compact administrator or
designee from that state who shall serve on the interstate
commission in such capacity under or pursuant to the applicable
law of the compacting state.

(c) 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,
interstate compact for adult offender supervision, interstate
compact for the placement of children, juvenile justice and
juvenile corrections officials, 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, including members of other national
organizations, in such numbers as shall be determined by the
commission.

(d) Each compacting state represented at any meeting of the
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.

(e) The commission shall meet at least once each calendar
year. The chairperson may call additional meetings and, upon
the request of a simple majority of the compacting states, shall
call additional meetings. Public notice shall be given of all
meetings and meetings shall be open to the public.
The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as 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 amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the interstate commission or set forth in the bylaws.

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 and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

The interstate commission's bylaws shall 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.
(i) 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 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 investigative 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 person or entity for the purpose of regulation or supervision of such person or entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
(9) Specifically relate to the interstate commission’s issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to the provisions of subsection (i) above, the interstate commission’s legal counsel shall publicly certify that, in the legal counsel’s 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 therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compact-
ing states to the extent and in the manner provided in this compact.

(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

(d) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices which shall be located within one or more of the compacting states.

(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, hire or contract for services of personnel.

(h) 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.

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications.

(j) To establish the interstate commission’s personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.
(k) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(l) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

(m) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

(n) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(o) To sue and be sued.

(p) To adopt a seal and bylaws governing the management and operation of the interstate commission.

(q) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(r) 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.

(s) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(t) To establish uniform standards of the reporting, collecting and exchanging of data.
(u) The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

(a) The interstate commission shall, by a majority of the members present and voting, within twelve months after 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 to;

(3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

(4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers of the interstate commission;

(6) Providing a mechanism for concluding the operations of the interstate commission and the 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 "start-up" rules for initial administration of the compact; and
23 (8) Establishing standards and procedures for compliance
24 and technical assistance in carrying out the compact.

Section B. Officers and Staff.

1 (b) (1) The interstate commission shall, by a majority of the
2 members, elect annually from among its members a chairperson
3 and a vice chairperson, each of whom shall have such authority
4 and duties as may be specified in the bylaws. The chairperson
5 or, in the chairperson’s absence or disability, the
6 vice-chairperson shall preside at all meetings of the interstate
7 commission. The officers so elected shall serve without
8 compensation or remuneration from the interstate commission;
9 provided that, subject to the availability of budgeted funds, the
10 officers shall be reimbursed for any ordinary and necessary
11 costs and expenses incurred by them in the performance of their
12 duties and responsibilities as officers of the interstate commis-
13
14 (2) The interstate commission shall, through its executive
15 committee, appoint or retain an executive director for such
16 period, upon such terms and conditions and for such compensa-
17 tion as the interstate commission may deem appropriate. The
18 executive director shall serve as secretary to the interstate
19 commission, but shall not be a member and shall hire and
20 supervise such other staff as may be authorized by the interstate
21 commission.

Section C. Qualified Immunity, Defense and Indemnification.

1 (c)(1) The commission’s executive director and employees
2 shall be immune from suit and liability, either personally or in
3 their official capacity, for any claim for damage to or loss of
4 property or personal injury or other civil liability caused or
5 arising out of or relating to any actual or alleged act, error, or
6 omission that occurred, or that such person had a reasonable
7 basis for believing occurred within the scope of commission
employment, duties, or responsibilities; provided, that any such
person shall not be protected from suit or liability for any
damage, loss, injury, or liability caused by the intentional or
willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or
agent of a commissioner, acting within the scope of such
person’s employment or duties for acts, errors, or omissions
occurring within such person’s state may not exceed the limits
of liability set forth under the constitution and laws of that state
for state officials, employees, and agents. Nothing in this
subsection shall be construed to protect any such person from
suit or liability for any damage, loss, injury, or liability caused
by the intentional or willful and wanton misconduct of any such
person.

(3) The interstate commission shall defend the executive
director or the employees or representatives of the interstate
commission and, subject to the approval of the attorney general
of the state represented by any commissioner of a compacting
state, shall defend such commissioner or the commissioner’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 commis-
sion employment, duties or responsibilities, or that the defen-
dant had a reasonable basis for believing occurred within the
scope of interstate commission employment, duties, or respon-
sibilities, provided that the actual or alleged act, error, or
omission did not result from intentional or willful and wanton
misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the
commissioner of a compacting state, or the commissioner’s
representatives 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 commis-
sion employment, duties, or responsibilities, provided that the
actual or alleged act, error, or omission did not result from
intentional or willful and wanton misconduct on the part of such
persons.

ARTICLE VI. RULE-MAKING FUNCTIONS OF THE INTERSTATE COM-
MISSION.

(a) The interstate commission shall promulgate and publish
rules in order to effectively and efficiently achieve the purposes
of the compact.

(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 "Model State Administrative Procedures Act,"
such other administrative procedures act, as the interstate
commission deems appropriate consistent with due process
requirements under the U.S. Constitution as now or hereafter
interpreted by the U.S. Supreme Court. All rules and amend-
ments shall become binding as of the date specified, as pub-
lished with the final version of the rule as approved by the
commission.

(c) When promulgating a rule, the interstate commission
shall, at a minimum:

(1) Publish the proposed rule's entire text stating the
reason(s) for that proposed rule;
(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) Allow, not later than sixty days after a rule is promulgated, any interested person to 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 in the rule making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the "Interstate Compact on Juveniles" superceded by this article shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that a state-of-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, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

(a)(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact 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.

(3) The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules.

(4) 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, it 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 all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII. FINANCE.

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization 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 each compacting state and the volume of interstate movement of juveniles 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 to 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 IX. THE STATE COUNCIL.

Each member state shall create a state council for interstate juvenile supervision. While each 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 the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state’s participation in interstate commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,
American Samoa, and the Northern Marianas Islands 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 four, 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 shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The interstate commission may propose amendments to the compact 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 XI. 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 by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.
8 (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.

14 (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.

18 (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. Technical Assistance, Fines, Suspension, Termination and Default.

1 (b)(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(A) Remedial training and technical assistance as directed by the interstate commission;

(B) Alternative dispute resolution;

(C) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

(D) Suspension or termination of membership in the compact. Suspension or termination of membership in the compact shall be imposed only after all other reasonable means
of securing compliance under the bylaws and rules have been
exhausted and the interstate commission has therefore deter-
mined that the offending state is in default. Immediate notice of
suspension shall be given by the interstate commission to the
governor, the chief justice or the 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 this compact, the bylaws, or
duly promulgated rules and any other grounds designated in
commission bylaws and rules.

(3) The interstate commission shall immediately notify the
defaulting state in writing of the penalty imposed by the
interstate commission and of the default pending a cure of the
default.

(4) The 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 commission, the defaulting state
shall be terminated 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 termination.

(5) Within sixty days of the effective date of termination of
a defaulting state, the commission shall notify the governor, the
chief justice or chief judicial officer, the majority and minority
leaders of the defaulting state’s legislature, and the state council
of such termination.

(6) 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.

(7) The interstate commission shall not bear any costs
relating to the defaulting state unless otherwise mutually agreed
upon in writing between the interstate commission and the
defaulting state.

(8) 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.

Section C. Judicial Enforcement.

(c) 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 state, 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 concluded and any surplus funds shall be distributed in
accordance with the bylaws.
ARTICLE XII. SEVERABILITY AND CONSTRUCTION.

(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 construed to effectuate its purposes.

ARTICLE XIII. 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 other than state constitutions and other interstate compacts 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 commission 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 compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§49-8A-2. State council for interstate juvenile supervision.

(a) Upon the effective date of the interstate compact for juveniles, there shall be created a state council for interstate juvenile 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 juvenile corrections, juvenile placement or juvenile services, and one of whom must be a representative of a victims' group.

(b) Within ninety days of the effective date of this compact, 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.

§49-SA-3. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for juveniles, 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 juveniles 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 to act as the juvenile compact administrator for the interstate compact on juveniles, pursuant to section three,
article eight 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 designated a commissioner to vote on behalf of the state of West Virginia at the interstate commission, the individual or administrator who has been designated to act as the juvenile compact administrator for the interstate compact on juveniles, pursuant to section three, article eight of this chapter, shall function as the acting commissioner for the state of West Virginia before the state council has met and designated a commissioner to vote on behalf of the state at the interstate compact.

§49-8A-4. Notification of the effective date of the interstate compact for juveniles.

Within ten days of the date that the thirty-fifth state adopts legislation approving this compact, the appointed or designated juvenile compact administrator under section three, article eight of this chapter shall advise the governor, the chief justice of the Supreme Court of Appeals of West Virginia, the speaker of the House of Delegates and the president of the Senate of the effective date of this compact.

CHAPTER 54

(Com. Sub. for H. B. 4655 — By Delegates Michael, Cann, Foster, Leach, Stalnaker, Boggs and Proudfoot)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
providing that submission of an application for benefits through the children’s health insurance agency constitutes an assignment of rights to the agency to recover benefits paid by the agency; requiring that a jury is not to be informed of the interest of the agency; providing for the deduction of attorney fees from the amount paid to the agency; requiring a person with notice of the interests of the agency to withhold the amount of settlement proceeds necessary to reimburse the agency; and, imposing liability on persons who fail to reimburse the agency.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-10, to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-10. Assignment of rights; right of subrogation by children’s health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) Submission of an application to the children’s health insurance agency for medical assistance is, as a matter of law, an assignment of the right of the applicant or legal representative thereof, to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of children’s health insurance agency services paid for by the children’s health insurance agency program. This assignment of rights does not extend to medicare benefits. At the time the application is made, the children’s health insurance agency shall include a statement along with the application that explains that the applicant has assigned his or her rights and the legal implications of making an assignment as provided in this section.
If medical assistance is paid or will be paid to a provider of medical care on behalf of a recipient of medical assistance because of any sickness, injury, disease or disability, and another person is legally liable for the expense, either pursuant to contract, negligence or otherwise, the children’s health insurance agency shall have a right to recover full reimbursement from any award or settlement for the medical assistance from the other person, or from the recipient of the assistance if he or she has been reimbursed by the other person. The children’s health insurance agency shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the sickness, injury, disease or disability for which the recipient has received damages. When an action or claim is brought by a medical assistance recipient or by someone on his or her behalf against a third party who may be liable for the injury, disease, disability or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the children’s health insurance agency for reimbursement of an amount sufficient to reimburse the children’s health insurance agency the full amount of benefits paid on behalf of the recipient under the medical assistance program for the injury, disease, disability or death of the medical assistance recipient. The claim of the children’s health insurance agency assigned by the recipient may not exceed the amount of medical expenses for the injury, disease, disability or death of the recipient paid by the children’s health insurance agency on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to the subrogation. Any settlement, compromise, judgment or award that excludes or limits the cost of medical services or care does not preclude the children’s health insurance agency from enforcing its rights under this
section. The children's health insurance agency may compro-
mise, settle and execute a release of any claim, in whole or in part.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by them against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses, even though the person received medical assistance in the payment of the medical expenses, in whole or in part.

If the action be tried by a jury, the jury is not to be informed as to the interest of the children's health insurance agency, if any, and the fact is not to be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical assistance given be withheld and paid over to the children's health insurance agency. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the children's health insurance agency there shall be deducted the attorney fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the children's health insurance agency shall bear the pro rata portion of the attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he or she may have against another person and delivering to the children's health insurance agency, from the proceeds of the settlement, the sums received by him or her from the children's health insurance agency or paid by the children's health insurance agency for his or her medical assistance. If the other person is aware of or has been informed of the interest of the children's health insurance agency in the matter, it shall be the
duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the children’s health insurance agency to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease or disability, in which the children’s health insurance agency has interest, shall be satisfied without first giving the children’s health insurance agency notice and reasonable opportunity to establish its interest. The children’s health insurance agency shall have sixty days from receipt of written notice to advise the recipient or his or her representative in writing of the children’s health insurance agency’s desire to establish its interest through the assignment. If no written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the children’s health insurance agency the portion of the recovery proceeds less the children’s health insurance agency’s share of attorney’s fees and costs expended in the matter. In the event of less than full recovery the recipient and the children’s health insurance agency shall agree as to the amount to be paid to the children’s health insurance agency for its claim. If there is no recovery, the children’s health insurance agency shall under no circumstances be liable for any costs or attorney’s fees expended in the matter. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the children’s health insurance agency, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award, without the written approval of the children’s health insurance agency, that person shall be liable to the children’s health insurance agency for any amount that, as a result of the disposition of the funds, is not recoverable by the children’s health insurance agency. In the event that a controversy arises concerning the subrogation claims by the children’s health insurance agency, an attorney shall interplead, pursuant to rule
twenty-two of the rules of civil procedure, the portion of the recipient’s settlement that will satisfy the children’s health insurance agency exclusive of attorney’s fees and costs regardless of any contractual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the children’s health insurance agency to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover children’s health insurance agency care expenditures paid for by the children’s health insurance agency program.

CHAPTER 55

(Com. Sub. for H. B. 4517 — By Delegates Campbell, Cann, Susman, Proudfoot, Stalnaker, Evans and Hall)

[Passed March 11, 2004; 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 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) *Claims against the Division of Corrections:*

(TO BE PAID FROM GENERAL REVENUE FUND)

| (1) Appalachian Regional Health Care, Inc.       | $668.00 |
| (2) Ashton Medical Associates, Inc.              | $110.00 |
| (3) Associated Radiologists, Inc.                | $1,171.00 |
| (4) Charleston Area Medical Center, Inc.        | $175,157.09 |
| (5) Charleston Psychiatric Group, Inc.          | $2,804.00 |
| (6) Clarksburg Anesthesia Associates            | $2,590.00 |
| (7) Correctional Medical Services                | $810,063.25 |
| (8) Davis Memorial Hospital                      | $27,834.65 |
| (9) Federal Bureau of Prisons                    | $9,583.77 |
| (10) Flat Iron Drug Store, Inc.                  | $230.49 |
### CHAPTER 56

(S. B. 536 — By Senators Love, Sharpe, Edgell, Minear, Minard and Ross)

[Passed March 13, 2004; 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:*
§1. Finding and declaring certain claims against the adjutant general; air quality board; alcohol beverage control administration; appraisers licensing board; attorney general; auditor’s office; board of accountancy; board of embalmers and funeral directors; board of landscape architects; board of examiners for licensed practical nurses; board of optometry; board of pharmacy; board of physical therapy; board of professional engineers; board of psychologists; board of radiologic technologists; board of registered nurses; board of respiratory care; board of risk and insurance management; board of social work examiners; board of veterinary medicine; bureau of employment programs; bureau of senior services; consolidated public retirement board; department of administration; department of administration - unclaimed property; department of agriculture; department of education; department of health and human resources; department of tax and revenue; development office; division of banking; division of corrections; division of criminal justice services; division of culture and history; division of environmental protection; division of finance; division of forestry; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; division of personnel; division of protective services; division of rehabilitation services; division of tourism; education and state employees grievance board; educational broadcasting headquarters; environmental quality board; general services division; geological and economic survey; governor’s office; governor’s office of technology; health care authority; higher education policy commission; hospital finance authority; human rights commission; human services; information services and communications division; insurance commission; joint committee on government
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Adjutant General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. $232.04

(TO BE PAID FROM NON GENERAL REVENUE FUND)
(2) Verizon West Virginia, Inc. ........... $5,797.53

(b) Claim against the Air Quality Board:

(1) Verizon West Virginia, Inc. ........... $4.40

(c) Claim against the Alcohol Beverage Control Administration:

(1) Verizon West Virginia, Inc. ........... $2,485.42

(d) Claim against the Appraisers Licensing Board:

(1) Verizon West Virginia, Inc. ........... $267.58

(e) Claim against the Attorney General:

(1) Verizon West Virginia, Inc. ........... $7,118.13

(f) Claim against the Auditor’s Office:

(1) Verizon West Virginia, Inc. ........... $4,436.04

(g) Claim against the Board of Accountancy:

(1) Verizon West Virginia, Inc. ........... $53.69
(h) Claim against the Board of Embalmers and Funeral Directors:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $90.76

(i) Claim against the Board of Landscape Architects:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $194.62

(j) Claim against the Board of Licensed Practical Nurses:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $176.67

(k) Claim against the Board of Optometry:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $249.95

(l) Claim against the Board of Pharmacy:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $432.86

(m) Claim against the Board of Physical Therapy:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $246.03

(n) Claim against the Board of Professional Engineers:
56 (TO BE PAID FROM NON GENERAL REVENUE FUND)
57 (1) Verizon West Virginia, Inc. ............. $87.39
58 (o) Claim against the Board of Psychologists:
59 (TO BE PAID FROM NON GENERAL REVENUE FUND)
60 (1) Verizon West Virginia, Inc. ............. $100.44
61 (p) Claim against the Board of Radiologic Technologists:
62 (TO BE PAID FROM NON GENERAL REVENUE FUND)
63 (1) Verizon West Virginia, Inc. ............. $54.76
64 (q) Claims against the Board of Registered Nurses:
65 (TO BE PAID FROM NON GENERAL REVENUE FUND)
66 (1) Amy H. Carte ...................... $3,300.00
67 (2) Verizon West Virginia, Inc. ............. $466.04
68 (r) Claim against the Board of Respiratory Care:
69 (TO BE PAID FROM NON GENERAL REVENUE FUND)
70 (1) Verizon West Virginia, Inc. ............. $70.94
71 (s) Claim against the Board of Risk and Insurance Management:
73 (TO BE PAID FROM NON GENERAL REVENUE FUND)
74 (1) Verizon West Virginia, Inc. ............. $891.17
75 (t) Claim against the Board of Social Work Examiners:
76 (TO BE PAID FROM NON GENERAL REVENUE FUND)
(1) Verizon West Virginia, Inc. .......... $408.44

(u) Claim against the Board of Veterinary Medicine:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $59.22

(v) Claim against the Bureau of Employment Programs:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $54,366.86

(w) Claim against the Bureau of Senior Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $2,077.92

(x) Claim against the Consolidated Public Retirement Board:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $3,362.33

(y) Claim against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $652.70

(z) Claim against the Department of Administration - Unclaimed Agencies:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $21,803.38
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<tr>
<th>Page</th>
<th>Description</th>
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<td>98</td>
<td>(aa) Claims against the Department of Agriculture:</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>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
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<td>(bb) Claims against the Department of Education:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>105</td>
<td>(1) Manpower</td>
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<td>(2) Verizon West Virginia, Inc.</td>
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<td>107</td>
<td>(3) Xerox Capital Services, LLC</td>
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<td>108</td>
<td>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
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<td>(4) Verizon West Virginia, Inc.</td>
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<td>(cc) Claims against the Department of Health and Human Resources</td>
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<td>112</td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>113</td>
<td>(1) Pomeroy IT Solutions, Inc.</td>
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<td>(2) Verizon West Virginia, Inc.</td>
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<td>(dd) Claims against the Department of Tax &amp; Revenue:</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>119</td>
<td>(1) Verizon West Virginia, Inc.</td>
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(TO BE PAID FROM NON GENERAL REVENUE FUND)

(2) Verizon West Virginia, Inc. ........ $14,095.22

(ee) Claim against the Development Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $12,865.93

(ff) Claim against the Division of Banking:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $970.70

(gg) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Barbour County Commission ........ $7,950.00
(2) City of Elkins .......................... $225.00
(3) David Steven Myers .................. $12.00
(4) William J. Toncray ................... $40.00
(5) Verizon West Virginia, Inc. ........ $22,164.16
(6) Wayne County Commission .......... $5,525.00
(7) WV Regional Jail and Correctional
    Facility Authority ................... $1,923,652.55

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(8) Verizon West Virginia, Inc. ........ $1,436.75

(hh) Claims against the Division of Criminal Justice
    Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $14.88
Claim against the Division of Culture and History:

Claim against the Division of Environmental Protection:

Claim against the Division of Finance:

Claim against the Division of Forestry:

Claims against the Division of Highways:
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<td>Marian Ashley</td>
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<td>Tony G. Bazzie</td>
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<td>168</td>
<td>Sandra Sue Beard</td>
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<td>Alan and Stephanie Beddow</td>
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<td>John and Mary Ann Depto</td>
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<td>Sondra Frazier</td>
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<td>Levonia Terrell</td>
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<td>214</td>
<td>Verizon West Virginia, Inc.</td>
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<td>215</td>
<td>Kevin O. and Katrina L. West</td>
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<td>216</td>
<td>Kristopher Wiesner</td>
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<td>Gary L. and Diane L. Wilson</td>
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<td>218</td>
<td>Jerry E. Workman</td>
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(nn) Claims against the Division of Juvenile Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

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<td>222</td>
<td>Verizon West Virginia, Inc.</td>
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(oo) Claims against the Division of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

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(pp) Claims against the Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

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<td>228</td>
<td>Scott Alan Renner</td>
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(2) Verizon West Virginia, Inc. ........ $17,565.20

(qq) Claim against the Division of Natural Resources:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $30,936.18

(rr) Claim against the Division of Personnel:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $2,173.87

(ss) Claim against the Division of Protective Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $109.77

(tt) Claim against Division of Rehabilitation Services:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) West Virginia Association of Rehabilitation Facilities ........ $4,053.95

(2) Verizon West Virginia, Inc. ........ $32,873.85

(uu) Claim against the Division of Tourism:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $4,134.82

(vv) Claim against the Education and State Employees Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)
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<td>(ww) Claim against Educational Broadcasting Headquarters:</td>
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<td>(xx) Claim against the Environmental Quality Board:</td>
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<td>(zz) Claim against Geological and Economic Survey:</td>
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<td>263</td>
<td>(aaa) Claims against the Governor's Office:</td>
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<td>267</td>
<td>(2) Verizon West Virginia, Inc.</td>
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<td>268</td>
<td>(bbb) Claim against the Governor's Office of Technology:</td>
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(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) American Society for Quality ............ $775.00

(c) Claim against Health Care Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ....... $1,168.61

(d) Claims against the Higher Education Policy Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Amanda Trygar .................... $150.00
(2) Verizon West Virginia, Inc. ...... $24,886.55

(e) Claim against the Hospital Finance Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ........ $25.95

(f) Claim against the Human Rights Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ....... $1,593.10

(g) Claim against Human Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ....... $122,043.28

(h) Claim against Information Services and Communications Division:
(TO BE PAID FROM NON GENERAL REVENUE FUND)

(i) Claim against the Insurance Commission:

(1) Verizon West Virginia, Inc. ............ $2,735.58

(iii) Claim against Joint Committee on Government and Finance:

(1) Verizon West Virginia, Inc. ............ $1,974.40

(jjj) Claim against Joint Committee on Government and Finance:

(1) Verizon West Virginia, Inc. ............ $478.88

(kkk) Claim against the Library Commission:

(1) Verizon West Virginia, Inc. ............ $478.88

(lll) Claim against the Lottery Commission:

(1) Verizon West Virginia, Inc. ............ $5,425.13

(mmm) Claim against the Massage Therapists Board:

(1) Verizon West Virginia, Inc. ............ $6,486.97

(nnn) Claim against Miners Health Safety & Training:

(1) Verizon West Virginia, Inc. ............ $105.35

(1) Verizon West Virginia, Inc. ............ $105.35

(1) Verizon West Virginia, Inc. ............ $6,486.97

(1) Verizon West Virginia, Inc. ............ $105.35

(1) Verizon West Virginia, Inc. ............ $105.35
(1) Verizon West Virginia, Inc. .......... $2,837.99

Claim against the Municipal Bond Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $76.33

Claim against the Office of Emergency Services:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $1,158.04

Claim against the Prosecuting Attorneys Institute:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $1,211.37

Claim against Public Defender Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $3,342.39

Claim against the Public Employees Insurance Agency:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. .......... $7,142.17

Claim against the Public Service Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Carl Sanders ....................... $771.40
(2) Wendell Sweetser ................ $4,950.00
(3) Verizon West Virginia, Inc. ........ $11,662.80
(uuu) Claim against Public Transit:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

1. Verizon West Virginia, Inc. .......... $561.53

(vvv) Claim against the Racing Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

1. Verizon West Virginia, Inc. .......... $871.37

(www) Claim against the Real Estate Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

1. Verizon West Virginia, Inc. .......... $371.79

(xxx) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

1. Grant Rogers .......................... $109.00
2. Stephen A. Smyth ..................... $50.00
3. Verizon West Virginia, Inc. ....... $8,103.41

(yyy) Claim against the Secretary of State:

(TO BE PAID FROM GENERAL REVENUE FUND)


(zzz) Claim against the Solid Waste Management Board:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

1. Verizon West Virginia, Inc. .......... $8,051.01

(aaaa) Claim against the State Fire Commission:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Alltel ............................ $507.12
(2) Goodyear Tire and Rubber Company ... $438.54
(3) Verizon West Virginia, Inc. ............ $3,364.10

Claim against the State Rail Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Garrett B. Kuykendall, Jr. ............ $4,000.00

Claim against the Supreme Court:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............ $6,999.95

Claim against Surplus Property:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............ $746.59

Claim against Travel Management:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............ $64.02

Claim against the Treasurer’s Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............ $1,016.83

Claim against Travel Management:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(2) Verizon West Virginia, Inc. ............ $3,445.94
Claim against Veterans' Affairs:

1. Verizon West Virginia, Inc. $2,320.52

Claim against Veterans' Home:

1. Verizon West Virginia, Inc. $344.87

Claim against the Water Development Authority:

1. Verizon West Virginia, Inc. $847.97

Claim against Workers' Compensation Commission:

1. Peggy M. Nelson $500.00
2. Tamaran, Inc. $91,442.91
3. Verizon West Virginia, Inc. $65,105.54
4. WV School Service Personnel Association $603.95

Claim against the WV Ethics Commission:

1. Verizon West Virginia, Inc. $320.07

Claim against the WV Network:
352    CODE REPEALED

399    (1) Verizon West Virginia, Inc. ............ $269.98

400    (mmmm) Claim against the WV Parole Board:

401    (TO BE PAID FROM GENERAL REVENUE FUND)

402    (1) Verizon West Virginia, Inc. ............ $835.18

403    (nnnn) Claim against the WV State Police:

404    (TO BE PAID FROM GENERAL REVENUE FUND)

405    (1) Verizon West Virginia, Inc. ............ $37,542.71

406    The Legislature finds that the above moral obligations and

407    the appropriations made in satisfaction thereof shall be the full

408    compensation for all claimants, and that prior to the payments to

409    any claimant provided for in this bill, the court of claims shall

410    receive a release from said claimant releasing any and all claims

411    for moral obligations arising from the matters considered by the

412    Legislature in the finding of the moral obligations and the

413    making of the appropriations for said claimant. The court of

414    claims shall deliver all releases obtained from claimants to the

415    department against which the claim was allowed.

CHAPTER 57

(H. B. 4403—By Delegates Amores, Palumbo and Faircloth)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §7-7-10 of the code of West Virginia, 1931, as
amended, relating to the requirement of affidavits acknowledging
receipt of compensation.
Be it enacted by the Legislature of West Virginia:

§1. Repeal of section requiring affidavits acknowledging receipt of compensation.

1 Section ten, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 58
(S. B. 722 — By Senator Oliverio)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §29-5A-11 of the code of West Virginia, 1931, as amended, relating to prohibiting giving away, selling or offering for sale intoxicating liquor in any building, or part thereof, in which boxing or sparring exhibitions are being conducted.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§1. Repeal of section relating to prohibiting giving away, selling or offering for sale intoxicating liquor in any building, or part thereof, in which boxing or sparring exhibitions are being conducted.

1 Section eleven, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
AN ACT to repeal §29-22-22 of the code of West Virginia, 1931, as amended, relating to exemption of lottery prizes from taxation.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of exemption of lottery prizes from taxation.

Section twenty-two, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

AN ACT to repeal §33-16-3c of the code of West Virginia, 1931, as amended, relating to mental health parity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.
§33-16-3c. Repeal of section relating to coverage for alcoholic treatment.

Section three-c, article sixteen, chapter thirty-three of the code of West Virginia, as amended, is hereby repealed.

CHAPTER 61

(S. B. 319 — By Senators Love, Hunter, White, McKenzie and Rowe)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §25-4-6 of the code of West Virginia, 1931, as amended, relating to young adult offenders found unfit to remain at a center for young adult offenders; specifying entitlement to a hearing before the committing court; providing standard of review; and allowing reliance on record established at the center under specified circumstances.

Be it enacted by the Legislature of West Virginia:

That §25-4-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

The judge of any court with original criminal jurisdiction may suspend the imposition of sentence of any young adult, as defined in this section, convicted of or pleading guilty to a felony offense, other than an offense punishable by life impris-
onment, including, but not limited to, felony violations of the provisions of chapter seventeen-c of this code, who has attained his or her eighteenth birthday but has not reached his or her twenty-third birthday at the time of the sentencing by the court and commit the young adult to the custody of the West Virginia commissioner of corrections to be assigned to a center. Young adult offenders who have previously been committed to a young adult offender center are not eligible for commitment to this program. The period of confinement in the center shall be for a period of not less than six months or longer to successfully complete the program requirements set by the warden, but in any event the period of confinement may not exceed two years. The court shall order a presentence investigation to be conducted and provide the warden with a copy of the presentence investigation report, along with the commitment order.

If, in the opinion of the warden, the young adult offender proves to be an unfit person to remain in the center, the offender shall be returned to the committing court to be dealt with further according to law. The offender is entitled to a hearing before the committing court to review the warden’s determination. The standard for review is whether the warden, considering the offender’s overall record at the center and the offender’s compliance with the center’s rules, regulations, programs and services, abused his or her discretion in determining that the offender is an unfit person to remain in the center. At the hearing before the committing court, the state need not offer independent proof of the offender’s disciplinary infractions contained in the record of the center, when opportunity for an administrative hearing on those infractions was previously made available at the institution. In the event that the court upholds the warden’s determination, the court may sentence the offender for the crime for which the offender was convicted. In his or her discretion, the judge may allow the defendant credit on the sentence for time the offender spent in the center.
A young adult offender shall be returned to the jurisdiction of the court which originally committed the offender when, in the opinion of the warden, the young adult offender has satisfactorily completed the center training program. The offender is then eligible for probation for the offense with which the offender is charged and the judge of the court shall immediately place the offender on probation. In the event the offender's probation is subsequently revoked, the judge shall impose the sentence the young adult offender would have originally received had the offender not been committed to the center and subsequently placed on probation. The court shall, however, give the offender credit on his or her sentence for the time spent in the center.

CHAPTER 62

(Com. Sub. for S. B. 533 — By Senator Kessler)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §28-7-4, relating to authorizing the division of corrections to charge a fee of up to one hundred dollars to adult offenders applying for transfer under the interstate compact for the supervision of adult offenders; setting up a special revenue account; and providing for expenditure of moneys.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §28-7-4, to read as follows:
ARTICLE 7. INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS.

§28-7-4. Transfer application fee.

On and after the first day of July, two thousand four, the division of corrections may charge an application fee set by the division, not to exceed one hundred dollars, to adult offenders applying for transfer out-of-state under the interstate compact for the supervision of adult offenders. There is created a special revenue account in the state treasury designated the “Interstate Compact for Adult Offenders Fund”. The application fee shall be deposited in this account and expended to offset the cost of operating the interstate compact. All funds not expended at year-end may be retained and carried forward by the division and used by the division for the same purpose.

CHAPTER 63

(S. B. 316 — By Senators Love, Hunter, White and McKenzie)

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §31-20-10 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-20-10a, all relating to regional jail and correctional facility authority funds; providing statutory procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority; and outlining the allocation of costs for housing inmates.

Be it enacted by the Legislature of West Virginia:
That §31-20-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §31-20-10a, all to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

§31-20-10. Regional jail and correctional facility authority funds.

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

§31-20-10. Regional jail and correctional facility authority funds.

(a) The regional jail and correctional facility authority may create special funds in the state treasury to identify various revenue sources and payment of specific obligations. These funds may be used for purposes that include, but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and the individual operations accounts of facilities operated by the authority. The authority may create other separate accounts within these funds that it determines are necessary for the efficient operation of the authority.

(b) Revenues deposited into these funds shall be used to make payments of interest and shall be pledged as security for bonds, security interests or notes issued or lease-purchase obligations entered into with another state entity by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in these funds is in excess of the immediate requirements of this article, it may request that the excess be invested until needed. In this case, the excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned
on any money invested pursuant to this section shall be credited to these funds.

(d) If the authority determines that moneys held in these funds are in excess of the amount needed to carry out the purposes of this article, it shall take any action that is necessary to release the excess and transfer it to the general revenue fund of the state treasury.

(e) These funds consist of the following:

(1) Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion in these funds;

(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in these funds.

(f) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within these funds and expended for the purpose of construction, renovation and repair of correctional facilities, regional jails and juvenile detention and correctional facilities for which need has been determined by the authority;
(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness, including lease-purchase obligations entered into by the authority with another state entity or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of regional jails that are constructed pursuant to the provisions of this article and shall expend those amounts for that purpose. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from those sources shall be in proportion to the percentage the amount contributed to these funds by the counties in each region bears to the total amount received by these funds from those sources;

(5) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred at the regional jail facility at which each inmate was incarcerated; and

(6) Any amounts deposited in these funds from other sources permitted by this article shall be expended in the
respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code and as established in section ten-a of this article to cover the costs of operating the regional jail facilities of this state to maintain each inmate. The per diem costs for incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities: Provided, That each regional jail facility operating in this state shall keep a record of the date and time that an inmate is incarcerated and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.
§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

(a) This section applies to the regional jail and correctional facility authority, counties, municipalities, the division of corrections, the United States marshal service, the United States bureau of prisons and any other entity by whose authority inmates are incarcerated and maintained in facilities operated by the authority.

(b) (1) The authority shall develop and approve a schedule of anticipated operational expenditures for each regional jail. The schedules shall include funds for personal services and fringe benefits for personnel necessary to the operation of the facilities, as well as allocations of funds for food, clothing, utilities, supplies, transportation and all other costs necessary to operate and maintain the facilities. The operational expenditure schedule shall include all costs, both direct and indirect, for operating and maintaining the regional jail. The authority shall develop and approve an operational expenditure schedule for each regional jail on an annual basis, consistent with the state fiscal year.

(2) If the actual operational costs exceed the approved schedule of operational expenditures by more than ten percent in a line item, the authority’s executive director shall add a temporary surcharge to the cost per inmate day in an amount sufficient to cover the actual expenditures.

(c) The county is responsible for costs incurred by the authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the commissioner of corrections.

(d) The county is responsible for the costs incurred by the authority for housing and maintaining inmates who, prior to
sentencing, are awaiting transportation to a state correctional
category for a sixty-day evaluation period as provided in section
seven, article twelve, chapter sixty-two of this code.

(e) The division of corrections is responsible for the costs
incurred by the authority for housing and maintaining inmates
who have been sentenced to the custody of the division of
corrections beginning the calendar day following the day the
commitment order was entered into the court record. The
circuit clerk of the county from which the commitment order
has been entered shall immediately transmit by facsimile
machine an advance copy of the certified commitment order to
the division of corrections and to the regional jail in which the
inmate is confined.

(f) The division of corrections is responsible for the costs
incurred by the authority for housing and maintaining inmates
who have been held on a parole violation warrant.

(g) The division of corrections is responsible for the costs
incurred by the authority for housing and maintaining inmates
who have been returned to a regional jail under court order,
except that the county from which the inmate was charged is
responsible for the per diem costs in the event that a court of
competent jurisdiction sets aside or vacates the order of
commitment to the division of corrections, from the date of the
order or the return of the inmate to a regional jail, whichever is
later.

(h) The costs incurred by the authority for housing and
maintaining inmates who are being held as fugitives from
justice from another jurisdiction shall be billed to the fugitive’s
demanding jurisdiction, except the costs incurred by the
authority for housing and maintaining any person who is
arrested and confined in one of the authority’s facilities on the
basis of the commission of a new crime shall be billed to the
arresting county until the pending West Virginia charges have been properly resolved.

(i) Any other entity or jurisdiction, unless otherwise stipulated in this section, is responsible for any and all costs associated with housing its inmates in a facility operated by the authority.

CHAPTER 64

(S. B. 482 — By Senators Love, Minard, Kessler, Rowe, Fanning, Jenkins, Ross, McKenzie, Hunter, Smith, Snyder and Edgell)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §49-5E-5a of the code of West Virginia, 1931, as amended, relating to reclassifying juvenile detention and corrections facility employees as classified service rather than classified-exempt service.

Be it enacted by the Legislature of West Virginia:

That §49-5E-5a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the division, when employing any persons to complete the approved staffing plan of any of its juvenile detention or corrections facilities, shall employ any person otherwise
qualified who applies for a position at the juvenile detention or corrections facility who was also employed in good standing at a county or local jail facility, at the time of its closing, that was closed due to the completion of a regional jail.

(b) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the division of personnel, created under section five, article six, chapter twenty-nine of this code; all such employees shall also be covered by the policies and procedures of the education and state employees grievance board, created under section five, article six-a, chapter twenty-nine of this code and the classified service protection policies of the division of personnel.

CHAPTER 65

(S. B. 317 — By Senators Love, Hunter, White, McKenzie and Rowe)

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §62-12-17 of the code of West Virginia, 1931, as amended, relating to allowing the commissioner of the division of corrections to increase the parolee supervision fee to forty dollars.

Be it enacted by the Legislature of West Virginia:

That §62-12-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.
§62-12-17. Conditions of release on parole.

(a) Release and supervision on parole of any person, including the supervision by the division of corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

(2) That he or she may not, during the period of his or her parole, leave the state without the consent of the division;

(3) That he or she shall comply with the rules prescribed by the division for his or her supervision by the parole officer;

(4) That in every case in which the parolee for a conviction is seeking parole from an offense against a child, defined in section twelve, article eight, chapter sixty-one of this code; or article eight-b or eight-d of said chapter, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to this state pursuant to the provisions of article six, chapter twenty-eight of this code, the parolee may not live in the same residence as any minor child nor exercise visitation with any minor child nor may he or she have any contact with the victim of the offense; and

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, is required to pay a fee, based on his or her ability to pay, not to exceed forty dollars per month to defray costs of supervision.

(b) The commissioner shall keep a record of all actions taken and account for moneys received. No provision of this section prohibits the division from collecting the fees and
conducting the checks upon the effective date of this section. All moneys shall be deposited in a special account in the state treasury to be known as the "Parolee's Supervision Fee Fund". Expenditures from the fund shall be for the purposes of providing parole supervision required by the provisions of this code 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. 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.

(c) The division shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

(1) Current income prospects for the parolee or probationer, taking into account seasonal variations in income;

(2) Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be liquidated to provide funds to pay the fee;

(3) Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment; and
59  (5) The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

62  (d) In addition, the division may impose, subject to modification at any time, any other conditions which the division considers advisable.

CHAPTER 66

(S. B. 444 — By Senators Hunter and Oliverio)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §7-1-3ff of the code of West Virginia, 1931, as amended, relating to authority of county commissions to hire litter control officer; and requiring county litter control officer to enforce litter laws under the litter control program.

Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure
for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and cleanup of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(c) The county commission, in formally adopting ordinances, shall designate an enforcement agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company,
the county litter control officer, if the commission chooses to hire one, and two members at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

(d) In addition to the powers and duties imposed by this section, county litter control officers shall have authority to issue citations for violations of the provisions of section twenty-six, article seven, chapter twenty of this code, after completing a training course offered by the West Virginia division of natural resources. Nothing in this subsection supercedes the authority or duty of other law-enforcement officers to preserve law and order, and enforce the litter control program.

(e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner as to cause the least possible inconvenience to the persons in possession.

(f) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the
enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished. The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia rules of civil procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or
whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect. The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question or to remove or cleanup any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order. Appeals from the county commission to the circuit court shall be in accordance with the provisions of article three, chapter fifty-eight of this code.

(g) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the county commission, the county commission may advertise for and seek contractors to make the ordered repairs, alterations or improvements, or the ordered demolition, removal or cleanup. The county commission may enter into any contract with any contractor to accomplish the ordered repairs, alterations or improvements or the ordered demolition, removal or cleanup.

(h) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land which is the subject matter of the order of the county commission to subject the private land in question to a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements or ordered demolition, removal or cleanup, together with any daily civil monetary penalty imposed and reasonable attorney fees and court costs and to order and decree the sale of the private land in question to satisfy the lien and to order and decree that the
contractor may enter upon the private land in question at any
and all times necessary to make improvements, or ordered
repairs, alterations or improvements, or ordered demolition,
removal or cleanup. In addition, the county commission shall
have the authority to institute a civil action in a court of
competent jurisdiction against the landowner or other responsi-
ble party for all costs incurred by the county with respect to the
property and for reasonable attorney fees and court costs
incurred in the prosecution of the action.

(i) County commissions have the power and authority to
receive and accept grants, subsidies, donations and services in
kind consistent with the objectives of this section.

CHAPTER 67

(H. B. 4634 — By Delegates Cann, Ennis, Swartzmiller,
Stalnaker, Stemple, Craig and Kominar)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §7-8-14, relating to
requiring persons incarcerated in county or regional jails who
have been convicted of a misdemeanor to pay for the costs of up
to thirty days of their incarceration; requiring determination of
ability to pay; and allowing for modification of assessment based
upon need.

Be it enacted by the Legislature of West Virginia:
That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-8-14, to read as follows:

ARTICLE 8. JAIL AND JAILER.

§7-8-14. Reimbursement for costs of incarceration.

(a) Notwithstanding any provision to the code to the contrary and in addition to any fine, cost assessment or fee authorized or required to be imposed upon a person by virtue of his or her conviction of a criminal provision of this code, or a lawfully enacted ordinance of a political subdivision of this state, a person convicted and incarcerated in a regional jail by virtue of said conviction may be assessed the costs of up to thirty days of his or her incarceration.

(b) Prior to any person being required to pay the cost of his or her incarceration pursuant to the provisions of subsection (a) of this section, a hearing shall be held before the sentencing court to determine his or her ability to pay. The court may not sentence a defendant to pay his or her costs of incarceration unless he or she is or in the foreseeable future will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(c) A defendant who has been sentenced to pay costs and who is not in willful default in the payment of the costs may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant’s family or dependents, the court may excuse payment of all or part of the amount due in costs, or modify the method of payment.
AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §7-14D-24a, all relating to benefits and responsibilities in the deputy sheriffs’ retirement system generally; providing for membership of certain persons not employed as a deputy when system initiated; changing method for determining contributions to the system’s fund; providing for calculation of contributions required upon reemployment as deputy sheriff; removing language providing for benefits upon reaching early retirement age; changing method for calculating retirement benefits; providing right of members to name a beneficiary in certain circumstances; providing for distribution of accumulated contributions to member’s estate in certain circumstances; limiting system loans to members; and providing for determining payment of benefits prior to, during and after deputy retiree returns to work as a deputy.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §7-14D-24a, all to read as follows:
ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

§7-14D-5. Members.

§7-14D-7. Members' contributions; employer contributions.

§7-14D-12. Annuity options.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.


§7-14D-15. Same — Due to other causes.

§7-14D-20. Additional death benefits and scholarships — Dependent children.


§7-14D-23. Loans to members.

§7-14D-24a. Return to covered employment by retired member.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

2 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section nine-a of this article.

3 (b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-c, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered employment together with regular interest on the deducted amounts.

4 (c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when
the member has been called to active full-time duty and has
received no compensation during the period of that duty from
any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value
computed upon the basis of the mortality table and interest rates
as set and adopted by the retirement board in accordance with
the provisions of this article.

(e) "Annual compensation" means the wages paid to the
member during covered employment within the meaning of
Section 3401(a) of the Internal Revenue Code, but determined
without regard to any rules that limit the remuneration included
in wages based upon the nature or location of employment or
services performed during the plan year plus amounts excluded
under Section 414(h)(2) of the Internal Revenue Code and less
reimbursements or other expense allowances, cash or noncash
fringe benefits or both, deferred compensation and welfare
benefits. Annual compensation for determining benefits during
any determination period may not exceed one hundred fifty
thousand dollars as adjusted for cost of living in accordance
with Section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first
period for which an amount is received as an annuity by reason
of retirement. For purposes of this subsection, if retirement
income payments commence after the normal retirement age,
"retirement" means the later of the last day the member worked
in covered employment and the normal retirement age.

(h) "Base salary" means a member's cash compensation
exclusive of overtime from covered employment during the last
twelve months of employment. Until a member has worked
twelve months, annualized base salary is used as base salary.
(i) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d of chapter five of this code: Provided, That the deputy sheriff contribute to the fund created in section six of this article the amount specified as the deputy sheriff’s contribution in section seven of this article.

(l) "Credited service" means the sum of a member’s years of service, active military duty, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;
(C) A child who at the time of the member's death was
living with the member while the member was an adopting
parent during any period of probation; or

(D) A stepchild of the member residing in the member's
household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited
college or university;

(B) Who was claimed as a dependent by the member for
federal income tax purposes at the time of the member's death;
and

(C) Whose relationship with the member is described in
subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(o) "Dependent parent" means the father or mother of the
member who was claimed as a dependent by the member for
federal income tax purposes at the time of the member's death.

(p) "Disability service" means service received by a
member, expressed in whole years, fractions thereof or both,
equal to one half of the whole years, fractions thereof, or both,
during which time a member receives disability benefits under
section fourteen or fifteen of this article.

(q) "Early retirement age" means age forty or over and
completion of twenty years of service.

(r) "Effective date" means the first day of July, one
thousand nine hundred ninety-eight.

(s) "Final average salary" means the average of the highest
annual compensation received for covered employment by the
member during any five consecutive plan years within the
member’s last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under section fourteen or fifteen of this article then “final average salary” means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) “Fund” means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia division of labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision and under this paragraph. Hours under this
paragraph shall be credited to the member for the plan year or
years to which the award or agreement pertains, rather than the
plan year in which the award, agreement or payment is made.

(v) “Member” means a person first hired as a deputy sheriff
after the effective date of this article, as defined in subsection
(1) of this section, or a deputy sheriff first hired prior to the
effective date and who elects to become a member pursuant to
section five or section seventeen of this article. A member shall
remain a member until the benefits to which he or she is
entitled under this article are paid or forfeited.

(w) “Monthly salary” means the portion of a member’s
annual compensation which is paid to him or her per month.

(x) “Normal form” means a monthly annuity which is one
twelfth of the amount of the member’s accrued benefit which
is payable for the member’s life. If the member dies before the
sum of the payments he or she receives equals his or her
accumulated contributions on the annuity starting date, the
named beneficiary shall receive in one lump sum the difference
between the accumulated contributions at the annuity starting
date and the total of the retirement income payments made to
the member.

(y) “Normal retirement age” means the first to occur of the
following:

(1) Attainment of age fifty years and the completion of
twenty or more years of service;

(2) While still in covered employment, attainment of at
least age fifty years and when the sum of current age plus years
of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at
least age sixty years and completion of five years of service; or
(4) Attainment of age sixty-two years and completion of five or more years of service.

(z) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) "Public employees retirement system" means the West Virginia public employee's retirement system created by article ten, chapter five of this code.

(bb) "Plan" means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ee) "Retirement income payments" means the annual retirement income payments payable under the plan.
(ff) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(gg) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(hh) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

A member's receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.
(ii) “Year of service.” A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section twelve of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.
(jj) "Required beginning date" means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and plan and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan: Provided, That this time period is extended to the thirtieth day of January, one thousand nine hundred ninety-nine, in accordance with the decision of the Supreme Court of Appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the
28 deputy sheriff remains employed in covered employment in this plan: Provided further, That any deputy sheriff who elects during the time period from the first day of July, one thousand nine hundred ninety-eight, to the thirtieth day of January, one thousand nine hundred ninety-nine, or who so elects during the ten-day time period occurring immediately following the day after the day the amendments made during the one thousand nine hundred ninety-nine legislative session become law, to transfer from the public employees retirement system to the plan created in this article shall contribute to the plan created in this article at the rate set forth in section seven of this article retroactive to the first day of July, one thousand nine hundred ninety-eight. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

46 (c) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date, but was not employed as a deputy sheriff on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the public employees retirement fund system pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the public employees retirement system have been repaid pursuant to section thirteen of this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes of this article. Each transferring deputy sheriff shall be given credited service for the purposes of this article for all
covered employment transferred from the public employees retirement system regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy sheriff. All service in the public employees retirement system accrued by a transferring deputy sheriff shall be transferred into the plan created by this article and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all covered service which is transferred from the public employees retirement system as that transferring deputy sheriff would have received from the public employees retirement system if the transfer had not occurred. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

(e) Notwithstanding any other provisions of this article, any individual who is a leased employee shall not be eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§7-14D-7. Members' contributions; employer contributions.
There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as a deputy sheriff as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional employment which additional employment requires the deputy sheriff to be a member of another retirement which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the contributions provided for in this section, to be paid by the county commission, exceed ten and one-half percent of the total payroll for the members in the employ of the county commission for the preceding fiscal year. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than ten days following the end of the calendar month.

§7-14D-12. Annuity options.

Prior to the effective date of retirement, but not thereafter, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:
(a) **Option A — Joint and Survivor Annuity.** — A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member’s life. Upon the death of either the member or his or her beneficiary, the benefit shall continue as a life annuity to the survivor in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) **Option B — Contingent Joint and Survivor Annuity.** — A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member’s life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(c) **Option C — Ten Years Certain and Life Annuity.** — A life annuity payable during the member’s lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member’s estate.

(d) **Option D — Level Income Annuity.** — A life annuity payable monthly in an increased amount “A” from the time of retirement until the member is social security retirement age,
and then a lesser amount “B” payable for the member’s lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

(1) **Actuarial equivalence.** — The actuarial present value at the date of retirement of the member’s annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”; and

(2) **Level income.** — The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

In the case of a member who has elected the options set forth in subdivisions (a) and (b) of this section, respectively, and whose beneficiary dies prior to the member’s death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is,
3 by written request filed with the board, entitled to receive from
4 the fund the member's accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the
6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

8 (b) Any member who withdraws accumulated contributions
9 from either this plan or the public employees retirement system
10 and thereafter becomes reemployed in covered employment
11 shall not receive any credited service for the prior employment
12 unless following his or her return to covered employment, the
13 member redeposits in the fund the amount of the accumulated
14 contributions submitted on salary earned while a deputy sheriff,
15 together with interest on the accumulated contributions at the
16 rate determined by the board from the date of withdrawal to the
17 date of redeposit. Upon repayment he or she shall receive the
18 same credit on account of his or her former service as if no
19 refund had been made. The repayment shall be made in a lump
20 sum within sixty months of the deputy sheriff's reemployment
21 or if later, within sixty months of the effective date of this
22 article.

23 (c) Every member who completes sixty months of covered
24 employment is eligible, upon cessation of covered employment,
25 to either withdraw his or her accumulated contributions in
26 accordance with subsection (a) of this section, or to choose not
27 to withdraw his or her accumulated contribution and to receive
28 retirement income payments upon attaining normal retirement
29 age.

30 (d) Notwithstanding any other provision of this article,
31 forfeitures under the plan shall not be applied to increase the
32 benefits any member would otherwise receive under the plan.

Any member who after the effective date of this article and during covered employment: (A) Has been or becomes either totally or partially disabled by injury, illness or disease; and (B) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (C) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (D) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates, the compensation under either subdivision (a) or (b) of this section.

(a) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member's disability award, or the shorter period if the member has not worked twelve months.

(b) If the member is partially disabled, the member shall receive forty-five percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member's disability award, or the shorter period if the member has not worked twelve months.

If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

If the member remains partially disabled until attaining sixty years of age the member shall then receive the retirement
§7-14D-15. Same — Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(c) If the member is partially disabled, he or she shall receive thirty-three and one-third percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(d) If the member remains disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided for in sections eleven and twelve of this article.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter
twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.

§7-14D-20. Additional death benefits and scholarships — Dependent children.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and there shall be paid to the spouse one hundred dollars monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under either section nineteen or twenty of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this, in addition to any other benefits due under this or other sections
of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding six thousand dollars per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.


Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit shall be paid to the member’s spouse. If the member is not married, the burial benefit shall be paid to the member’s estate for the purposes of paying burial expenses, settling the member’s final affairs, or both. Any unspent balance shall be distributed as a part of the member’s estate.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than
five hundred dollars nor more than eight thousand dollars: 
Provided, That the maximum amount of any loan shall not 
exceed the lesser of the following: (1) Eight thousand dollars; 
or (2) fifty percent of his or her accumulated contributions. No 
member is eligible for more than one outstanding loan at any 
time. No loan may be made from the plan if the board deter-
mines that the loans constitute more than fifteen percent of the 
amortized cost value of the assets of the plan as of the last day 
of the preceding plan year. The board may discontinue the loans 
any time it determines that cash flow problems might develop 
as a result of the loans. Each loan shall be repaid through 
monthly installments over periods of six through sixty months 
and carry interest on the unpaid balance and an annual effective 
interest rate that is two hundred basis points higher than the 
most recent rate of interest used by the board for determining 
actuarial contributions levels: Provided, however, That interest 
charged shall be commercially reasonable in accordance with 
the provisions of section 72(p)(2) of the Internal Revenue Code 
and federal regulations issued thereunder. Monthly loan 
payments shall be calculated to be as nearly equal as possible 
with all but the final payment being an equal amount. An 
eligible member may make additional loan payments or pay off 
the entire loan balance at any time without incurring any 
interest penalty. At the member’s option, the monthly loan 
payment may include a level premium sufficient to provide 
descending term insurance with the plan as beneficiary to repay 
the loan in full upon the member’s death. If a member declines 
the insurance and dies before the loan is repaid, the unpaid 
balance of the loan shall be deducted from the lump sum 
insurance benefits payable under section twenty-one of this 
article.

(b) A member with an unpaid loan balance who wishes to 
retire may have the loan repaid in full by accepting retirement 
income payments reduced by deducting from the actuarial 
reserve for the accrued benefit the amount of the unpaid balance
and then converting the remaining of the reserve to a monthly
pension payable in the form of the annuity desired by the
member.

(c) The entire unpaid balance of any loan, and interest due
thereon, shall at the option of the retirement board become due
and payable without further notice or demand upon the occur-
rence with respect to the borrowing member of any of the
following events of default: (1) Any payment of principal and
accrued interest on a loan remains unpaid after the same
become due and payable under the terms of the loan or after
such grace period as may be established in the discretion of the
retirement board; (2) the borrowing member attempts to make
an assignment for the benefit of creditors of his or her benefit
under the retirement system; or (3) any other event of default
set forth in rules promulgated by the board pursuant to the
authority granted in section one, article ten-d, chapter five of
this code: Provided, That any offset of an unpaid loan balance
shall be made only at such time as the member is entitled to
receive a distribution under the plan.

(d) Loans shall be evidenced by such form of obligations
and shall be made upon such additional terms as to default,
prepayment, security, and otherwise as the retirement board
may determine.

(e) Notwithstanding anything herein to the contrary, the
loan program authorized by this section shall comply with the
provisions of section 72(p)(2) and section 401 of the Internal
Revenue Code and the federal regulations issued thereunder.
The retirement board is authorized to: (a) Apply and construe
the provisions of this section and administer the plan loan
program in such a manner as to comply with the provisions of
sections 72(p)(2) and section 401 of the Internal Revenue Code;
(b) adopt plan loan policies or procedures consistent with these
federal law provisions; and (c) take such actions as it deems
necessary or appropriate to administer the plan loan program
created hereunder in accordance with these federal law provi-
sions. The retirement board is further authorized in connection
with the plan loan program to take any actions that may at any
time be required by the Internal Revenue Service regarding
compliance with the requirements of section 72(p)(2) or section
401 of the Internal Revenue Code, notwithstanding any
provision in this article to the contrary.

§7-14D-24a. Return to covered employment by retired member.

The annuity of any member who retires under the provi-
sions of this article and who resumes service in covered
employment shall be suspended while the member continues in
covered employment. The monthly annuity payment for the
month in which the service resumes shall be pro-rated to the
date of commencement of service, and the member shall again
become a contributing member during resumption of service.
At the conclusion of resumed service in covered employment
the member shall have his or her annuity recalculated to take
into account the entirety of service in covered employment.

CHAPTER 69
(S. B. 645 — By Senator Tomblin, Mr. President)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §14-2-4a, relating to
providing a procedure for appointing an interim judge to the court
of claims when a sitting judge is temporarily unable to serve.
Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2-4a, to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-4a. Interim judges.

(a) If at any time two or more of the judges appointed under section four of this article are temporarily unable, due to illness or other incapacity, to perform their responsibilities the president of the Senate and the speaker of the House of Delegates may appoint one or two interim judges to serve under the conditions specified in this section.

(b) Appointments made under this section are temporary. An interim judge serves under this section until the judge for whom the interim judge is temporarily replacing can resume his or her duties. In no event may the interim judge serve for more than three months unless reappointed.

(c) Appointments made under this section shall be made from a list furnished to the president of the Senate and the speaker of the House of Delegates by the board of governors of the West Virginia state bar. The board of governors of the West Virginia state bar shall annually, on or before the fifteenth day of January, submit a list of twenty qualified nominees. In two thousand four, the list shall be submitted before the first day of April.

(d) An interim judge:

(1) Is entitled to the same compensation and expense reimbursement a judge is entitled to under the provisions of section eight of this article;
(2) Shall take the oath of office as required in section nine of this article;

(3) Has all the authority given to a judge under this article; and

(4) Is required to possess the qualifications required of a judge in section ten of this article.

(e) The president of the Senate and the speaker of the House of Delegates may jointly terminate the appointment of any interim judge appointed under this section at any time.

CHAPTER 70

(Com. Sub. for H. B. 4123 — By Delegates Schadler and Amores)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §50-1-9b, all relating to magistrate courts; modifying the criteria upon which magistrate, magistrate court clerk, and magistrate assistant salaries are based; authorizing the Supreme Court of Appeals to create a panel of senior magistrate court clerks; granting authority to senior magistrate court clerks to fill certain vacancies; authorizing the Supreme Court of Appeals to promulgate rules for senior magistrate court clerks; providing for reasonable compensation to senior clerks; providing for reimbursement of certain expenses incurred by senior clerks.
Be it enacted by the Legislature of West Virginia:

That §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §50-1-9b, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.
§50-1-9b. Appointment of senior magistrate court clerks.


(a) The Legislature finds and declares that:

(1) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

(2) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate section thirty-nine, article VI of the Constitution of West Virginia;

(3) The utilization of a two-tiered salary schedule for magistrates is an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than eight thousand four hundred in population and the second tier for magistrates serving eight thousand four hundred or more in population is rational and equitable given current statistical information relating to population and caseload; and
(5) That all magistrates who fall under the same tier should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than eight thousand four hundred in population shall be paid annual salaries of thirty thousand six hundred twenty-five dollars and magistrates who serve eight thousand four hundred or more in population shall be paid annual salaries of thirty-seven thousand dollars: Provided, That on and after the first day of July, two thousand three, magistrates who serve fewer than eight thousand four hundred in population shall be paid annual salaries of thirty-three thousand six hundred twenty-five dollars and magistrates who serve eight thousand four hundred or more in population shall be paid annual salaries of forty thousand dollars.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of two thousand five hundred dollars per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.
(b) Magistrate court clerks shall be paid a monthly salary by the state. Magistrate court clerks serving magistrates who serve less than eight thousand four hundred in population shall be paid up to one thousand seven hundred forty-eight dollars per month and magistrate court clerks serving magistrates who serve eight thousand four hundred or more in population shall be paid up to two thousand one hundred fifty-seven dollars per month; Provided, That on and after the first day of January, two thousand two, magistrate court clerks serving magistrates who serve less than eight thousand four hundred in population shall be paid up to one thousand nine hundred ninety-eight dollars per month and magistrate court clerks serving magistrates who serve eight thousand four hundred or more in population shall be paid up to two thousand four hundred seven dollars per month; Provided, however, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an "across-the-board" increase, may also be granted to magistrate court clerks. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, within the limits set forth in this section.

(c) In addition to other duties that may be imposed by the provisions of this chapter or by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of the reports required of the court and to carry out on behalf of...
the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


(a) In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the state of West Virginia. For the purpose of this section, “immediate family” means the relationships of mother, father, sister, brother, child or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

(1) The preparation of summons in civil actions;

(2) The assignment of civil actions to the various magistrates;

(3) The collection of all costs, fees, fines, forfeitures and penalties which are payable to the court;
(4) The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be located in the magistrate clerk’s office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.

(c) Magistrate assistants shall be paid a monthly salary by the state. Magistrate assistants serving magistrates who serve less than eight thousand four hundred in population shall be paid up to one thousand four hundred seventy-four dollars per month and magistrate assistants serving magistrates who serve eight thousand four hundred or more in population shall be paid up to one thousand seven hundred thirty-two dollars per month: Provided, That on and after the first day of January, two thousand two, magistrate assistants serving magistrates who serve less than eight thousand four hundred in population shall be paid up to one thousand seven hundred twenty-four dollars per month and magistrate assistants serving magistrates who serve eight thousand four hundred or more in population shall be paid up to one thousand nine hundred eighty-two dollars per month: Provided, however, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a
percentage increase or an “across-the-board” increase, may also
be granted to magistrate assistants. For the purpose of determin-
ing the population served by each magistrate, the number of
magistrates authorized for each county shall be divided into the
population of each county. The salary of the magistrate assistant
shall be established by the magistrate within the limits set forth
in this section.

§50-1-9b. Appointment of senior magistrate court clerks.

The West Virginia Supreme Court of Appeals is authorized
to create a panel of senior magistrate court clerks to utilize the
talent and experience of former magistrate court clerks of this
state. The Supreme Court of Appeals shall promulgate rules
providing for senior magistrate court clerks to be assigned
duties as needed to serve: (1) In the place of magistrate court
clerks who are on authorized leave or are otherwise unavail-
able; or (2) while there is a vacancy in a magistrate court
clerk’s office. The Supreme Court of Appeals shall further
promulgate rules to provide for: (1) Reimbursement of travel
and other necessary expenses actually incurred while the senior
clerk is serving outside the county of his or her residence; and
(2) reasonable compensation on a per diem basis: Provided,
That the per diem and retirement compensation of a senior
magistrate court clerk may not exceed the salary of the magis-
trate court clerk in whose place the senior clerk is serving.

CHAPTER 71

(S. B. 418 — By Senator Facemyer)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §50-1-14 of the code of West Virginia, 1931, as amended, relating to authorizing civil process servers employed by a county sheriff to carry firearms and requiring training, continued annual weapons qualifications and bonding through the office of the sheriff.

Be it enacted by the Legislature of West Virginia:

That §50-1-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-14. Duties of sheriff; service of process; bailiff.

(a) It shall be the duty of each sheriff to execute all civil and criminal process from any magistrate court which may be directed to such sheriff. Process shall be served in the same manner as provided by law for process from circuit courts.

Subject to the supervision of the chief justice of the Supreme Court of Appeals or of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the sheriff, or his or her designated deputy, to serve as bailiff of a magistrate court upon the request of the magistrate. Such service shall also be subject to such administrative rules as may be promulgated by the Supreme Court of Appeals. A writ of mandamus shall lie on behalf of a magistrate to enforce the provisions of this section.

(b) The sheriff of any county may employ, by and with the consent of the county commission, one or more persons whose sole duties shall be the service of civil process and the service of subpoenas and subpoenas duces tecum. Any such person shall not be considered a deputy or deputy sheriff within the meaning of subdivision (2), subsection (a), section two, article fourteen, chapter seven of this code, nor shall any such person
be authorized to carry deadly weapons in the performance of his or her duties: *Provided*, That the sheriff may authorize an employee whose sole duties involve service of civil process to carry a firearm if the employee completes all training requirements otherwise applicable to deputy sheriffs for the use and handling of firearms: *Provided, however*, That the sheriff may authorize previously certified West Virginia law-enforcement officers to carry a deadly weapon in the performance of the duties of the officers under the provisions of this section: *Provided further*, That these officers and employees maintain yearly weapons qualifications and are bonded through the office of the sheriff.

CHAPTER 72


[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §51-10-8 of the code of West Virginia, 1931, as amended; and to amend and reenact §62-1C-14 of said code, all relating to bail bondspersons; requiring the Supreme Court of Appeals to adopt rules specifying the qualifications of persons and corporations applying for authority to engage in the bonding business in West Virginia; allowing bail bondsperson to deliver offenders to county and regional jails without bailpiece; setting requirements; setting forth requirements related to medical treatment of defendant prior to authorities taking custody pursuant to a bailpiece; providing for certain immunities from liability; and providing penalties.
Be it enacted by the Legislature of West Virginia:

That §51-10-8 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-1C-14 of said code be amended and reenacted, all to read as follows:

Chapter
51. Courts and Their Officers.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.

§51-10-8. Qualifications of bondsmen; rules to be prescribed by Supreme Court of Appeals; lists of agents to be furnished; renewal of authority to act; false swearing.

(a) The Supreme Court of Appeals shall under reasonable rules, specify the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the state of West Virginia, and the terms and conditions upon which the business may be carried on. After the first day of September, two thousand four, no person or corporation may, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in any court regularly exercising criminal jurisdiction until qualified pursuant to the rules. The Supreme Court of Appeals, in making the rules, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person may be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. The court shall require every person qualifying to engage in the bonding
business as principal to file with the court a list showing the
name, age, and residence of each person employed by the
bondsman as agent, clerk, or representative in the bonding
business, and require an affidavit from each of the persons
stating that the person will abide by the terms and provisions of
this article. The court shall require the authority of each of the
persons to be renewed from time to time at periods the court
may by rule provide. Before the authority may be renewed the
court shall require from each of the persons an affidavit that
since his or her previous qualifications to engage in the bonding
business he or she has abided by the provisions of this article,
and any person swearing falsely in any of the affidavits is guilty
of false swearing.

(b) Persons authorized to engage in the bonding business in
criminal cases in the state of West Virginia on the effective date
of the amendments made to this section during the regular
session of the Legislature in two thousand four may continue to
engage in the business until the first day of September, two
thousand four.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-14. Bailpiece; issuance to surety; taking accused into
custody.

(a) A bailpiece is a certificate stating that the bail became
such for the accused in a particular case and the amount thereof.
Upon demand therefor, the court, magistrate or clerk shall issue
to the bail bondsperson a bailpiece. Any officer having author-
ity to execute a warrant of arrest shall assist the bail
bondsperson holding such bailpiece to take the accused into
custody and produce him before the court or magistrate. The
bail bondsperson may take the accused into custody and
surrender him or her to the court or magistrate without such bailpiece.

(b) If bailpiece is inaccessible due to unavailability of the courts’ circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional or county jail without bailpiece, and the jail must accept the offender; provided:

(1) The bail bondsperson, or his or her designee, delivering an offender to a jail without a bailpiece issued by the courts’ circuit clerk or magistrate appears on the registered list maintained at the jails and approved by the court of original jurisdiction;

(2) The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece. Such agreement shall contain a clause indicating the incarceration of such offender is lawful and that the jail accepting the offender shall be held harmless from any claims of illegal incarceration or other relative charges; thereby, such bail bondsperson assumes the risk and liability of such incarceration; and

(3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the courts’ circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

(c) Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state and shall be fined not more than one thousand dollars and confined in the regional or county jail not more than one year.
(d) No officer, jailer or other person having authority to accept offenders in a county or regional jail is required to accept such offenders being housed in lieu of bailpiece if such offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until the bail bondsperson, or his or her designee, provides the jailer or persons accepting such offender with a written clearance from a licensed physician reflecting that the offender has been examined and, if necessary, treated, and which states that it is the physician’s medical opinion that the offender can be safely confined in the county or regional jail.

(e) The regional jail authority, the county sheriff, county commission, or any of their agents or employees, shall be immune from liability for any claims of illegal incarceration or other relative charges for any offender accepted into a facility under this section.

CHAPTER 73

(H. B. 4097—By Delegates Staton, Amores, Kominar and Pino)

[Passed March 9, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §59-1-11 of the code of West Virginia, 1931, as amended, relating to clarifying those persons or entities responsible for paying certain fees assessed by the clerk of a circuit court for processing of criminal bonds and bailpiece.

Be it enacted by the Legislature of West Virginia:
That §59-1-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered as such clerk the following fees, and such fees shall be paid in advance by the parties for whom such services are to be rendered:

(1) For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding, one hundred twenty-five dollars, of which thirty dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code and ten dollars shall be deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, two hundred sixty dollars, of which ten dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after the first day of July, one thousand nine hundred ninety-nine, for instituting an action for divorce, separate maintenance or annulment, one hundred thirty-five dollars;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, eighty-five dollars; and
(5) For petitioning for an expedited modification of a child support order, thirty-five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;

(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate’s court, three dollars;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, ten dollars, of which five dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;
(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents;

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, fifty-five dollars;

(2) In the case of any felony, seventy-five dollars, of which ten dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) The clerk of a circuit court shall charge and collect a fee of twenty-five dollars per bond for services rendered by the clerk for processing of criminal bonds, and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.
In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk, and all fees collected pursuant to this subsection (d) shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection (d) may be construed as authorizing the clerk to collect the above fee from any person for the processing of a personal recognizance bond; and

(e) The clerk of a circuit court shall charge and collect a fee of ten dollars for services rendered by the clerk for processing of bailpiece, and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection (e) shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code.

(f) No such clerk shall be required to handle or accept for disbursement any fees, cost or amounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

CHAPTER 74

(Com. Sub. for S. B. 556 — By Senator Minard (By Request)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §46A-6C-2 of the code of West Virginia, 1931, as amended, relating to credit services organiza-
tions; and exempting retailers of automobiles and trucks from the
definition of credit services organizations.

Be it enacted by the Legislature of West Virginia:

That §46A-6C-2 of the code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.

§46A-6C-2. Credit services organization.

(a) A credit services organization is a person who, with
respect to the extension of credit by others and in return for the
payment of money or other valuable consideration, provides, or
represents that the person can or will provide, any of the
following services:

(1) Improving a buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to
subdivision (1) or (2) of this subsection.

(b) The following are exempt from this article:

(1) A person authorized to make loans or extension of credit
under the law of this state or the United States who is subject to
regulation and supervision by this state or the United States, or
a lender approved by the United States secretary of housing and
urban development for participation in a mortgage insurance
program under the National Housing Act (12 U. S. C. Section
1701, et seq.);

(2) A bank or savings and loan association whose deposit
or accounts are eligible for insurance by the federal deposit
(3) A credit union doing business in this state;

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;

(5) A person licensed as a real estate broker or salesman under the Real Estate Brokers License Act acting within the course and scope of that license;

(6) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) A broker-dealer registered with the securities and exchange commission or the commodity future trading commission acting within the course and scope of that regulation;

(8) A consumer reporting agency;

(9) A person whose primary business is making loans secured by liens on real property;

(10) A person whose primary business is the retail sale of automobiles and trucks: Provided, That the person is not extending credit for a buyer, excluding assignments; and

(11) A person licensed to practice public accounting in this state acting within the course and scope of the person's practice as an accountant.
AN ACT to amend and reenact §61-2-10b of the code of West Virginia, 1931, as amended, relating to including division of forestry employees in the assault and battery statute with similar state personnel.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal, division of forestry employees and county or state correctional employees; penalties.

(a) Malicious assault. — Any person who maliciously
shoots, stabs, cuts or wounds or by any means causes bodily
injury with intent to maim, disfigure, disable or kill a police
officer, probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, state fire
marshal or employee, division of forestry employee, county
correctional employee or state correctional employee, employee of an urban mass transportation system acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, division of forestry employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, division of forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, division of forestry employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) Battery. — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provok-
ing nature with a police officer, probation officer, conservation
officer, humane officer, emergency medical service personnel,
firefighter, state fire marshal or employee, division of forestry
employee, county correctional employee, state correctional
employee, employee of a mass transportation system acting in
his or her official capacity, or unlawfully and intentionally
causes physical harm to a police officer, probation officer,
conservation officer, humane officer, emergency medical
service personnel, firefighter, state fire marshal or employee,
division of forestry employee, county correctional employee,
state correctional employee, employee of an urban mass
transportation system acting in such capacity, is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in
the county or regional jail for not less than one month nor more
than twelve months, fined the sum of five hundred dollars, or
both. If any person commits a second such offense, he or she is
guilty of a felony and, upon conviction thereof, shall be
confined in a correctional facility for not less than one year nor
more than three years or fined the sum of one thousand dollars
or both fined and confined. Any person who commits a third
violation of this subsection is guilty of a felony and, upon
conviction thereof, shall be confined in a correctional facility
not less than two years nor more than five years or fined not
more than two thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to
commit a violent injury to the person of a police officer,
probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, state fire
marshal or employee, division of forestry employee, county
correctional employee, state correctional employee, employee
of a mass transportation system acting in his or her official
capacity, or unlawfully commits an act which places a police
officer, probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, division of forestry employee, county correctional employee or state correctional employee, employee of a mass transportation system acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than twenty-four hours nor more than six months, fined not more than two hundred dollars, or both fined and confined.

(e) For purposes of this section:

(1) “Police officer” means any person employed by the state police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as defined in section forty-one, article three of this chapter.

(2) “Employee of an urban mass transportation system” means any person employed by an urban mass transportation system as such is defined in section three, article twenty-seven, chapter eight of this code or by a system that receives federal transit administration funding under 49 U.S.C. §5307 or 5311.

(3) “Division of forestry employee” means an officer, agent, employee, or servant, whether full-time or not, of the division of forestry.
CHAPTER 76

(Com. Sub. for H. B. 4433 — By Mr. Speaker, Mr. Kiss, and Delegates Pino, Webb, Stemple, Schadler, Craig and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §61-2-29 of the code of West Virginia, 1931, as amended, relating to abuse or neglect of an incapacitated adult; adding the crimes of abuse and neglect of an elder person age sixty-five years or older and the crime of misuse and misappropriation of the funds or assets of an elder person; and creating the crime of misuse or misappropriation of the funds or assets of an elder person through deception, intimidation, coercion, the infliction of bodily injury or the threat of bodily injury; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-2-29 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29. Abuse or neglect of incapacitated adult; abuse or neglect of elder person; misappropriation or misuse of assets or funds of elder person; misappropriation or misuse of assets or funds of elder person through deception, intimidation, coercion, bodily injury or threats of bodily injury; penalties.
(a) The following words when used in this section have the meaning ascribed, unless the context clearly indicates otherwise:

(1) "Abuse" means the infliction or threat to inflict physical pain or injury on an incapacitated adult or elder person;

(2) "Caregiver" means an adult who has or shares actual physical possession or care of an incapacitated adult or elder person on a full-time or temporary basis, regardless of whether such person has been designated as a guardian of such adult by any contract, agreement or legal proceeding. Caregiver includes health care providers, family members, and any person who otherwise voluntarily accepts a supervisory role towards an incapacitated adult or elder person;

(3) "Neglect" means: (i) The failure to provide the necessities of life to an incapacitated adult or elder person; or (ii) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or elder person;

(4) "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health;

(5) "Elder" means a person age sixty-five years or older;

(6) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition; and

(7) "Custodian" means a person over the age of eighteen years who has or shares actual physical possession of care and custody of an elder person on a full-time or temporary basis, regardless of whether the person has been granted custody of the elder person by any contract, agreement or legal proceeding.
(b) Any person, caregiver, guardian or custodian who neglects an incapacitated adult or elder person, or who knowingly permits another person to neglect said adult, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars, or imprisoned in the county or regional jail for not less than ninety days nor more than one year, or both fined and imprisoned.

(c) Any person, caregiver, guardian or custodian who intentionally abuses or neglects an incapacitated adult or elder person is guilty of a felony and, upon conviction thereof, shall, in the discretion of the court, be confined in a state correctional facility for not less than two nor more than ten years.

(d) If any person, caregiver, guardian or custodian of an elder person or incapacitated adult, willfully misappropriates, or misuses the funds or assets of an incapacitated adult or elder person for the person's, caregiver's, guardian's, or custodian's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars and incarcerated in a correctional facility not less than two nor more than ten years.

(e) If any person, caregiver, guardian or custodian of an elder person or incapacitated adult, by means of deception, intimidation, coercion, infliction of bodily injury or threats of the infliction of bodily injury, willfully misappropriates, or misuses the funds or assets of an incapacitated adult or elder person for the person's, caregiver's, guardian's, or custodian's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars and incarcerated in a correctional facility not less than five nor more than fifteen years.
(f) Nothing in this article shall be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment.

CHAPTER 77

(S. B. 558 — By Senators Caldwell, Rowe and McKenzie)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §61-3-20 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-20a, all relating to crimes of embezzlement; removing certain evidentiary presumptions which have been deemed unconstitutional; creating a new crime of embezzlement related to the wilful and fraudulent misuse of a power of attorney or other fiduciary relationship; and providing that such crimes of embezzlement or fraudulent conversion to be punishable as larceny.

Be it enacted by the Legislature of West Virginia:

That §61-3-20 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-3-20a, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-20. Embezzlement.
§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

§61-3-20. Embezzlement.

If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently convert to his own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be guilty of the larceny thereof. If such guilty person be an officer, agent, clerk or servant of any banking institution, he shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten years. And it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his own use or embezzled by him.

And whenever any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or use for his own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he shall be held to have embezzled the same and be guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be neces-
sary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his own benefit or for the benefit of any other person.

§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

Any person who holds a fiduciary power of attorney or who has a fiduciary relationship with a person and in so doing wilfully and with intent to defraud embezzles, misappropriates or fraudulently converts for his or her own benefit, or for the benefit of another, the assets or property, real or personal, with which he or she has been entrusted, or misuses or misappropriates funds from the person to whom he or she owes a fiduciary duty or misuses any account, line of credit or credit card of the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship, shall be held to have embezzled the same and, upon conviction, shall be deemed guilty of the larceny thereof.

CHAPTER 78

(Com. Sub. for H. B. 2200 — By Delegate Schadler)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §61-3-30 of the code of West Virginia, 1931, as amended, relating to creating the felony offense of injury, defacing or destruction of property causing damage, destruction or diminution in value of twenty-five hundred dollars or more; and providing penalties.
Be it enacted by the Legislature of West Virginia:

That §61-3-30 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-30. Removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs; penalties.

(a) If any person unlawfully, but not feloniously, takes and carries away, or destroys, injures or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

(b) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the real or personal property of one or more other persons or entities during the same act, series of acts or course of conduct causing a loss in the value of the property in an amount of two thousand five hundred dollars or more, is guilty of the felony offense of destruction of property and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or imprisoned in the state correctional facility for not less than one year nor more than ten years, or in the discretion of the court, confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) If any person breaks down, destroys, injures, defaces or removes any monument erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any tree marked for that purpose, or any sign or notice upon private property designating no trespassing upon the property, except signs or notices posted in accordance with the provisions and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she is guilty of a misdemeanor and,
27 upon conviction thereof, shall be fined not less than twenty
28 dollars nor more than two hundred dollars, or confined in the
29 county or regional jail not less than one nor more than six
30 months, or both fined and imprisoned. Magistrates have
31 concurrent jurisdiction of all offenses arising under the provi-
32 sions of this section. The provisions of this paragraph do not
33 apply to the owner, or his or her agent, of the lands on which
34 such signs or notices are posted.

CHAPTER 79

(Com. Sub. for H. B. 4104 — By Delegates Morgan, Kominar,
Mahan, Stemple, Craig, Amores and Staton)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-3-56, relating to
creating the crimes of scanning device and reencoder fraud;
providing definitions; and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §61-3-56, to read as
follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-56. Scanning device or reencoder fraud; felony; defini-
tions; and penalties.

1 (a) As used in this section, the term:
"Authorized user" means the person to whom a payment card is issued or any other person acting with the permission of the person to whom the card is issued;

"Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator. A "merchant" also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money or anything else of value from the person;

"Payment card" means a credit card, charge card, debit card, hotel key card, stored value card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value from a merchant;

"Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card; and

"Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) Any person who uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or
(c) Any person who uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or confined in a county or regional jail not more than one year, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who is convicted of the provisions of subsection (b) or (c) of this section who has previously been convicted of a violation of either subsection shall be guilty of a felony and, upon conviction, shall be imprisoned 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.

CHAPTER 80

(Com. Sub. for H. B. 4388 — By Delegates Morgan, Craig, Leach, Stemple, Varner, Kominar and Smirl)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-57, relating to creating the criminal offense of possession of fraudulently obtained or counterfeit sales receipts or universal product codes or devices to produce counterfeit sales receipts or universal
product codes with the intent to cheat or defraud; creating new felony offense for such illegal activity; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-57, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-57. Possession of bogus receipts or universal product codes with intent to defraud; penalties.

Any person who, with intent to defraud, possesses fifteen or more fraudulently obtained or counterfeit sales receipts or fraudulently obtained or counterfeit universal product codes, or possesses a device the purpose of which is to manufacture counterfeit retail sales receipts or counterfeit universal product code labels, is guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned in a state correctional facility not less than one year nor more than three years, or both.

CHAPTER 81

(Com. Sub. for H. B. 4492 — By Delegates Howard, Caruth, Sobonya and Armstead)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3C-14b, relating to
creating the criminal offense of soliciting certain minors or one believed to be a minor via computer to commit violations of certain criminal laws; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3C-14b, to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14b. Soliciting, etc. a minor via computer; penalty.

Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, to commit any illegal act proscribed by the provisions of articles eight, eight-b, eight-c or eight-d of this chapter, or any felony offense under section four hundred one, article four, chapter sixty-a of this code, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

CHAPTER 82

(Com. Sub. for S. B. 508 — By Senators Plymale, Tomblin, Mr. President, Edgell, Dempsey and Hunter)

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]
AN ACT to amend and reenact §29-1-3 of the code of West Virginia, 1931, as amended, relating to membership of the commission on the arts; and expenditure of moneys in the cultural facilities and capital resources matching grant program fund.

Be it enacted by the Legislature of West Virginia:

That §29-1-3 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the arts.

(a) The commission on the arts is continued and shall be composed of fifteen appointed voting members and the ex officio nonvoting members set forth or authorized for appointment in this section.

(b)(1) The governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight voting members may be of the same political party. Effective the first day of July, two thousand four, no more than three voting members may be from the same regional educational service agency district created in section twenty-six, article two, chapter eighteen of this code. Voting members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the voting members constitute a quorum for the transaction of business. The director of the arts section shall be an ex officio
nonvoting member of the commission and shall serve as
secretary. The director or a majority of the members also may
call a meeting upon notice as provided in this section.

(4) Each voting member or ex officio nonvoting member of
the commission shall serve without compensation, but shall be
reimbursed for all reasonable and necessary expenses actually
incurred in the performance of the duties of the office; except
that in the event the expenses are paid, or are to be paid, by a
third party, the member or ex officio member, as the case may
be, shall not be reimbursed by the state.

(5) Upon recommendation of the commissioner, the
governor also may appoint those officers of the state that are
appropriate to serve on the commission as ex officio nonvoting
members.

c) The commission may:

(1) Advise the commissioner and the director of the arts
section concerning the accomplishment of the purposes of that
section and establish a state plan with respect to the arts section;

(2) Approve and distribute grants-in-aid and awards from
federal and state funds relating to the purposes of the arts
section;

(3) Request, accept or expend federal funds to accomplish
the purposes of the arts section when federal law or regulations
would prohibit those actions by the commissioner or section
director, but would permit them to be done by the commission
on the arts;

(4) Otherwise encourage and promote the purposes of the
arts section;

(5) Approve rules concerning the professional policies and
functions of the section as promulgated by the director of the
arts section; and
(6) Advise and consent to the appointment of the director by the commissioner.

(d) A special revenue account in the state treasury, known as the "cultural facilities and capital resources matching grant program fund", is continued. The fund shall consist of moneys received under section ten, article twenty-two-a of this chapter and funds from any other source. The moneys in the fund shall be expended in accordance with the following:

(1) Fifty percent of the moneys deposited in the fund shall be expended by the commission on the arts for capital improvements, preservation and operations of cultural facilities: Provided, That the commission on the arts may use no more than twenty-five percent of the funding for operations of cultural facilities pursuant to the rule required by this subdivision: Provided, however, That the commission shall make a women's veterans memorial statue a priority when expending the funds: Provided further, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to create a matching grant program for cultural facilities and capital resources; and

(2) Fifty percent of the moneys deposited in the fund shall be expended by the division of culture and history for:

(A) Capital improvements, preservation and operation of cultural facilities that are managed by the division; and

(B) Capital improvements, preservation and operation of cultural facilities that are not managed by the division.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-1-11, relating to creating the position of state Americans with disabilities coordinator within the department of administration; powers and duties; authorizing assessing fees to other state agencies for the coordinator’s services; creating special fund; annual report; and sunset provision.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-1-11, to read as follows:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.


(a) There is hereby created within the department of administration the position of the state Americans with disabilities coordinator, who shall be appointed by the secretary of the department of administration with input from the chairperson from each of the following four councils:

(1) The developmental disabilities council;

(2) The statewide independent living council;
(3) The mental health planning council; and

(4) The state rehabilitation council.

(b) The coordinator shall be a full-time employee, and shall have an in-depth working knowledge of the challenges facing persons with disabilities. The coordinator may be a current employee of the department of administration or other state agency employee.

(c) The coordinator shall:

(1) Advise the director of personnel in the development of comprehensive policies and programs for the development, implementation and monitoring of a statewide program to assure compliance with 42 U.S.C. §12101, et seq., the federal Americans with Disabilities Act;

(2) Assist in the formulation of rules and standards relating to the review, investigation and resolution of complaints of discrimination in employment, education, housing and public accommodation;

(3) Consult and collaborate with state and federal agency officials in the state plan development;

(4) Consult and collaborate with agency Americans with disabilities officers on the appropriate training for managers and supervisors on regulations and issues;

(5) Represent the state on local, state and national committees and panels related to Americans with disabilities;

(6) Advise the governor and agency heads on Americans with disabilities issues;

(7) Consult with state equal employment opportunity officers on the hiring of persons with disabilities; and

(8) Be available to inspect and advise the leasing section of the division of purchasing on all physical properties owned or
leased by the state of West Virginia for compliance with 42
U.S.C. §12101, *et seq.*, the federal Americans with Disabilities
Act.

(d)(1) The secretary of the department of administration
may assess, charge and collect fees from each state spending
unit which utilizes the services of the coordinator, for the direct
costs and expenses incurred by the coordinator in providing
those services. Costs and expenses include travel, materials,
equipment and supplies. Moneys shall be collected through the
division of finance.

(2) A state spending unit shall agree in writing to all costs
and expenses before the services by the Americans with
disabilities coordinator are rendered.

(e) There is hereby created in the department of administra-
tion a special fund to be named the “Americans with Disabili-
ties Coordinator Fund”, which shall be an interest-bearing
account and may be invested in accordance with the provisions
of article six, chapter twelve of this code, with the interest
income a proper credit to the fund. Funds paid into the account
may be derived from the following sources:

(1) All moneys received from state spending units for the
costs and expenses incurred by the state Americans with
disabilities coordinator for providing services related to the
state’s implementation and compliance with 42 U.S.C. §12101,
*et seq.*, the federal Americans with Disabilities Act;

(2) Any gifts, grants, bequests, transfers or donations which
may be received from any governmental entity or unit or any
person, firm, foundation or corporation; and

(3) All interest or return on investment accruing to the fund.

(f) Moneys in the fund are to be used for the costs and
expenses incurred pursuant to this section. Any balance
including accrued interest in this special fund at the end of any
fiscal year shall not revert to the general revenue fund, but shall
remain in the fund for use by the secretary of the department of administration for providing additional Americans with disabilities coordinator services within the state of West Virginia in the ensuing fiscal years.

(g) The secretary of the department of administration shall report annually on the fund to the governor, president of the Senate and speaker of the House of Delegates. The report must be on CD ROM or other electronic media and shall not be in print format.

(h) The state Americans with disabilities coordinator shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 84

(Com. Sub. for H. B. 4156 — By Delegates Webster, Brown, Mahan, R. Thompson, Armstead, Calvert and Faircloth)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

CLAERK’S NOTE: It has been determined that H. B. 4156, originally styled as Chapter 84 was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 4156 did not become law.

The text formerly occupied pages 442 through 449, which have been omitted.
Pages 443-449 have been intentionally omitted
CHAPTER 85

(Com. Sub. for H. B. 4605 — By Delegates Amores, Fleischauer, Mahan, Brown and Webster)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended; to amend and reenact §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code; to amend and reenact §61-2-9 and §61-2-28 of said code; and to amend and reenact §61-7-4 and §61-7-7 of said code, all relating to domestic violence generally; clarifying the relationship between temporary and final domestic violence protective orders and the provisions of protective measures reflected in temporary or final divorce orders entered in divorce proceedings or other types of domestic proceedings; making the violation of emergency or final protective orders issued by injunctive relief or protective order in a divorce proceeding a misdemeanor; clarifying provisions related to the arrest and criminal enforcement of protective order violations; clarifying the penalties which may be imposed for the first and subsequent violation of such protective orders; authorizing the governor’s committee on crime, delinquency and correction to develop and promulgate rules regarding the procedures for the dispatch of matters involving domestic violence; relating to prohibitions against the issuance of licenses and permits to carry concealed weapons and the possession of firearms as they pertain to persons who have been convicted of domestic violence offenses and/or are subject to domestic violence protection orders; and clarifying who is proscribed from possessing a firearm due to domestic violence convictions.

Be it enacted by the Legislature of West Virginia:
That §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code be amended and reenacted; that §61-2-9 and §61-2-28 of said code be amended and reenacted; and that §61-7-4 and §61-7-7 of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

Article

5. Divorce.


ARTICLE 5. DIVORCE.

PART 5. TEMPORARY RELIEF DURING PENDENCY OF ACTION FOR DIVORCE.

§48-5-509. Enjoining abuse, emergency protective order.

§48-5-608. Injunctive relief or protective orders.

§48-5-509. Enjoining abuse, emergency protective order.

(a) The court may 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. This order may enjoin the offending party from:

1. Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

2. Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

3. Contacting the other, in person or by telephone, for the purpose of harassment or threats; or
(3) Harassing or verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article.

(c) The court, in its discretion, may enter a protective order, as provided in article twenty-seven of this chapter, as part of the final relief granted in a divorce action, either as a part of an order for temporary relief or as part of a separate order. Notwithstanding the provisions of section five hundred five of said article, a protective order entered pursuant to the provisions of this subsection shall remain in effect until a final order is entered in the divorce, unless otherwise ordered by the judge.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-608. Injunctive relief or protective orders.

(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.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized to be awarded by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article.
(c) The court, in its discretion, may enter a protective order, as provided by the provisions of article twenty-seven of this chapter, as part of the final relief in a divorce action, either as a part of an order for final relief or in a separate order. A protective order entered pursuant to the provisions of this subsection shall remain in effect for the period of time ordered by the court not to exceed one hundred eighty days:

Provided, That if the court determines that a violation of a domestic violence protective order entered during or extended by the divorce action has occurred, it may extend the protective order for whatever period the court deems necessary to protect the safety of the petitioner and others threatened or at risk.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-401. Interaction between domestic proceedings


(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.

(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, annulment and separate maintenance, pursuant to part 5-501, \textit{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, \textit{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, when an action 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 is filed or is reopened by petition, motion or otherwise, then any order issued pursuant to this article which is in effect on the day the action is filed or reopened shall remain in full force and effect by operation of this statute until: (1) A temporary or final order is entered pursuant to the provisions of part 5-501, \textit{et seq.} or part 6-601 \textit{et seq.} of this chapter; or (2) an order is entered modifying such order issued pursuant to this article; or (3) the entry of a final order granting or dismissing the action.

PART 9. SANCTIONS.


(a) When a respondent abuses the petitioner or minor children, or both, or is physically present at any location in knowing and willful violation of the terms of an emergency or final protective order under the provisions of this article or sections 5-509 or 5-608 of this chapter granting the relief
pursuant to the provisions of this article, any person authorized to file a petition pursuant to the provisions of section 27-305 or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section 27-901.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.

**§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.**

(a) A respondent who abuses the petitioner or minor children or who is physically present at any location in knowing and willful violation of the terms of: (1) An emergency or final protective order issued under the provisions of this article or sections 5-509 or 5-608 of this chapter granting relief pursuant to the provisions of this article; or (2) a condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) A respondent who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

* CLERK'S NOTE: This section was also amended by S. B. 258 (Chapter 86), which passed prior to this act.
PART 10. ARRESTS.


(a) When a law-enforcement officer observes any respondent abuse the petitioner or minor children or the respondent’s physical presence at any location in knowing and willful violation of the terms of an emergency or final protective order issued under the provisions of this article or section 5-509 or 5-608 of this chapter granting the relief pursuant to the provisions of this article, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section 27-903, a law-enforcement officer may arrest the perpetrator for said offense where:

1. The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

2. The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

3. The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a circuit court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or
31 magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

PART 11. MISCELLANEOUS PROVISIONS.


1 The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers, law-enforcement agencies and communications and emergency operations centers which dispatch law-enforcement officers with regard to domestic violence: Provided, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures. Prior to the publication of proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article 26-101, et seq., of this chapter, to represent communications and emergency operations centers that dispatch law enforcement officers and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. The committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
2. Crimes Against the Person.
7. Dangerous Weapons.
ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9. Malicious or unlawful assault; assault; battery; penalties.


§61-2-9. Malicious or unlawful assault; assault; battery; penalties.

(a) If any person maliciously shoot, stab, cut or wound any person, or by any means cause him bodily injury with intent to maim, disfigure, disable or kill, he shall, except where it is otherwise provided, be guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding five hundred dollars.

(b) Assault. — If any person unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act which places another in reasonable apprehension of immediately receiving a violent injury, he shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than six months, or fined not more than one hundred dollars, or both such fine and imprisonment.

(c) Battery. — If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, he shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than twelve months, or fined not more than five hundred dollars, or both such fine and imprisonment.

(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in the ten years prior to said
conviction, been convicted of a violation of either subsection (b) or (c) of this section where the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or convicted of a violation of section twenty-eight of this article or has served a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or section twenty-eight of this article when the victim has such present or past relationship shall upon conviction be subject to the penalties set forth in section twenty-eight of this article for a second, third or subsequent criminal act of domestic violence offense, as appropriate.


(a) Domestic battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than twelve months, or fined not more than five hundred dollars, or both.

(b) Domestic assault. — Any person who unlawfully attempts to commit a violent injury against his or her family or household member or unlawfully commits an act which places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months, or fined not more than one hundred dollars, or both.

(c) Second offense. — Domestic Assault or Domestic Battery.
A person convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article where the victim was his or her current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c), section nine of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense is guilty of a misdemeanor, and upon conviction thereof, shall be confined in a county or regional jail for not less than sixty days nor more than one year, or fined not more than one thousand dollars, or both.

A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or having previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article where the victim was a current or former spouse, current or former sexual or intimate
partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense shall be confined in a county or regional jail for not less than thirty days nor more than six months, or fined not more than five hundred dollars, or both.

(d) Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section nine of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or a violation of the provisions of section nine of this article in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense, or any combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ten years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years or fined not more than two thousand five hundred dollars, or both.

(e) As used in this section, “family or household member” means “family or household member” as defined in 48-27-204 of this code.
92 (f) A person charged with a violation of this section may
93 not also be charged with a violation of subsection (b) or (c),
94 section nine of this article for the same act.

95 (g) No law-enforcement officer may be subject to any
96 civil or criminal action for false arrest or unlawful detention
97 for effecting an arrest pursuant to this section or pursuant to
98 48-27-1002 of this code.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.
§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section,
any person desiring to obtain a state license to carry a con-
cealed deadly weapon shall apply to the sheriff of his or her
county for such license, and shall pay to the sheriff, at the
time of application, a fee of seventy-five dollars, of which
fifteen dollars of that amount shall be deposited in the court-
house facilities improvement fund created by section six,
article twenty-six, chapter twenty-nine of this code. Con-
cealed weapons permits may only be issued for pistols or
revolvers. Each applicant shall file with the sheriff, a com-
plete application, as prepared by the superintendent of the
West Virginia state police, in writing, duly verified, which
sets forth only the following licensing requirements:

(1) The applicant’s full name, date of birth, social secu-
ritv number and a description of the applicant’s physical
features;

(2) That, on the date the application is made, the appli-
cant is a bona fide resident of this state and of the county in
which the application is made and has a valid driver’s license
or other state-issued photo identification showing such resi-
dence;
(3) That the applicant is twenty-one years of age or older:  
Provided, That any individual who is less than twenty-one  
years of age and possesses a properly issued concealed weap-  
ons license as of the effective date of this article shall be  
licensed to maintain his or her concealed weapons license  
notwithstanding the provisions of this section requiring new  
applicants to be at least twenty-one years of age: Provided,  
however, That upon a showing of any applicant who is eigh-  
ten years of age or older that he or she is required to carry a  
concealed weapon as a condition for employment, and pres-  
ents satisfactory proof to the sheriff thereof, then he or she  
shall be issued a license upon meeting all other conditions of  
this section. Upon discontinuance of employment that re-  
quires the concealed weapons license, if the individual issued  
the license is not yet twenty-one years of age, then the indi-  
vidual issued the license is no longer eligible and must return  
his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a con-  
trolled substance or a drug and is not an unlawful user  
thereof;

(5) That the applicant has not been convicted of a felony  
or of an act of violence involving the misuse of a deadly  
weapon;

(6) That the applicant has not been convicted of a misde-  
meanor offense of assault or battery either under the provi-  
sions of section twenty-eight, article two of this chapter or  
the provisions of subsection (b) or (c), section nine, article  
two of this chapter in which the victim was a current or for-  
mer spouse, current or former sexual or intimate partner,  
person with whom the defendant has a child in common,  
person with whom the defendant cohabits or has cohabited, a  
parent or guardian, the defendant’s child or ward or a mem-  
ber of the defendant’s household at the time of the offense; or  
a misdemeanor offense with similar essential elements in a  
jurisdiction other than this state;
57. (7) That the applicant is not under indictment for a felony
58. offense or is not currently serving a sentence of confinement,
59. parole, probation or other court-ordered supervision imposed
60. by a court of any jurisdiction or is the subject of an emer-
61. gency or temporary domestic violence protective order or is
62. the subject of a final domestic violence protective order en-
63. tered by a court of any jurisdiction;
64. (8) That the applicant is physically and mentally compo-
65. tent to carry such weapon;
66. (9) That the applicant has not been adjudicated to be
67. mentally incompetent;
68. (10) That the applicant has qualified under the minimum
69. requirements set forth in subsection (d) of this section for
70. handling and firing such weapon: Provided, That this require-
71. ment shall be waived in the case of a renewal applicant who
72. has previously qualified;
73. (11) That the applicant authorizes the sheriff of the
74. county, or his or her designee, to conduct an investigation
75. relative to the information contained in the application.
76. (b) The sheriff shall conduct an investigation which shall
77. verify that the information required in subdivisions (1), (2),
78. (3), (5), (6), (8) and (9), subsection (a) of this section are true
79. and correct.
80. (c) Sixty dollars of the application fee and any fees for
81. replacement of lost or stolen licenses received by the sheriff
82. shall be deposited by the sheriff into a concealed weapons
83. license administration fund. Such fund shall be administered
84. by the sheriff and shall take the form of an interest bearing
85. account with any interest earned to be compounded to the
86. fund. Any funds deposited in this concealed weapon license
87. administration fund are to be expended by the sheriff to pay
88. for the costs associated with issuing concealed weapons li-
89. censes. Any surplus in the fund on hand at the end of each
90. fiscal year may be expended for other law-enforcement pur-
poses or operating needs of the sheriff’s office, as the sheriff may consider appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official national rifle association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by such institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the national rifle association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or national guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.
(f) If the information in the application is found to be true and correct, the sheriff shall issue a license. The sheriff shall issue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of fifteen dollars which the sheriff shall forward to the superintendent of the West Virginia state police within thirty days of receipt. Any such license shall be valid for five years throughout the state, unless sooner revoked.

(h) All persons holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, shall continue to hold a valid concealed weapons license until his or her license expires or is revoked as provided for in this article: Provided, That all reapplication fees shall be waived for applications received by the first day of January, one thousand nine hundred ninety-seven, for any person holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, which contains use restrictions placed upon the license as a condition of issuance by the issuing circuit court. Any licenses reissued pursuant to this subsection will be issued for the time period of the original license.

(i) Each license shall contain the full name, social security number and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and such license card is deemed a license for the purposes of this section.

(j) The superintendent of the West Virginia state police shall prepare uniform applications for licenses and license
cards showing that such license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(k) In the event an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. Such petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case shall the court be required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the rules of appellate procedure of the supreme court of appeals.

(l) In the event a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of five dollars by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the superintendent of the West Virginia state police a certified copy of the approved application. It shall be the duty of the sheriff to furnish to the superintendent of the West Virginia state police at any time so requested a certified list of all such licenses issued in the county. The superintendent of the West Virginia state police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) All licensees must carry with them a state-issued photo identification card with the concealed weapons license whenever the licensee is carrying a concealed weapon. Any licensee who fails to have in his or her possession a state-
issued photo identification card and a current concealed weapons license while carrying a concealed weapon shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty or more than two hundred dollars for each offense.

(o) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(p) No person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license shall incur any civil liability as the result of the lawful performance of his or her duties under this article.

(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section, and the application of the honorably retired officer shall be granted without proof or inquiry by the sheriff as to those requirements set forth in subdivision (9), subsection (a) of this section, if the officer meets the remainder of the requirements of this section and has the approval of the appropriate chief law-enforcement officer.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided for in this section, no person shall possess a firearm as such is defined in section two of this article who:
(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is addicted to alcohol;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution;

(5) Being an alien is illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of
subsection (b) or (c), section nine, article two of this chapter
in which the victim was a current or former spouse, current
or former sexual or intimate partner, person with whom the
defendant has a child in common, person with whom the
defendant cohabits or has cohabited, a parent or guardian, the
defendant’s child or ward or a member of the defendant’s
household at the time of the offense or has been convicted in
any court of any jurisdiction of a comparable misdemeanor
crime of domestic violence.

Any person who violates the provisions of this subsection
shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than one hundred dollars nor
more than one thousand dollars or confined in the county jail
for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of
this section, any person:

(1) Who has been convicted in this state or any other
jurisdiction of a felony crime of violence against the person
of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other
jurisdiction of a felony controlled substance offense involv-
ing a Schedule I controlled substance other than marijuana, a
Schedule II or a Schedule III controlled substance as such are
defined in sections two hundred four, two hundred five and
two hundred six, article two, chapter sixty-a of this code and
who possesses a firearm as such is defined in section two of
this article shall be guilty of a felony and, upon conviction
thereof, shall be confined in a state correctional facility for
not more than five years or fined not more than five thousand
dollars, or both. The provisions of subsection (c) of this sec-
tion shall not apply to persons convicted of offenses referred
to in this subsection or to persons convicted of a violation of
this subsection.

(c) Any person prohibited from possessing a firearm by
the provisions of subsection (a) of this section may petition
the circuit court of the county in which he or she resides to
regain the ability to possess a firearm and if the court finds
by clear and convincing evidence that the person is compe-
tent and capable of exercising the responsibility concomitant
with the possession of a firearm, the court may enter an order
allowing the person to possess a firearm if such possession
would not violate any federal law.

CHAPTER 86

(Com. Sub. for S. B. 258 — By Senators Caldwell, Dempsey,
Minard, Minear, Rowe, Unger, Hunter and White)

[Passed February 19, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §48-27-310, §48-27-802 and §48-
27-903 of the code of West Virginia, 1931, as amended; and to
amend said code by adding thereto a new article, designated
§48-28-7, §48-28-8, §48-28-9 and §48-28-10, all relating to the
enforcement of domestic violence protective orders generally;
granting full faith and credit to out-of-state protection orders;
expanding the West Virginia state police registry of in-state
protective orders to include registration of out-of-state protec-
tive orders; expanding offenses and penalties for violations of
in-state protective orders to include violations of conditions of
bail, probation or parole which are intended to protect the per-
sonal safety of another; adopting the uniform interstate enforce-
ment of domestic violence protection orders act; setting forth
definitions; providing for enforcement of out-of-state protec-
tion orders even if the relief sought would not be available in
West Virginia; setting forth criteria for enforcement of out-of-
state protection orders, including protection provisions of valid
out-of-state orders governing custody and visitation and mutual
protection orders; providing that an out-of-state protection
order which appears authentic on its face is presumed to be valid; providing for nonjudicial enforcement of out-of-state protection orders by law-enforcement officers with probable cause to believe that a valid protection order exists and has been violated; providing for registration of an out-of-state protection order with the West Virginia state police; providing that registration is not a prerequisite to enforcement of an out-of-state protection order; providing immunity from civil or criminal liability for law-enforcement or other government officers or agencies for good faith acts or omissions undertaken in the course of enforcing an out-of-state protection order; providing criminal penalties for violation of out-of-state protection orders or conditions of bail, probation or parole; specifying that a protected individual may pursue other remedies; urging a construction of the act that encompasses uniformity of application and construction with other states that adopt it; and specifying the orders and actions to which the act is applicable.

Be it enacted by the Legislature of West Virginia:

That §48-27-310, §48-27-802 and §48-27-903 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §48-28-1, §48-28-2, §48-28-3, §48-28-4, §48-28-5, §48-28-6, §48-28-7, §48-28-8, §48-28-9 and §48-28-10, all to read as follows:

Article


ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-310. Full faith and credit.

§48-27-310. Full faith and credit.
Any protective order issued pursuant to this article shall be effective throughout the state in every county. Any protection order issued by any other state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States or any Indian tribe or band that has jurisdiction to issue protection orders shall be accorded full faith and credit and enforced in accordance with the provisions of article twenty-eight of this chapter.


(a) The West Virginia state police shall maintain a registry in which it shall enter certified copies of protective orders entered by courts from every county in this state pursuant to the provisions of this article and of protection orders issued by another jurisdiction pursuant to its law: Provided, That the provisions of this subsection are not effective until a central automated state law-enforcement information system is developed.

(b) A petitioner who obtains a protective order pursuant to this article, or a protection order from another jurisdiction pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A West Virginia protective order may be registered by the petitioner in a county other than the issuing county by obtaining a copy of the order of the issuing court, certified by the clerk of that court, and presenting that certified order to the local office of the West Virginia state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the West Virginia state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including any municipal police office and the office of the sheriff.
(e) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued if the petitioner has not registered the order in the county in which an alleged violation of the order occurs.


(a) A respondent who abuses the petitioner or minor children or who is physically present at any location in knowing and willful violation of the terms of: (1) An emergency or final protective order issued under the provisions of this article or section five hundred nine, article five of this chapter granting relief pursuant to the provisions of this article; or (2) a condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) A respondent who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.

*CLERK'S NOTE: This section was also amended by H. B. 4605 (Chapter 85), which passed subsequent to this act.
§48-28-1. Title.

This article may be cited as the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act”.


In this article:

1. “Court” means a circuit court, family court or magistrate court which has jurisdiction over domestic violence proceedings pursuant to article twenty-seven of this chapter.

2. “Foreign protection order” means a protection order issued by a tribunal of another state.

3. “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

4. “Protected individual” means an individual protected by a protection order.

5. “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence or antistalking laws of the issuing state, to prevent an
individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(7) "West Virginia protective order" means an order issued pursuant to article twenty-seven of this chapter or to section five hundred nine, article five of this chapter.

(8) "Respondent" means the individual against whom enforcement of a protection order is sought.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(10) "Tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.


(a) A person authorized by the law of this state to seek enforcement of a West Virginia protective order may seek enforcement of a valid foreign protection order in a court of this state. The court shall enforce the terms of the order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it was issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of West Virginia protective orders.

(b) A court of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.
(c) A court of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state or under federal law and with the requirements set out in subsection (d) of this section.

(d) A foreign protection order is valid if it:

(1) Identifies the protected individual and the respondent;

(2) Is currently in effect;

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the respondent’s rights to due process of law.

(e) A foreign protection order which appears authentic on its face is presumed to be valid.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A court of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) The tribunal of the issuing state made specific findings in favor of the respondent.

(a) A law-enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were a West Virginia protective order. Presentation of a foreign protection order that identifies both the protected individual and the respondent and that appears, on its face, to be authentic and currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law-enforcement officer of this state may consider other credible information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law-enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this article.

§48-28-5. Registration of order.

(a) Any individual may register a foreign protection order in this state by:
(1) Presenting a certified copy of the order to a local office of the West Virginia state police for registration in accordance with the provisions of section eight hundred two, article twenty-seven of this chapter; or

(2) Presenting a certified copy of the order to the clerk of the court in which enforcement may be sought and request that the order be forwarded to the West Virginia state police for registration in accordance with the provisions of section eight hundred two, article twenty-seven of this chapter.

(b) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual’s knowledge, the order is currently in effect.

(c) Upon receipt of a foreign protection order for registration, the local office of the West Virginia state police shall:

(1) Provide certified copies of the order to any law-enforcement agency within its jurisdiction, including any municipal police office and the office of the sheriff;

(2) Register the order in accordance with the provisions of this section and of section eight hundred two, article twenty-seven of this chapter;

(3) Furnish to the individual registering the order a certified copy of the registered order.

(d) A registered foreign protection order that is shown to be inaccurate or not currently in effect must be corrected or removed from the registry.

(e) A foreign protection order registered under this article may be entered in any existing state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order.

This state or a local governmental agency, or a law-enforcement officer, prosecuting attorney, clerk of court or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this article.


(a) A respondent who abuses, as that term is defined in section two hundred two, article twenty-seven of this chapter, a protected individual or who is physically present at any location in knowing and willful violation of the terms of: (1) A valid foreign protection order; (2) a protection order entered in any pending foreign divorce action which enjoins the offending party from molesting or interfering with another party or interfering with the custodial or visitation rights of another person; or (3) a condition of bail, probation or parole imposed in another state which has the express intent or effect of protecting the personal safety of a particular person or persons is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) A respondent who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars.
§48-28-8. Other remedies.

1 A protected individual who pursues remedies under this article is not precluded from pursuing other legal or equitable remedies against the respondent.


1 In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-28-10. Transitional provision.

1 This article applies to:

2 (a) Foreign protection orders issued before the effective date of this article; and

4 (b) Continuing actions for enforcement of foreign protection orders commenced before the effective date of this article. A request for enforcement, made on or after the effective date of this article, of a foreign protection order based on violations which occurred before the effective date of this article is governed by this article.

CHAPTER 87

(S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse)

[By Request of the Executive]

[Passed February 5, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-11-1b; to
amend and reenact §17B-4-3 of said code; to amend and reenact §17C-5-2, §17C-5-6a and §17C-5-8 of said code; to amend and reenact §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code; to amend and reenact §20-7-18 and §20-7-18b of said code; to amend and reenact §33-6A-1 of said code; to amend said code by adding thereto a new section, designated §50-3-2b; and to amend said code by adding thereto a new section, designated §59-1-11a, all relating to driving a motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs; limiting the prior offenses that can be used to enhance sentences to those that occurred within the ten-year period next preceding the date of arrest in the current proceeding; and imposing additional costs on defendants convicted of offenses involving the driving of a motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs for the use of counties and municipalities.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-11-1b; that §17B-4-3 of said code be amended and reenacted; that §17C-5-2, §17C-5-6a and §17C-5-8 of said code be amended and reenacted; that §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code be amended and reenacted; that §20-7-18 and §20-7-18b of said code be amended and reenacted; that §33-6A-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §50-3-2b; and that said code be amended by adding thereto a new section, designated §59-1-11a, all to read as follows:

Chapter
17c. Traffic Regulations and Laws of the Road.
20. Natural Resources.
33. Insurance.
50. Magistrate Courts.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1b. Additional costs in certain criminal proceedings.

1 In each criminal case before a mayor or in the municipal court of a municipality in which the defendant is convicted, whether by plea or at trial, under the provisions of a municipal ordinance which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. The clerk of each municipal court, or other person designated to receive fines and costs, shall, for purposes of further defraying the cost to the municipality of enforcing the provisions of the ordinance or ordinances described in this section and related provisions, deposit these moneys in the general revenue fund of the municipality. The provisions of this section shall be effective after the thirtieth day of June, two thousand four.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 4. VIOLATIONS OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this
state or any other jurisdiction is, for the first offense, 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 second offense, the person is guilty
of a misdemeanor and, upon conviction thereof, shall be
confined in a county or regional jail for a period of ten days
and, in addition to the mandatory jail sentence, shall be fined
not less than one hundred dollars nor more than five hundred
dollars; for the third or any subsequent offense, the person is
guilty of a misdemeanor and, upon conviction thereof, shall
be confined in a county or regional jail for six months and, in
addition to the mandatory jail sentence, shall be fined not less
than one hundred fifty dollars nor more than five hundred
dollars.

(b) Any person who drives a motor vehicle on any public
highway of this state at a time when his or her privilege to do
so has been lawfully revoked for driving under the influence
of alcohol, controlled substances or other drugs, or for driv-
ing while having an alcoholic concentration in his or her
blood of eight hundredths of one percent or more, by weight,
or for refusing to take a secondary chemical test of blood
alcohol content, is, for the first offense, guilty of a misde-
meanor and, upon conviction thereof, shall be confined in a
county or regional jail for six months and in addition to the
mandatory jail sentence, shall be fined not less than one hun-
dred dollars nor more than five hundred dollars; for the sec-
ond offense, the person is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in a county or regional
jail for a period of one year and, in addition to the mandatory
jail sentence, shall be fined not less than one thousand dollars
nor more than three thousand dollars; for the third or any
subsequent offense, the person is guilty of a felony and, upon
conviction thereof, shall be imprisoned in a state correctional
facility for not less than one year nor more than three years
and, in addition to the mandatory prison sentence, shall be
fined not less than three thousand dollars nor more than five
thousand dollars.
(c) Upon receiving a record of the first or subsequent conviction of any person under subsection (b) of this section upon a charge of driving a vehicle while the license of such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license. Upon receiving a record of the second or subsequent conviction of any person under subsection (a) of this section upon a charge of driving a vehicle while the license of such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article
5. Serious Traffic Offenses.
5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving under the Influence of Alcohol, Controlled Substances or Drugs.
ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

§17C-5-8. Interpretation and use of chemical test.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.
(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than
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20 twenty-four hours, and shall be fined not less than one hun-
21 dred dollars nor more than five hundred dollars.

(f) Any person who:

1 Knowingly permits his or her vehicle to be driven in
2 this state by any other person who:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any
3 controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of
4 eight hundredths of one percent or more, by weight;

2 Is guilty of a misdemeanor and, upon conviction
3 thereof, shall be confined in the county or regional jail for not
4 more than six months and shall be fined not less than one
5 hundred dollars nor more than five hundred dollars.

(g) Any person who knowingly permits his or her vehicle
1 to be driven in this state by any other person who is an habit-
2 ual user of narcotic drugs or amphetamine or any derivative
3 thereof, is guilty of a misdemeanor and, upon conviction
4 thereof, shall be confined in the county or regional jail for not
5 more than six months and shall be fined not less than one
6 hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who
1 drives a vehicle in this state while he or she has an alcohol
2 concentration in his or her blood of two hundredths of one
3 percent or more, by weight, but less than eight hundredths of
4 one percent, by weight, for a first offense under this subsec-
5 tion, is guilty of a misdemeanor and, upon conviction thereof,
6 shall be fined not less than twenty-five dollars nor more than
one hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursu-
ant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section. An order for supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, and should, therefore, be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than two hundredths of one percent, by weight, the child may
not be taken into custody unless other grounds exist under subsection (b), section eight, article five, chapter forty-nine of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath or urine: Provided, That if the test so designated is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of section seven of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least thirty days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test:
Provided, That the breath test shall be administered in the presence of the official who took the child into custody. The results of such breath test may be used in evidence to the same extent and in the same manner as if such test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the West Virginia state police, the sheriff of the county wherein the child was taken into custody or any deputy of such sheriff or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of section six of this article.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of section eight of this article.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of eight hundredths of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall release the child: Provided, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths
102 of one percent or more, by weight, the child shall only be
103 released to a parent or custodian, or to some other responsible
104 adult.

§17C-5-8. Interpretation and use of chemical test.

(a) Upon trial for the offense of driving a motor vehicle
in this state while under the influence of alcohol, controlled
substances or drugs, or upon the trial of any civil or criminal
action arising out of acts alleged to have been committed by
any person driving a motor vehicle while under the influence
of alcohol, controlled substances or drugs, evidence of the
amount of alcohol in the person’s blood at the time of the
arrest or of the acts alleged, as shown by a chemical analysis
of his or her blood, breath or urine, is admissible, if the sam-
ple or specimen was taken within two hours from and after
the time of arrest or of the acts alleged. The evidence gives
rise to the following presumptions or has the following ef-
fect:

(1) Evidence that there was, at that time, five hundredths
of one percent or less, by weight, of alcohol in his or her
blood, is prima facie evidence that the person was not under
the influence of alcohol;

(2) Evidence that there was, at that time, more than five
hundredths of one percent and less than eight hundredths of
one percent, by weight, of alcohol in the person’s blood is
relevant evidence, but it is not to be given prima facie effect
in indicating whether the person was under the influence of
alcohol;

(3) Evidence that there was, at that time, eight hundredths
of one percent or more, by weight, of alcohol in his or her
blood, shall be admitted as prima facie evidence that the
person was under the influence of alcohol.

(b) A determination of the percent, by weight, of alcohol
in the blood shall be based upon a formula of:
(1) The number of grams of alcohol per one hundred cubic centimeters of blood;

(2) The number of grams of alcohol per two hundred ten liters of breath;

(3) The number of grams of alcohol per sixty-seven milliliters of urine; or

(4) The number of grams of alcohol per eighty-six milliliters of serum.

(c) A chemical analysis of a person's blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subsection (a) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the West Virginia state police.

(d) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

§17C-5A-2. Hearing; revocation; review.
§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

(a) Any person who is licensed to operate a motor vehicle in this state and who drives a motor vehicle in this state shall be deemed to have given his or her consent by the operation thereof, subject to the provisions of this article, to the procedure set forth in this article for the determination of whether his or her license to operate a motor vehicle in this state should be revoked because he or she did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or did refuse to submit to any designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section shall report to the commissioner of the division of motor vehicles by written statement within forty-eight hours the name and address of the person so arrested. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection shall constitute an oath or affirmation by the person signing the statement that the statements contained therein are true and that any copy filed
31 is a true copy. The statement shall contain upon its face a
32 warning to the officer signing that to willfully sign a state-
33 ment containing false information concerning any matter or
34 thing, material or not material, is false swearing and is a mis-
35 demeanor.

36 (c) If, upon examination of the written statement of the
37 officer and the tests results described in subsection (b) of this
38 section, the commissioner shall determine that a person was
39 arrested for an offense described in section two, article five
40 of this chapter or for an offense described in a municipal
41 ordinance which has the same elements as an offense de-
42 scribed in said section, and that the results of any secondary
43 test or tests indicate that at the time the test or tests were
44 administered the person had, in his or her blood, an alcohol
45 concentration of eight hundredths of one percent or more, by
46 weight, or at the time the person was arrested he or she was
47 under the influence of alcohol, controlled substances or
48 drugs, the commissioner shall make and enter an order revok-
49 ing the person's license to operate a motor vehicle in this
50 state. If the results of the tests indicate that at the time the
51 test or tests were administered the person was under the age
52 of twenty-one years and had an alcohol concentration in his
53 or her blood of two hundredths of one percent or more, by
54 weight, but less than eight hundredths of one percent, by
55 weight, the commissioner shall make and enter an order sus-
56 pending the person's license to operate a motor vehicle in this
57 state. A copy of the order shall be forwarded to the person by
58 registered or certified mail, return receipt requested, and shall
59 contain the reasons for the revocation or suspension and de-
60 scribe the applicable revocation or suspension periods pro-
61 vided for in section two of this article. No revocation or
62 suspension shall become effective until ten days after receipt
63 of a copy of the order.

64 (d) Any law-enforcement officer taking a child into cus-
65 tody under the provisions of section six-a, article five of this
66 chapter who has reasonable cause to believe that the child, at
67 the time of driving the motor vehicle, had an alcohol concen-
68 tration in his or her blood of two hundredths of one percent or
69 more, by weight, or that the act of the child in driving the
70 motor vehicle was such that it would provide grounds for
71 arrest for an offense defined under the provisions of section
72 two of said article if the child were an adult, shall report to
73 the commissioner of the division of motor vehicles by written
74 statement within forty-eight hours the name and address of
75 the child.

76 (e) If applicable, the report shall include a description of
77 the specific offense with which the child could have been
78 charged if the child were an adult, and a copy of the results of
79 any secondary tests of blood, breath or urine. The signing of
80 the statement required to be signed by this subsection shall
81 constitute an oath or affirmation by the person signing such
82 statement that the statements contained therein are true and
83 that any copy filed is a true copy. Such statement shall con-
84 tain upon its face a warning to the officer signing that to will-
85 fully sign a statement containing false information concern-
86 ing any matter or thing, material or not material, is false
87 swearing and is a misdemeanor.

88 (f) Upon examination of the written statement of the
89 officer and any test results described in subsection (d) of this
90 section, if the commissioner determines that the results of the
91 tests indicate that at the time the test or tests were adminis-
92 tered the child had, in his or her blood, an alcohol concen-
93 tration of two hundredths of one percent or more, by weight, but
94 also determines that the act of the child in driving the motor
95 vehicle was not such that it would provide grounds for arrest
96 for an offense defined under the provisions of subsection (a),
97 (b), (c), (d), (e), (f) or (g), section two, article five of this
98 chapter if the child were an adult, the commissioner shall
99 make and enter an order suspending the child's license to
100 operate a motor vehicle in this state. If the commissioner
101 determines that the act of the child in driving the motor vehi-
102 cle was such that it would provide grounds for arrest for an
103 offense defined under the provisions of subsection (a), (b),
104 (c), (d), (e), (f) or (g), section two, article five of this chapter
if the child were an adult, the commissioner shall make and
enter an order revoking the child's license to operate a motor
vehicle in this state. A copy of such order shall be forwarded
to the child by registered or certified mail, return receipt
requested, and shall contain the reasons for the suspension or
revocation and describe the applicable suspension or revoca-
tion periods provided for in section two of this article. No
suspension or revocation shall become effective until ten
days after receipt of a copy of such order.

§17C-5A-1a. Revocation upon conviction for driving under the
influence of alcohol, controlled substances or
drugs.

(a) If a person is convicted for an offense defined in sec-
tion two, article five of this chapter or for an offense de-
scribed in a municipal ordinance which has the same ele-
ments as an offense described in said section because the
person did drive a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or the combined
influence of alcohol or controlled substances or drugs, or did
drive a motor vehicle while having an alcoholic concen-
tration in his or her blood of eight hundredths of one percent or
more, by weight, or did drive a motor vehicle while under the
age of twenty-one years with an alcohol concentration in his
or her blood of two hundredths of one percent or more, by
weight, but less than eight hundredths of one percent, by
weight, and if the person does not act to appeal the conviction
within the time periods described in subsection (b) of this
section, the person's license to operate a motor vehicle in this
state shall be revoked or suspended in accordance with the
provisions of this section.

(b) The clerk of the court in which a person is convicted
for an offense described in section two, article five of this
chapter or for an offense described in a municipal ordinance
which has the same elements as an offense described in said
section shall forward to the commissioner a transcript of the
judgment of conviction. If the conviction is the judgment of
a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the transcript when the person convicted has not perfected an appeal within ten days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(c) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. If the commissioner determines that the person was convicted of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall make and enter an order suspending the person's license to operate a motor vehicle in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for in section two of this article. Further, the order shall give the procedures for requesting a hearing which is to be held in accordance with the provisions of said section. The person shall be advised in the order that because of the receipt of a
transcript of the judgment of conviction by the commissioner. A presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

(d) The provisions of this section shall not apply if an order reinstating the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction.

(e) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked or suspended under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of the division of motor vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard. The written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted. The hearing shall be before the commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of the commissioner and all of the pertinent
provisions of article five, chapter twenty-nine-a of this code shall apply. The hearing shall be held at an office of the division located in or near the county wherein the arrest was made in this state or at some other suitable place in the county wherein the arrest was made if an office of the division is not available.

(b) Any such hearing shall be held within one hundred eighty days after the date upon which the commissioner received the timely written request therefor unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner's own motion or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at the hearing without the necessity of payment of fees by the division of motor vehicles.

(c) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(d) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a
motor vehicle while having an alcohol concentration in the
person's blood of eight hundredths of one percent or more, by
weight, or did refuse to submit to the designated secondary
chemical test, or did drive a motor vehicle while under the
age of twenty-one years with an alcohol concentration in his
or her blood of two hundredths of one percent or more, by
weight, but less than eight hundredths of one percent, by
weight.

The commissioner may propose a legislative rule in com-
pliance with the provisions of article three, chapter
twenty-nine-a of this code, which rule may provide that if a
person accused of driving a motor vehicle while under the
influence of alcohol, controlled substances or drugs, or ac-
cused of driving a motor vehicle while having an alcohol
concentration in the person's blood of eight hundredths of one
percent or more, by weight, or accused of driving a motor
vehicle while under the age of twenty-one years with an alco-
hol concentration in his or her blood of two hundredths of
one percent or more, by weight, but less than eight hun-
dredths of one percent, by weight, intends to challenge the
results of any secondary chemical test of blood, breath or
urine, or intends to cross-examine the individual or individu-
als who administered the test or performed the chemical anal-
ysis, the person shall, within an appropriate period of time
prior to the hearing, notify the commissioner in writing of
such intention. The rule may provide that when there is a
failure to comply with the notice requirement, the results of
the secondary test, if any, shall be admissible as though the
person and the commissioner had stipulated the admissibility
of such evidence. Any such rule shall provide that the rule
shall not be invoked in the case of a person who is not repre-
sented by counsel unless the communication from the com-
missioner to the person establishing a time and place for the
hearing also informed the person of the consequences of the
person's failure to timely notify the commissioner of the
person's intention to challenge the results of the secondary
chemical test or cross-examine the individual or individuals
who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall make specific findings as to:

1. Whether the arresting law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (3) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(f) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner
also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others, and if the commissioner further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or
failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years:

Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or finds that the person, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, did drive a motor vehicle, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
(j) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the commissioner further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the
ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(1) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative
suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest.

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(3) Any revocation under the provisions of section seven, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(o) In the case of a hearing wherein a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (4) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least one year and up to life if the person refused to submit to the test finally designated in the manner provided in said section.
If the commissioner finds by a preponderance of the evidence that: (1) The arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated; and (4) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

If the commissioner finds to the contrary with respect to the above issues, the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter.

A copy of the commissioner's order made and entered following the hearing shall be served upon the person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming the commissioner's earlier order of revocation, the person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code. The commissioner may not stay enforcement of the order. The court may grant
a stay or supersede as of the order only upon motion and
hearing, and a finding by the court upon the evidence pre-
presented, that there is a substantial probability that the appellant
shall prevail upon the merits, and the appellant will suffer
irreparable harm if the order is not stayed: Provided, That in
no event shall the stay or supersede as of the order exceed
one hundred fifty days. Notwithstanding the provisions of
section four, article five of said chapter, the commissioner
may not be compelled to transmit a certified copy of the tran-
script of the hearing to the circuit court in less than sixty
days.

(r) In any revocation or suspension pursuant to this sec-
tion, if the driver whose license is revoked or suspended had
not reached the driver's eighteenth birthday at the time of the
conduct for which the license is revoked or suspended, the
driver's license shall be revoked or suspended until the
driver's eighteenth birthday or the applicable statutory period
of revocation or suspension prescribed by this section, which-
ever is longer.

(s) Funds for this section's hearing and appeal process
may be provided from the drunk driving prevention fund, as
created by section forty-one, article two, chapter fifteen of
this code, upon application for such funds to the commission
on drunk driving prevention.

§17C-5A-3a. Establishment of and participation in the motor
vehicle alcohol test and lock program.

(a) The division of motor vehicles shall control and regu-
late a motor vehicle alcohol test and lock program for per-
sons whose licenses have been revoked pursuant to this arti-
cle or the provisions of article five of this chapter. Such
program shall include the establishment of a users' fee for
persons participating in the program which shall be paid in
advance and deposited into the driver's rehabilitation fund.
Except where specified otherwise, the use of the term "pro-
gram" in this section refers to the motor vehicle alcohol test
and lock program. The commissioner of the division of motor vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol.

(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That no person whose license has been revoked pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (a) or (b), section two, article five of this chapter, or pursuant to the provisions of subsection (f) or (g), section two of this article, shall be eligible for participation in the program: Provided, however, That any person whose license is revoked pursuant to this article or pursuant to article five of this chapter for an act which occurred either while participating in or after successfully completing the program shall not again be eligible to participate in such program.
(2) Any person whose license has been suspended pursuant to the provisions of subsection (1), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: Provided, That in the case of a person under the age of eighteen, the person shall be eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect, or after the person's eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to thereafter comply with the following conditions:

(A) If not already enrolled, the person will enroll in and complete the educational program provided for in subsection (c), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person will pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, no person eligible to participate in the program shall operate a motor vehicle unless approved to do so by the commissioner.

(c) For purposes of this section, "minimum revocation period" means the portion which has actually expired of the period of revocation imposed by the commissioner pursuant to this article or the provisions of article five of this chapter.
upon a person eligible for participation in the program as
follows:

(1) For a person whose license has been revoked for a
first offense for six months pursuant to the provisions of
section one-a of this article for conviction of an offense de-

dined in section two, article five of this chapter, or pursuant to
subsection (i), section two of this article, the minimum period
of revocation before such person is eligible for participation
in the test and lock program is thirty days, and the minimum
period for the use of the ignition interlock device is five
months, or that period described in subdivision (1), subsec-
tion (e) of this section, whichever period is greater;

(2) For a person whose license has been revoked for a
first offense pursuant to section seven, article five of this
chapter, refusal to submit to a designated secondary chemical
test, the minimum period of revocation before such person is
eligible for participation in the test and lock program is thirty
days, and the minimum period for the use of the ignition
interlock device is nine months, or the period set forth in
subdivision (1), subsection (e) of this section, whichever
period is greater;

(3) For a person whose license has been revoked for a
second offense pursuant to the provisions of section one-a of
this article for conviction of an offense defined in section
two, article five of this chapter, or pursuant to section two of
this article, the minimum period of revocation before such
person is eligible for participation in the test and lock pro-
gram is nine months, and the minimum period for the use of
the ignition interlock device is eighteen months, or that pe-
period set forth in subdivision (2), subsection (e) of this section,
whichever period is greater;

(4) For a person whose license has been revoked for any
other period of time pursuant to the provisions of section
one-a of this article for conviction of an offense defined in
section two, article five of this chapter, or pursuant to section
two of this article or pursuant to section seven, article five of
this chapter, the minimum period of revocation is eighteen
months, and the minimum period for the use of the ignition
interlock device is two years, or that period set forth in subdi-
vision (3), subsection (e) of this section, whichever period is
greater;

(5) An applicant for the test and lock program must not
have been convicted of any violation of section three, article
four, chapter seventeen-b of this code, for driving while the
applicant's driver's license was suspended or revoked, within
the two-year period preceding the date of application for
admission to the test and lock program;

(6) The commissioner is hereby authorized to allow indi-
viduals in the test and lock program an additional device or
devices if such is necessary for employment purposes.

(d) Upon permitting an eligible person to participate in
the program, the commissioner shall issue to such person,
and such person shall be required to exhibit on demand, a
driver's license which shall reflect that such person is re-
stricted to the operation of a motor vehicle which is equipped
with an approved motor vehicle alcohol test and lock system.

(e) Any person who has completed the safety and treat-
ment program and who has not violated the terms required by
the commissioner of such person's participation in the motor
vehicle alcohol test and lock program shall be entitled to the
restoration of such person's driver's license upon the expira-
tion of:

(1) One hundred eighty days of the full revocation period
imposed by the commissioner for a person described in sub-
division (1) or (2), subsection (c) of this section;

(2) The full revocation period imposed by the commis-
sioner for a person described in subdivision (3), subsection
(c) of this section;
(3) One year from the date a person described in subdivision (4), subsection (c) of this section is permitted to operate a motor vehicle by the commissioner.

(f) A person whose license has been suspended pursuant to the provisions of subsection (1), section two of this article who has completed the educational program, and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all other records pertaining to the suspension shall be expunged by operation of law: Provided, That a person shall be entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that such records have been expunged and by securely sealing and filing the records. Expungement shall have the legal effect as if the suspension never occurred. The records shall not be disclosed or made available for inspection and, in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of such information does not divulge the identity of the person.

(g) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during such person's participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who assists another
person required by the terms of such other person's participation in the motor vehicle alcohol test and lock program to use a motor vehicle alcohol test and lock system in any effort to bypass the system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if such is a condition of his or her employment.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

(a) No person shall operate a motorboat, jet ski or other motorized vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any motorboat, jet ski or other motorized vessel, or manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he or she can do so without serious danger to his or her own
vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his or her name, address and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(d) The operator of a vessel involved in a collision, accident or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of five hundred dollars damage to a vessel or other property. The report shall be made on such forms and contain information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or
(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of
the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:
(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, operates a motorboat, jet ski or other motorized vessel in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or
100 (B) Under the influence of any controlled substance; or
101 (C) Under the influence of any other drug; or
102 (D) Under the combined influence of alcohol and any controlled substance or any other drug; or
103 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;
104 (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
105 (g) Any person who knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
106 (h) Any person under the age of twenty-one years who operates a motorboat, jet ski or other motorized vessel in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.
131 A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) The person when so operating has on or within the motorboat, jet ski or other motorized vessel one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a
fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section for an offense which occurred on or after the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of this section for an offense which occurred within a period of five years immediately preceding the date of the offense; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the effective date of this section.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous
offense. The warrant or indictment or information shall set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to operate as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or
cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

(a) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(b) The policy is obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(1) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for a chemical test for intoxication: Provided, That when a license is suspended for sixty days by the commissioner of the division of motor vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (1), section two of said article, the suspension shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle;

(e) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or
forfeits bail during the policy period for any of the following reasons:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator's license;

(7) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all such violations.

Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the division of motor vehicles.

Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel: Provided, That cancellation
of the insurance policy by the insurer for failure of consider-
ation to be paid by the insured upon initial issuance of the
insurance policy is effective upon the expiration of ten days'
otice of cancellation to the insured.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2b. Additional costs in certain criminal proceedings.

In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, under the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. A magistrate court shall, on or before the tenth day of the month following the month in which the costs imposed in this section were collected, remit an amount equal to the amount from each of the criminal proceedings in which the costs specified in this section were collected to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit, together with information as may be required by the rules of the supreme court of appeals and the rules of the office of chief inspector. At the end of each month, for purposes of further defraying the cost to the county of enforcing the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code and related provisions, these moneys shall be paid to the sheriff of the county and deposited in the general revenue fund of the county. The provisions of this section shall be effective after the thirtieth day of June, two thousand four.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.
§59-1-11a. Additional costs in certain criminal proceedings.

(a) Except as provided in subsections (b) and (c) of this section, in each criminal case before a circuit court in which the defendant is convicted, whether by plea or at trial, under the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. For purposes of further defraying the cost to the county of enforcing the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code and related provisions, the clerk of the circuit court shall, on or before the tenth day of the month following the month in which the costs imposed in this section were collected, remit an amount equal to the amount from each of the criminal proceedings in which the costs specified in this subsection were collected to the sheriff of the county who shall deposit the same in the general revenue fund of the county.

(b) In each criminal case before a circuit court upon appeal from a magistrate court in which the defendant is convicted, whether by plea or at trial in the circuit court, under the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. For purposes of further defraying the cost to the county of enforcing the provisions of section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code and related provisions, the clerk of the circuit court shall, on or before the tenth day of the month following the month in which the costs imposed in this section were collected, remit an amount equal to the amount from each of the criminal proceedings in which the costs
specified in this subsection were collected to the sheriff of
the county who shall deposit the same in the general revenue
fund of the county. The provisions of this subsection shall
not require payment of the costs imposed by this subsection
to the circuit court where the costs have been paid in the
magistrate court.

(c) In each criminal case before a circuit court upon ap-
peal from a municipal proceeding in which the defendant is
convicted, whether by plea or at trial in the circuit court,
under the provisions of a municipal ordinance which has the
same elements as an offense described in section two, article
five, chapter seventeen-c of this code or section eighteen-b,
article seven, chapter twenty of this code, there shall be im-
posed, in addition to other costs, fines, forfeitures or penalties
as may be allowed by law, costs in the amount of fifty-five
dollars. For purposes of further defraying the cost to the
municipality of enforcing the provisions of the ordinance or
ordinances described in this subsection and related provi-
sions, the clerk of the circuit court shall, on or before the
tenth day of the month following the month in which the
costs imposed in this section were collected, remit an amount
equal to the amount from each of the criminal proceedings in
which the costs specified in this subsection were collected to
the clerk of the municipal court or other person designated to
receive fines and costs for the municipality from which the
conviction was appealed who shall deposit these moneys in
the general revenue fund of the municipality. The provisions
of this subsection shall not require payment of the costs im-
posed by this subsection to the circuit court where the costs
have been paid to the clerk of the municipal court or other
person designated to receive fines and costs for the munici-

(d) The provisions of this section shall be effective after
the thirtieth day of June, two thousand four.
AN ACT to amend and reenact §13-2C-3a of the code of West Virginia, 1931, as amended; and to amend and reenact §31-15-5 of said code, all relating to the economic development authority board; conferring the authority and duties of the industrial revenue bond allocation review committee to the board of the West Virginia economic development authority; and adding members to the board of the economic development authority.

Be it enacted by the Legislature of West Virginia:

That §13-2C-3a of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-15-5 of said code be amended and reenacted, all to read as follows:

Chapter
13. Public Bonded Indebtedness.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

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

§13-2C-3a. Continuation of industrial revenue bond allocation review committee; appointment, terms of members; voting; expenses; duties.
(a) There is continued the West Virginia industrial revenue bond allocation review committee consisting of the members of the board of the West Virginia economic development authority created by article fifteen, chapter thirty-one of this code.

(b) Members 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: Provided, That no member may be eligible for expenses for meetings of both the board of the West Virginia economic development authority and the West Virginia industrial revenue bond allocation review committee when the meetings are held on the same day.

(c) A majority of the members of the committee constitutes a quorum for the purpose of conducting business. The affirmative vote of at least the majority of the members present is necessary for any action taken by vote of the committee. No vacancy in the membership of the committee impairs the right of a quorum to exercise all the rights and perform all the duties of the committee.

(d) The committee shall review and evaluate all applications for reservation of funds submitted to the development office by a governmental body pursuant to the provisions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the state allocation (as defined in subdivision (2), subsection (b) of section twenty-one of this article) pursuant to subdivision (3), subsection (b) and subsection (c) of section twenty-one of this article.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.
§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.

(a) The West Virginia economic development authority is continued as a body corporate and politic, constituting a public corporation and government instrumentality.

(b) The authority shall be composed of a board of members consisting of a chairman, who shall be the governor, or his or her designated representative, the tax commissioner and seven members who shall be appointed by the governor, by and with the advice and consent of the Senate, and who shall be broadly representative of the geographic regions of the state. One member of the House of Delegates to be appointed by the speaker and one member of the Senate to be appointed by the president shall serve on the board in an advisory capacity as ex officio, nonvoting members. The board shall direct the exercise of all the powers given to the authority in this article. The governor shall also be the chief executive officer of the authority, and shall designate the treasurer and the secretary of the board.

(c) As appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment.

(d) The governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him or her at any meeting of the authority. In that case, the subordinate has the same power and privileges as the governor and may vote on any question.
Members of the authority are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

A majority of the members constitutes a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

The board shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.
(j) The governor may remove a member in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare the member's office vacant and appoint a person for the vacancy as provided in other cases of vacancy.

(k) The secretary of the board shall keep a record of the proceedings of the board and perform any other duties determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in the amount designated by other members of the board.

CHAPTER 89

(H. B. 4131 — By Delegates Mezzatesta, Cann, Frederick, Stalnaker, Sumner and Walters)

[Passed February 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18B-3D-2 of the code of West Virginia, 1931, as amended, relating to the workforce development initiative program; updating terms; and requiring certain reporting to the legislative oversight commission on workforce investment for economic development.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.
§18B-3D-2. Workforce development initiative program created; program administration.

(a) For the purposes of this article "Council" means the council for community and economic development as defined in section two, article two, chapter five-b of this code.

(b) There is hereby created under the council, a workforce development initiative program to administer and oversee grants to community and technical colleges to achieve the purposes of this article in accordance with legislative intent. The primary responsibility of the council as it relates to the workforce development initiative program is to administer the state fund for community and technical college and workforce development including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds, and evaluating the performance of workforce development initiatives.

(c) The council shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding, and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the council shall appoint an advisory committee consisting of the vice chancellor for community and technical colleges, the secretary of education and the arts or a designee, the assistant state superintendent for technical and adult education, the chair of the council for community and technical college education, and the chair of the West Virginia workforce investment council. The advisory committee shall review all applications for workforce development initiative grants and make a report including recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to
share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

(2) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(3) The council also shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of fifty thousand dollars of the funds available for grants on an annual basis, for general program administration.

(e) The head of the council shall report to the legislative oversight commission on workforce investment for economic development on the status of the workforce development initiative program by the first day of December, two thousand four, and annually thereafter by the first day of December.

(f) Moneys appropriated or otherwise available for the workforce development initiative program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(g) Nothing in this article requires a specific level of appropriation by the Legislature.
A BILL to amend and reenact §31-15-2 and §31-15-3 of the code of West Virginia, 1931, as amended, all relating to providing a procedure for the economic development authority to address employment and economic development problems of minority populations of this state.

Be it enacted by the Legislature of West Virginia:

That §31-15-2 and §31-15-3 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding: (a) That unemployment exists in many areas of the state and may well come about, from time to time, in other areas of the state; (b) that in some areas of the state, unemployment is a serious problem and has been for so long a period of time that, without remedial measures, it may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and
ultimately upon the state in the form of welfare and unemployment compensation; (e) that the absence of employment and business opportunities for youth is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of employment and business opportunities has resulted in thousands of workers and their families leaving the state to find such opportunities elsewhere and that this exodus has adversely affected the tax base of counties and municipalities resulting in an impairment of their financial ability to support education and other local government services; (g) that security against unemployment and the spread of indigency and economic stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, tourism, industry and manufacturing; (h) that the present and future health, safety, morals, right to gainful employment and general welfare of the people of the state require as a public purpose the promotion and development of new and expanded coal and other energy production, industrial, commercial, tourist and manufacturing enterprises within this state; (i) that the means and measures being authorized for the financing of projects, including the insuring of loans or other debt issued for working capital or the refinancing of existing debt of an enterprise, are, as a matter of public policy, for the public purposes of the several counties, municipalities and the state; (j) that the device under which private community industrial development organizations in the state acquire or build industrial buildings or sites and equip the same with funds raised through popular subscription, loans or otherwise for lease and sale to new or expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise and requires and deserves encouragement and support from the state as a means toward alleviation of unemployment and economic distress; (k) that community industrial development corporations in the state
have invested substantial funds in successful coal production, industrial projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first deed of trust or mortgage loans or letters of credit and other forms of credit enhancement; (l) that minority business ownership, especially among African-Americans in the area of Charleston, West Virginia, is proportionately less than minority business ownership nationwide and statewide, the unemployment rate for African-Americans recently has been about twice the unemployment rate for caucasians and significantly higher in some counties with a greater concentration of African-Americans and an urgent need exists to encourage African-Americans and minority business ownership and higher employment; (m) that an urgent need exists to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into projects; (n) that by increasing the number of projects presenting attractive opportunities for private investment, a larger portion of the private capital available in this state for investment can be put to use for the general economic development of the state; (o) that the availability of financial assistance through the creation of an insurance fund will promote the economic development of the state; and that it is in the public interest, in order to address the needs aforesaid, that a state instrumentality be created as a public body corporate with full powers to accept grants, gifts and appropriations, to generate revenues, to borrow money and issue its bonds, notes, commercial paper, other debt instruments and security interests to the end that funds obtained thereby may be used to furnish money and credit to approved industrial development agencies or enterprises or to promote the establishment of new projects or to retain existing projects.

The purposes of this article shall be to provide for the formation of a public economic development authority to promote, assist, encourage and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies or related corporations, partnerships, foundations, nonprofit organizations or other institutions, to develop and advance the business prosperity and economic welfare of the state of West Virginia; to encourage and assist in the location of new business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial, tourist or manufacturing developments in this state; to borrow moneys and to issue its bonds, notes, commercial paper, other debt instruments and security interests as well as creating an insurance fund for credit enhancement purposes; to furnish money and credit or credit enhancement to approved industrial development agencies or enterprises in this state or for the promotion of new projects or to retain existing projects or to financially assist projects by insuring bonds, notes, loans and other instruments, including, but not limited to, the insuring of financing of working capital or the refinancing of existing debt of an enterprise, thereby establishing a source of credit and credit enhancement not otherwise available; to review state procurement policies and practices to assure that they meet federal and state requirements and that they effectively encourage meaningful participation of African-Americans and other minority persons in the process of competing for and awarding of state contracts for goods and services; to encourage the state to continue to support and expand small business incubator programs, including the program at institutions of higher
education in the state; to encourage new and minority small business development; to undertake initiatives to encourage minority business ownership similar to those efforts used to encourage greater rates of business ownership among women; to assist community and economic development corporations to provide effective technical and business advisory services to minority-owned and -operated enterprises; to encourage industry, banks and other private businesses to hire African-Americans and other minority persons; to encourage governmental agencies and bodies and businesses to be more aggressive in establishing diversity-conscious practices as employers and for their operations; to enlist traditional and nontraditional lending institutions to be more creative and favorable to lending in minority communities and to minority persons, especially for business enterprises; to encourage small business start-up and expansion and provide funding to assist minority vendors to meet bid bonding requirements; and to encourage workforce investment boards to be accountable for educating poor and minority persons for jobs better than low-paying service jobs. These purposes are hereby declared to be public purposes for which public money may be spent and are purposes which will promote the health, safety, morals, right to gainful employment, business opportunities and general welfare of the inhabitants of the state.

CHAPTER 91

(Com. Sub. for S. B. 408 — By Senators Snyder, Helmick, Ross and Unger)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact §11-8-6f of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-11 of said code, all relating generally to levies by county boards of education and expenditure of property taxes collected from the levies; allowing growth counties to use provisions of growth county school facilities act; providing that high-growth counties may place certain property tax revenues in a growth county school facilities act fund to be used for the benefit of school facilities in the high-growth county; allowing moneys in the fund to be carried over from year to year; and providing that revenues deposited in a growth county school facilities act fund are not considered local share for purposes of the state aid formula.

Be it enacted by the Legislature of West Virginia:

That §11-8-6f of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase; creation and implementation of growth county school facilities act; creation of growth county school facilities act fund.

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

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

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

(c) Growth county school facilities act. -- Legislative Findings. –

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers and administrators. Therefore, the Legislature finds that county commissions in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a growth county school facilities act fund be used for school facilities in those counties to promote the best interests of this state’s students.

(1) For the purposes of this subsection, “growth county” means any county that has experienced an increase in second month net enrollment, excluding kindergarten students less than five years of age without an individualized education program, of fifty or more during any three of the last five years, as determined by the department of education.
(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property, shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account, designated as the growth counties school facilities act fund. Revenues deposited in the growth counties school facilities act fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the school building authority or for the payment of bonded indebtedness incurred for school facilities. Estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of section eleven, article nine-a, chapter eighteen of this code.

(d) This section, as amended during the legislative session in the year two thousand four, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, two
If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of articles one-c and three of said chapter, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value, made to it by the tax commissioner as follows:

(1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent as an allowance for the usual
losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five percent of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share that may be required prior to the report to the Legislature by the tax commissioner, the state board of education shall use the most recent projections or estimations that may be available from the tax department for that purpose.

(b) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they shall comply with the requirements of chapter eleven of this code and this section and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(c) For the purposes of any computation made in accordance with the provisions of this section, in any taxing unit in which tax increment financing is in effect pursuant to the provisions of article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base assessed value as defined in section two of said article.
(d) For purposes of any computation made in accordance with the provisions of this section, in any county where the county board of education has adopted a resolution choosing to use the provisions of the growth county school facilities act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section are made.

CHAPTER 92

(S. B. 448 — By Senators Plymale, Edgell, Boley, Bowman, Caldwell, Dempsey, Hunter, Oliverio, Sprouse, Unger and White)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
§18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code; to amend said code by adding thereto a new section, designated §18B-2B-6a; to amend and reenact §18B-2C-3 and §18B-2C-4 of said code; to amend and reenact §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code; to amend and reenact §18B-4-1, §18B-4-2 and §18B-4-7 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; to amend said code by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; to amend and reenact §18B-7-1 of said code; to amend said code by adding thereto a new section, designated §18B-7-12; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-10-2 of said code; and to amend said code by adding thereto a new section, designated §18B-10-1b, all relating to education generally; higher education; community and technical college education; post-secondary education; state board membership; powers and duties of higher education policy commission and council for community and technical college education; goals for post-secondary education; definitions; transferring certain rules and expanding and clarifying rule-making authority; developing and approving institutional compacts and master plans; establishing benchmarks and indicators; authorizing emergency rule; selecting peer institutions; legislative financing goals; budget authority of commission and council; provision of baccalaureate and graduate education; reducing duration of certain grants; higher education personnel; developing public policy agenda; commission membership; consistency and cooperation among commission, council and certain boards and groups; establishing priorities and distributing funds for capital projects; employment of staff; appointments to boards and commissions; transfer of certain course credits; approval of new institutions, programs and courses; employment of chancellor for higher education; powers and duties; evaluations and contracts; appointment of institutional presidents; evaluations; role of governing and advisory boards,
commission and council in appointments; requiring study of certain institutions providing post-secondary education; requiring reports to legislative oversight commission on education accountability; powers and duties of governing boards and institutional boards of advisors; authority of governing board in determining institutional status; changing status of certain baccalaureate institutions; establishing or continuing governing and advisory boards for certain institutions; membership; terms of office; legislative findings; employment of chancellor for community and technical college education; evaluations and contracts; maintenance of employee benefits; council membership and terms of office; qualifications; jurisdiction and authority of council; employment of staff; tuition and fees; certain fee transfer; developing standards for remedial and developmental courses; higher education report card; authorization to withdraw certain powers from a governing board; transfer and expansion of certain administrative, programmatic and budgetary control; establishing certain deadlines for commission and council; transferring certain fund and authorizing expenditures; employee transfer; powers and duties of chancellor; establishing and conforming structure of certain advisory groups; membership and terms of office; exceptions; meetings; development of search and screening guidelines; establishing certain advisory groups; clarifying certain expenses; modifying deadline for attaining independent accreditation; exceptions; council options; district consortium elimination; community and technical college consortium districts established; consortium powers, duties, responsibilities and operation; modifying title of certain employees; continuation in office; council authority over certain degree programs; service and fee requirement modification and limitation; employee reorganization; supervision of certain employees; essential services; employment of vice chancellor for administration; deadline for employment; modifying certain purchasing and competitive bidding requirements; certain employee seniority and displacement authority modification; duty of council regarding personnel classification.
system; creation, collection and use of certain fees; and eliminat-
ing certain obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18B-1A-8 of the code of West Virginia, 1931, as amended, be repealed; that §18B-1B-7 of said code be repealed; that §18B-3C-7 of said code be repealed; that §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code be repealed; that §18-2-1 of said code be amended and reenacted; that §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-11; that §18B-2A-1 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-6; that §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2B-6a; that §18B-2C-3 and §18B-2C-4 of said code be amended and reenacted; that §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code be amended and reenacted; that §18B-4-1, §18B-4-2 and §18B-4-7 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; that said code be amended by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; that §18B-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-7-12; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-10-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-10-1b, all to read as follows:
Chapter 18. Education.
18B. Higher Education.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

There is a state board of education, to be known as the West Virginia board of education, which is a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board consists of twelve members, of whom one is the state superintendent of schools, ex officio; one of whom is the chancellor of the higher education policy commission, ex officio; and one of whom is the chancellor of the West Virginia council for community and technical college education, ex officio, none of whom is entitled to vote. The other nine members are citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. Terms of office begin on the fifth day of November of the appropriate year and end on the fourth day of November of the appropriate year. At least two, but not more than three, members are appointed from each congressional district.

No more than five of the appointive members may belong to the same political party and no person is eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or who is an appointee or employee of the board.

Members are eligible for reappointment. Any vacancy on the
board shall be filled by the governor by appointment for the unexpired term.

Notwithstanding the provisions of section four, article six, chapter six of this code, a member of the state board may not be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers.

Before exercising any authority or performing any duties as a member of the state board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia, the certificate whereof shall be filed with the secretary of state. A suitable office in the state department of education at the state capitol shall be provided for use by the state board.

CHAPTER 18B. HIGHER EDUCATION.

1A. Compact with Higher Education for the Future of West Virginia.
1B. Higher Education Policy Commission.
2A. Institutional Boards of Governors.
2B. West Virginia Council for Community and Technical College Education.
2C. West Virginia Community and Technical College.
3C. Community and Technical College System.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Advisory Councils and Boards.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 1. GOVERNANCE.


(a) Findings.--The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable within the fiscal constraints of the state and for the state’s residents to participate and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

(1) West Virginia leads a national trend toward an aging population wherein a declining percentage of working-age adults will be expected to support a growing percentage of retirees. Public school enrollments statewide have declined and will continue to do so for the foreseeable future with a few notable exceptions in growing areas of the state. As the state works to expand and diversify its economy, it is vitally important that young people entering the workforce from our education systems have the knowledge and skills to succeed in the economy of the twenty-first century. It is equally important, however, that working-age adults who are the large majority of the current and potential workforce also possess the requisite knowledge and skills and the ability to continue learning throughout their lifetimes. The reality for West Virginia is that its future rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing
the opportunity to provide academic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and developing new methods to assess student competency rather than "seat time" as the basis for recognizing learning, allocating resources and ensuring accountability. In this changing environment, the state must take into account the continuing decline in the public school-age population, the limits of its fiscal resources and the imperative need to serve the educational needs of working-age adults. West Virginia cannot afford to finance quality higher education systems that aspire to offer a full array of programs while competing among themselves for a dwindling pool of traditional applicants. The competitive position of the state and its institutions will depend fundamentally on its capacity to reinforce the quality and differentiation of its institutions through policies that encourage focus and collaboration.

(3) The accountability system in West Virginia must be well equipped to address cross-cutting issues such as regional economic and workforce development, community and technical college services, collaboration with the public schools to improve quality and student participation rates, access to graduate education and other broad issues of state interest. Severe fiscal constraints require West Virginia to make maximum use of existing assets to meet new demands. New investments must be targeted to those initiatives designed to enhance and reorient existing capacity, provide incentives for collaboration and focus on the new demands. It must have a single accountability point for developing, building consensus around and sustaining attention to the public policy agenda and for allocating resources consistent with this policy agenda.

(4) The state should make the best use of the expertise that private institutions of higher education can offer and recognize
the importance of their contributions to the economic, social and cultural well-being of their communities.

(5) The system of public higher education should be open and accessible to all persons, including persons with disabilities and other persons with special needs.

(b) Compact with higher education. -- In pursuance of these findings, it is the intent of the Legislature to engage higher education in a statewide compact for the future of West Virginia, as provided in article one-a of this chapter, that focuses on a public policy agenda that includes, but is not limited to, the following:

(1) Diversifying and expanding the economy of the state;

(2) Increasing the competitiveness of the state's workforce and the availability of professional expertise by increasing the number of college degrees produced to the level of the national average and significantly improving the level of adult functional literacy; and

(3) Creating a system of higher education that is equipped to succeed at producing these results.

(c) Elements of the compact with higher education. -- It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b and three-c of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical
college education and geographical areas of responsibility to accomplish the following:

(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia's improved capacity to compete in the new economy through research oriented to state needs;

(B) Access to stable and continuing graduate-level programs in every region of the state, particularly in teacher education related to teaching within a subject area to improve teacher quality;

(C) Universities, colleges and community and technical colleges that have focused missions, individual points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

(D) Greater access and capacity to deliver technical education, workforce development and other higher education services to place-bound adults, thus improving the general levels of post-secondary educational attainment and literacy;

(E) Independently accredited community and technical colleges in every region of the state that:

(i) Assess regional needs;

(ii) Ensure access to comprehensive community and technical college and workforce development services within each of their respective regions;

(iii) Convene and serve as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions;
(iv) Provide and, as necessary, broker educational services;

(v) Provide necessary student services;

(vi) Fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c of this chapter; and

(vii) Maximize use of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.

(2) Providing additional resources, subject to availability and appropriation by the Legislature as provided in article one-a of this chapter, to make the state institutions of higher education more competitive with their peers, to assist them in accomplishing the elements of the public policy agenda and to ensure the continuity of academic programs and services to students.

(3) Establishing a process for the allocation of additional resources which focuses on achieving the elements of the public policy agenda and streamlines accountability for the step-by-step progress toward achieving these elements within a reasonable time frame as provided in article one-a of this chapter.

(4) Providing additional flexibility to the state institutions of higher education by making permanent the exceptions granted to higher education relating to travel rules and vehicles pursuant to sections forty-eight through fifty-three, inclusive, article three, chapter five-a of this code and section eleven, article three, chapter twelve of this code.

(5) Revising the higher education governance structure to make it more responsive to state and regional needs.
(d) General goals for post-secondary education. -- In pursuance of the findings and the development of institutional compacts with higher education for the future of West Virginia pursuant to article one-a of this chapter, it is the intent of the Legislature to establish general goals for post-secondary education and to have the commission and council report the progress toward achieving these goals in the higher education report card required pursuant to section eight, article one-b of this chapter and, where applicable, have the goals made a part of the institutional compacts. The Legislature establishes the general goals as follows:

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education to:

(i) Improve the quality of public education, particularly with respect to ensuring that the needs of public schools for teachers and administrators are met;

(ii) Inform public school students, their parents and teachers of the academic preparation that students need to be prepared adequately to succeed in their selected fields of study and career plans, including academic career fairs; and

(iii) Improve instructional programs in the public schools so that the students enrolling in post-secondary education are adequately prepared;

(B) Collaboration, coordination and interaction among public and post-secondary education, the governor’s council on literacy and the governor’s workforce investment office to
promote the effective and efficient utilization of workforce investment and other funds to:

(i) Provide to individuals and employers greatly improved access to information and services on education and training programs, financial assistance, labor markets and job placement;

(ii) Increase awareness among the state's citizens of the opportunities available to them to improve their basic literacy, workforce and post-secondary skills and credentials; and

(iii) Improve citizens' motivation to take advantage of available opportunities by making the system more seamless and user friendly;

(C) Collaboration, coordination and interaction between public and post-secondary education on the development of seamless curriculum in technical preparation programs of study between the secondary and post-secondary levels; and

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.

(2) The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;
(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

(C) An environment within post-secondary education that is student-friendly and that encourages and assists students in the completion of degree requirements within a reasonable time frame. The environment also should expand participation for the increasingly diverse student population;

(D) A spirit of entrepreneurship and flexibility within post-secondary education that is responsive to the needs of the current workforce and other nontraditional students for upgrading and retraining college-level skills; and

(E) The expanded use of technology for instructional delivery and distance learning.

(3) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which:

(A) Are relevant and affordable;

(B) Allow them to gain transferrable credits and associate or higher level degrees;

(C) Provide quality technical education and skill training; and

(D) Are responsive to business, industry, labor and community needs.

(4) State institutions of higher education prepare students to practice good citizenship and to compete in a global econ-
omly in which good jobs require an advanced level of education and skill which far surpasses former requirements. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The development of entrepreneurial skills through programs such as the rural entrepreneurship through action learning (REAL) program, which include practical experience in market analysis, business plan development and operations;

(B) Elements of citizenship development are included across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations and in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(C) Students are provided opportunities for internships, externships, work study and other methods to increase their knowledge and skills through practical application in a work environment;

(D) College graduates meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(E) College graduates meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates; and

(F) Admission and exit standards for students, professional staff development, program assessment and evaluation and other incentives are used to improve teaching and learning.
(5) State institutions of higher education exceed peer institutions in other states in measures of institutional productivity and administrative efficiency. Efforts in pursuit of this goal include, but are not limited to:

(A) The establishment of systematic ongoing mechanisms for each state institution of higher education to set goals, to measure the extent to which those goals are met and to use the results of quantitative evaluation processes to improve institutional effectiveness;

(B) The combination and use of resources, technology and faculty to their maximum potential in a way that makes West Virginia higher education more productive than its peer institutions in other states while maintaining educational quality; and

(C) The use of systemic program review to determine how much duplication is necessary to maintain geographic access and to eliminate unnecessary duplication.

(6) Post-secondary education enhances state efforts to diversify and expand the economy of the state. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The focus of resources on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state;

(B) The focus of resources on programs supportive of West Virginia employment opportunities and the emerging high-technology industries;

(C) Closer linkages among higher education and business, labor, government and community and economic development organizations; and
(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future workforce needs of the state.

(7) Faculty and administrators are compensated at a level competitive with peer institutions to attract and keep quality personnel at state institutions of higher education.

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level which at least covers the full cost of instruction.

§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 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 and eastern West Virginia community and technical college which may 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 deliver community and technical college education. This definition includes southern West Virginia community and technical college, West Virginia northern community and technical college, eastern West Virginia community and technical college, New River community and technical college, West Virginia university at Parkersburg, the community and technical college at West Virginia university institute of technology, the community and technical college of Shepherd, Fairmont state community and technical college, Marshall community and technical college and West Virginia state community and technical college;

(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 for higher education" means the chief executive officer of the higher education policy commission employed pursuant to section five, article one-b of this chapter;
(k) "Chancellor for community and technical college education" means the chief executive officer of the West Virginia council for community and technical college education employed pursuant to section three, article two-b of this chapter;

(l) "Chancellor" means the chancellor for higher education where the context refers to a function of the higher education policy commission. "Chancellor" means chancellor for community and technical college education where the context refers to a function of the West Virginia council for community and technical college education;

(m) "Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources in the 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 or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(n) "Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All such programs are under the jurisdiction of the council. Any reference to "post-secondary vocational education programs" means community and technical college education programs as defined in this subsection;
(o) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(p) For the purposes of this chapter and chapter eighteen-c of this code, "senior administrator" means the vice chancellor for administration employed by the commission with the advice and consent of the council in accordance with section two, article four of this chapter;

(q) "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;

(r) "State institution of higher education" means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(s) Until the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university and West Virginia university institute of technology;

(t) The advisory board previously appointed for the West Virginia graduate college is known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

(u) "Institutional compact" means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section two, article one-a of this chapter;

(v) "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;

(w) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight, article three-c of this chapter;

(x) "Sponsoring institution" means a 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;

(y) "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;

(z) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that 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

(aa) "Council" means the West Virginia council for community and technical college education created pursuant to article two-b of this chapter.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the seventeenth day of June, two thousand, are hereby transferred to the interim
governing board created in article one-c of this chapter and shall be exercised and performed by the interim governing board until the first day of July, two thousand one, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of this chapter, are hereby transferred to the interim governing board created in article one-c of this chapter until the first day of July, two thousand one. Property transferred to or vested in the board of trustees and board of directors shall include:

(1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents;

(2) All property acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents;

(3) All property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents; and

(4) All property acquired in the name of the board of regents and transferred to and vested in the respective board of trustees and board of directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of trustees and board of directors formerly existing under the provisions of this chapter is hereby transferred to the interim governing board until the first day of July, two thousand one, as those agreements and
obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of trustees and board of directors shall include:

(1) Each valid agreement and obligation of the board of governors of West Virginia university transferred to and deemed the agreement and obligation of the West Virginia board of regents;

(2) Each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents;

(3) Each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents; and

(4) Each valid agreement and obligation of the board of regents transferred to and deemed the agreement and obligation of the respective board of trustees and board of directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board until the first day of July, two thousand one, and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

(1) Those adopted or promulgated by the board of governors of West Virginia university and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine,
unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(2) Those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(3) Those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and

(4) Those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.

e) Title to all real property transferred to or vested in the interim governing board pursuant to this section of the code is hereby transferred to the commission effective the first day of July, two thousand one. The board of governors for each institution may request that the commission transfer title to the board of governors of any real property specifically identifiable with that institution or the commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property.
The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the commission shall be retained by the commission.

(f) Ownership of or title to any other property, materials, equipment or supplies obtained or purchased by the interim governing board or the previous governing boards on behalf of an institution is hereby transferred to the board of governors of that institution effective the first day of July, two thousand one.

(g) Each valid agreement and obligation previously transferred or vested in the interim governing board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of governors of the institution or institutions for whose benefit the agreement was entered into or the obligation undertaken effective the first day of July, two thousand one.

(1) The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight, article ten of this chapter and article twelve-b, chapter eighteen of this code are hereby transferred to the commission and each institution shall transfer to the commission those funds the commission determines are necessary to pay that institution’s share of bonded indebtedness.

(2) The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of governors of the institution on whose behalf the bonds were issued.

(h) All orders, resolutions, policies and rules:

(1) Adopted or promulgated by the respective board of trustees, board of directors or interim governing board and in effect immediately prior to the first day of July, two thousand
one, are hereby transferred to the commission effective the first
day of July, two thousand one, and continue in effect until
rescinded, revised, altered, amended or transferred to the
governing boards by the commission as provided in this section
and in section six of this article.

(2) Adopted or promulgated by the commission relating
solely to community and technical colleges or community and
technical college education, or rules which the council finds
necessary for the exercise of its lawful powers and duties
pursuant to the provisions of this chapter, may be adopted by
the council and continue in effect until rescinded, revised,
altered, amended or transferred to the governing boards under
the jurisdiction of the council pursuant to section six of this
article. Nothing in this section requires the initial rules of the
commission that are adopted by the council to be promulgated
again under the procedure set forth in article three-a, chapter
twenty-nine-a of this code unless such rules are rescinded,
revised, altered or amended.

(3) Adopted or promulgated by the commission relating to
multiple types of public institutions of higher education or
community and technical college education as well as baccala-
ureate and post-baccalaureate education are transferred to the
council in part as follows:

(A) That portion of the rule relating solely to community
and technical colleges or community and technical college
education is transferred to the council and continues in effect
until rescinded, revised, altered, amended or transferred to the
governing boards by the council as provided in this section and
in section six of this article;

(B) That portion of the rule relating to institutions or
education other than community and technical colleges is
retained by the commission and continues in effect until
rescinded, revised, altered, amended or transferred to the governing boards by the commission as provided in this section and in section six of this article.

(i) The commission may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the commission pursuant to section six of this article.

The council may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the council pursuant to section six of this article.

(j) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(k) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding
applicability of any provision of law shall first be made by the commission.

§18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, subject to the provisions of section three of this article.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code and subject to the provisions of section three of this article. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) The commission and council each shall promulgate a rule to guide the development and approval of rules, guidelines and other policy statements made by their respective governing boards. The rules promulgated by the commission and council shall include, but are not limited to, the following provisions:

(1) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected;

(2) Designation of a single location where all proposed and approved rules, guidelines and other policy statements can be accessed by the public;

(3) A procedure to maximize internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible.
(d) On and after the effective date of this section, and notwithstanding any other provision of this code to the contrary, any rule heretofore required by law to be promulgated as a legislative rule prior to the first day of July, two thousand one, may not be considered to be a legislative rule for the purposes of article three-a, chapter twenty-nine-a of this code except for the following:

(1) The legislative rule required by subsection (c), section eight of this article;

(2) The legislative rule required by section eight-a of this article;

(3) The legislative rule required by section two, article one-a of this chapter;

(4) The legislative rule required by section four, article one-b of this chapter;

(5) The legislative rule required by section one, article three, chapter eighteen-c of this code;

(6) The legislative rule required by section one, article four, chapter eighteen-c of this code;

(7) The legislative rule required by section seven, article five, chapter eighteen-c of this code; and

(8) The legislative rule required by section one, article six, chapter eighteen-c of this code.

(e) Nothing in this section requires that any rule reclassified or transferred under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.
(f) The commission and council each shall file with the legislative oversight commission on education accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

§18B-1A-3. Peer institutions.

§18B-1A-4. Legislative financing goals.

§18B-1A-5. Financing; institutional operating budgets, additional funding.

§18B-1A-6. Graduate education.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

(a) Each state college and university shall prepare an institutional compact for submission to the commission. Each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the institutional compacts shall form the agreements between the institutions of higher education and the commission or council, respectively, and, ultimately, between the institutions of higher education and the people of West Virginia on how the institutions will use their resources to address the intent of the Legislature and the goals set forth in section one-a, article one of this chapter. The compacts shall contain the following:

(1) A step-by-step process to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter as organized by the commission and council. The step-by-step process shall be delineated by objectives and shall set forth a time line for achieving the objectives which shall, where applicable, include benchmarks to measure
(2) A determination of the mission of the institution which specifically addresses changes, as applicable, in the areas of research, graduate education, baccalaureate education, revised admission requirements, community and technical colleges and such other areas as the commission or council determines appropriate. In the determination of mission, the institutions and the commission or council shall consider the report completed by the national center for higher education management systems pursuant to the legislative study as provided in section seven, article three of this chapter;

(3) A plan which is calculated to make any changes in institutional mission and structure within a six-year period;

(4) A statement of the geographic areas of responsibility, where applicable, for each goal to be accomplished as provided in subsection (d) of this section;

(5) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(6) Such other items, requirements or initiatives, required by the commission or council, designed to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter or other public policy goals established by the commission or council.

(b) Each institutional compact shall be updated annually and shall follow the same general guidelines contained in subsection (a) of this section.

(c) Development and updating of the institutional compacts is subject to the following:
(1) The ultimate responsibility for developing and updating the institutional compacts at the institutional level resides with the institutional board of advisors or the board of governors, as appropriate;

(2) The ultimate responsibility for developing and adopting the final version of the state college and university institutional compacts resides with the commission. The ultimate responsibility for developing and adopting the final version of the community and technical college institutional compacts resides with the council;

(3) Each institution shall submit its compact to the commission or council annually by the fifteenth day of November;

(4) The commission and council shall review each compact of the institutions under their respective jurisdictions and either adopt the compact or return it with specific comments for change or improvement. The commission and council shall continue this process as long as each considers advisable;

(5) By the first day of May annually, if the institutional compact of any institution as presented by that institution is not adopted by the commission or council, then the commission or council is empowered and directed to develop and adopt the institutional compact for the institution and the institution is bound by the compact so adopted; and

(6) As far as practicable, the commission and council each shall establish uniform processes and forms for the development and submission of the institutional compacts by the institutions under their respective jurisdictions. As a part of this function, the commission and council shall organize the statements of legislative intent and goals contained in section one-a, article one of this chapter in a manner that facilitates the purposes of this subdivision and the purposes of this section.
(d) The commission and council shall assign geographic areas of responsibility to the state institutions of higher education under their respective jurisdictions as a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve the public policy agenda. The benchmarks established in the institutional compacts shall include measures of programs and services by geographic area throughout the assigned geographic area of responsibility.

(e) The compacts shall contain benchmarks used to determine progress toward meeting the goals established in the compacts. The benchmarks shall meet the following criteria:

1. They shall be as objective as possible;
2. They shall be directly linked to the goals in the compacts;
3. They shall be measured by the indicators described in subsection (f) of this section; and
4. Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(f) The commission and council each shall establish by legislative rule indicators which measure the degree to which the goals and objectives set forth in section one-a, article one of this chapter are being addressed and met by the institutions under their respective jurisdictions. The benchmarks established in subsection (e) of this section shall be measured by the indicators.

(1) The Legislature finds that an emergency exists; therefore, not later than the first day of October, two thousand four, the council shall file as an emergency rule a legislative rule pertaining to benchmarks and indicators in accordance with the
provisions of article three-a, chapter twenty-nine-a of this code.
The rule pertaining to benchmarks and indicators in effect for
the commission at the time of the effective date of this section
remains in effect for the institutions under its jurisdiction.

(2) The legislative rules shall set forth at the least the
following as pertains to all state institutions of higher educa-
tion:

(A) The indicators used to measure the degree to which the
goals and objectives are being met;

(B) Uniform definitions for the various data elements to be
used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators
to:

(i) Provide measurable evidence that the pursuits of the
institution are targeting the educational needs of the citizens of
the state and the components of the compacts and master plans;

(ii) Delineate the goals and benchmarks for an institution so
that the commission or council can precisely measure the
degree to which progress is being made toward achieving the
goals for post-secondary education provided in section one-a,
article one of this chapter; and

(iii) Distinctly identify specific goals within the master plan
or compact of an institution that are not being met or toward
which sufficient progress is not being made.

(3) In addition to any other requirement, the legislative rule
established by the council shall set forth at the least the follow-
ing as pertains to community and technical college education:
(A) Benchmarks and indicators which are targeted to identify:

(i) The degree to which progress is being made by institutions toward meeting the goals for post-secondary education and the essential conditions provided in section three, article three-c of this chapter;

(ii) Information and data necessary to be considered by the council in making the determination required by section three, article two-c of this chapter;

(iii) The degree to which progress is being made in the areas considered by the council for the purpose of making the determination required by section three, article two-c of this chapter; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the council that an institution’s progress toward achieving the goals for post-secondary education and the essential conditions is so deficient that implementation of the provisions of section four, article two-c of this chapter is warranted and necessary.

(g) The commission or the council, as appropriate, shall approve the master plans developed by the boards of governors and the institutional boards of advisors pursuant to section four, article two-a of this chapter or section one, article six of this chapter, as appropriate.

§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) When selecting peers, the commission shall abide by the following conditions:

(1) 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.

(2) The peer institutions for community and technical colleges shall be selected in collaboration with the council.

(3) 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:

(A) To determine adjustments to base operating budgets as described in section five of this article;

(B) To determine comparable levels of tuition;

(C) To determine comparable faculty and staff teaching requirements and other workloads; and

(D) For such other purposes as the law may require or the commission may find useful or necessary.

(4) 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.

(5) The commission shall select peer institutions for each institution through an open, deliberative, objective process and
in consultation with the institutional boards of governors or boards of advisors, as appropriate, intended to achieve broad understanding of the basis for this selection in the higher education community and the Legislature.

(6) Final peer selection is subject to the approval of the legislative oversight commission on education accountability.

(7) In selecting peer institutions, the commission shall use criteria such as, but not limited to:

(A) Institutional mission;

(B) Institutional size related to full-time equivalent students;

(C) The proportions of full-time and part-time students;

(D) The level of academic programs, including, but not limited to, number of degrees granted at the associate, baccalaureate, masters, doctoral and first-professional level;

(E) The characteristics of academic programs such as health sciences, professional, technical or liberal arts and sciences; and

(F) The level of research funding from federal competitive funding sources.

(8) 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. The commission shall review and make adjustments to peer institutions for community and technical colleges in collaboration with the council.
§18B-1A-4. Legislative financing goals.

(a) The Legislature recognizes that the higher education goals set forth in section one-a, article one of this chapter are of utmost importance. The Legislature further recognizes that meeting the goals may require the appropriation of funds above the current operating budgets of the institutions.

(b) It is, therefore, the desire of the Legislature to increase funding annually for higher education at a rate not less than the annual percentage increase in the overall general revenue budget.

(c) If the commission or council, or both, determines that appropriations are insufficient to fund the requirements of the institutional compacts under its jurisdiction, the commission or council first shall consider extending the length of the compacts or otherwise modifying the compacts to allow the institutions to achieve the benchmarks in the compacts. If modifications to the institutional compacts are not sufficient to allow the institutions to meet their benchmarks, the commission or council, or both, shall recommend to the Legislature methods of making the higher education system more efficient. The methods may include, but are not limited to, the following:

(1) Administrative efficiencies;

(2) Consolidation of services;

(3) Elimination of programs;

(4) Consolidating institutions; and

(5) Closing institutions.
§18B-1A-5. Financing; institutional operating budgets, additional funding.

(a) Budget request and appropriations. -- The commission and council each has the responsibility to develop a budget for the state system of higher education under its respective jurisdiction. The commission submits the budget request for higher education, including the budget request as developed by the council, to the governor before the first day of September annually. The budget requests of the commission and the council specifically shall include the amount of the institutional operating budgets, as defined in section two, article one of this chapter, required for all state institutions of higher education under their respective jurisdictions. The budget appropriation for the state systems of higher education under this chapter and other provisions of the law shall consist of separate control accounts or institutional control accounts, or some combination of such accounts, for appropriation of institutional operating budgets and other funds. The commission and council each is responsible for allocating state appropriations to supplement institutional operating budgets in accordance with this section. In addition to the institutional operating budget and incentive funding, however, the commission and council each is responsible for allocating funds that are appropriated to it for other purposes. In order to determine institutional allocations, it is the responsibility of the institutions and their respective institutional boards of governors or advisors, as appropriate to provide to the commission or council documentation on institutional progress toward mission enhancement, preliminary peer comparison calculations, performance of increased productivity and academic quality and measurable attainment in fulfilling state priorities as set forth in this article. The documentation shall be provided to the commission or council no later than the first day of October annually.

(b) Legislative funding priorities. —
(1) The Legislature recognizes the current funding model has not moved all state institutions equitably towards comparable peer funding levels. The model has left West Virginia institutions at a competitive disadvantage to their national peers.

(2) The Legislature acknowledges that the resource allocation model used to comply with enrolled committee substitute for Senate bill no. 547, passed during the legislative session of one thousand nine hundred ninety-five, alleviated some of the disparity that exists among state institutions’ operating budgets, but left significant differences between the institutions and their national peers.

(3) The Legislature recognizes that a system of independently accredited community and technical colleges is essential to the economic vitality of the state.

(4) The Legislature places great importance on achieving the priority goals outlined in the public policy agenda and believes the state institutions of higher education should play a vital role in facilitating the attainment of these goals.

(5) The Legislature also believes it is imperative that the state make progress on narrowing the peer inequity while balancing the need for sustaining the quality of our institutions.

(6) It is the charge of the commission and council to allocate all funds appropriated in excess of the fiscal year two thousand one general revenue appropriations in alignment with the legislative funding priorities listed below. The commission and council shall consider the priorities and assign a percentage of the total appropriation of new funds to each priority.

(A) Peer equity. -- Funds appropriated for this purpose increase the level of the institutional operating budget for state institutions of higher education comparable to their peer
institutions. The allocation shall provide, subject to the availability of funds and legislative appropriations, for a systematic adjustment of the institutional operating budgets to move all institutions' funding in the direction of levels comparable with their peers. Institutional allocations shall be calculated as follows:

(i) A calculation shall be made of the deficiency in per student funding of each institution in comparison with the mean per student funding of the peer institutions as defined by the commission pursuant to section three of this article;

(ii) For all institutions that are deficient in comparison with peer institutions, the amounts of the deficiencies shall be totaled;

(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of deficiency for all West Virginia institutions shall be established for each institution; and

(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total amount of money in the account;

(B) *Independently accredited community and technical colleges development.* -- Funds appropriated for this purpose will ensure a smooth transition, where required, from "component" community and technical colleges to independently accredited community and technical colleges as defined in section two, article one of this chapter. Appropriations for this purpose are to be allocated only to those institutions having approved compacts with the council that expressly include the transition of their component community colleges to independently accredited status and have demonstrated measurable progress towards this goal. By the first day of July, two thousand five, or when all required community and technical
colleges are independently accredited, whichever first occurs, funds for this purpose shall be allocated to the incentives for institutional contributions to state priorities;

(C) *Research challenge.* -- Funds appropriated for this purpose shall assist public colleges and universities in West Virginia to compete on a national and international basis by providing incentives to increase their capacity to compete successfully for research funding. The Legislature intends for institutions to collaborate in the development and execution of research projects to the extent practicable and to target research to the needs of the state as established in the public policy agenda and linked to the future competitiveness of this state.

(i) The commission shall develop criteria for awarding grants to institutions under this account, which may include, but are not limited to, the following:

(I) Grants to be used to match externally funded, peer-reviewed research;

(II) Grants to be used to match funds for strategic institutional investments in faculty and other resources to increase research capacity;

(III) Grants to support funding for new research centers and projects that will foster economic development and workforce investment within the state. These grants shall be limited to five years and each research center or project funded shall receive a decreasing award each year and shall be required to be supported solely by external funding within five years;

(ii) The commission may establish an advisory council consisting of nationally prominent researchers and scientists, including representatives from outside the state, to assist in developing the criteria for awarding grants under this account.
(iii) For the purposes of making the distributions from this account, the commission shall establish the definition for research, research funds and any other terms as may be necessary to implement this subdivision; and

(D) Incentives for institutional contributions to state priorities. -- Funds appropriated for this purpose provide incentives to institutions which demonstrate success toward advancing the goals of the public policy agenda as set forth in section one-a, article one of this chapter and to provide incentives for mission enhancement as set forth in section two of this article.

(E) Sustained quality support. -- The commission and council shall provide additional operating funds to institutions under their respective jurisdictions with approved compacts. The commission and council shall allocate these funds on an equal percentage basis to all institutions. The commission or council may delay distribution of these funds to any institution which does not demonstrate measurable progress towards the goals provided in its compact with the commission or council.

(c) Allocations to institutional operating budgets. -- For the purposes of this subsection, the commission and council each shall establish by rule pursuant to subsection (f), section two of this article the method for measuring the progress of each institution towards meeting the benchmarks of its institutional compact.

(d) Allocation of appropriations to the institutions. -- Appropriations in this section shall be allocated to the state institutions of higher education in the following manner:

(1) Each fiscal year appropriations from the funds shall be allocated only to institutions which have:
(A) Approved compacts, pursuant to section two of this article; and

(B) Achieved their annual benchmarks for accomplishing the goals of their compacts, as approved by the commission or council.

(2) If an institution has not achieved all of its annual benchmarks, the commission or council may distribute a portion of the funds to the institution based on its progress as the commission or council determines appropriate. The commission and council each shall establish by rule, pursuant to subsection (f), section two of this article, the method for measuring the progress of each institution toward meeting the benchmarks of its institutional compact.

(c) Nothing in this section limits the appropriation or collection of fees necessary to effectuate the operation and purpose of the commission or council.

§18B-1A-6. Graduate education.

(a) Intent. -- It is the intent of the Legislature to address the need for high quality graduate education programs to be available throughout the state.

(b) Findings. -- The Legislature makes the following findings:

(1) Since West Virginia ranks below its competitor states in graduate degree production, particularly in the areas that are important to the state’s competitive position in the new economy of the twenty-first century, there is a considerable need for greater access to graduate education, especially at the master’s degree level;
(2) There is a significant disparity in access to part-time graduate degree programs among the different regions of the state and part-time graduate enrollments are heavily concentrated in the counties immediately surrounding Marshall university and West Virginia university;

(3) There is a particular need for increased access to graduate programs linked directly to the revitalization of the regional economies of the state; and

(4) There is a particular need for improved quality and accessibility of preservice and in-service programs for teachers in subject matter fields.

(c) In order to meet the need for graduate education, the commission shall be responsible for accomplishing the following:

(1) Ensuring that West Virginia university and Marshall university expand access to master's degree programs throughout West Virginia, with a strong emphasis on collaboration with the baccalaureate colleges and community and technical colleges in each region;

(2) Ensuring that any institution providing a master's degree program under the provisions of this section provides a meaningful, coherent program by offering courses in such a way that students, including place-bound adults, have ample opportunity to complete a degree in a reasonable period of time;

(3) Focusing on providing courses that enhance the professional skills of teachers in their subject areas; and

(4) Ensuring that programs are offered in the most cost-effective manner to expand access throughout the region and the state.
(d) Concord college, Fairmont state college, Glenville state
college, Shepherd college, West Liberty state college and West
Virginia state college shall meet the need for graduate educa-
tion in their regions by following the procedures outlined
below.

(1) The institutions shall develop as graduate centers for
their regions to broker access to graduate programs by contract-
ing with accredited colleges and universities in and out of the
state. These programs shall be related directly to each region's
education and economic needs.

(2) The institutions may begin collaborative programs with
other institutions leading to the granting of master's degrees in
selected areas that are demonstrated to be related directly to the
needs of their regions and that draw on faculty strengths. An
institution may continue to offer collaborative programs aimed
at meeting the documented needs with the approval of the
commission or, if a sustained need still exists, the institution
may move to the next level.

(3) If the graduate education needs of the region have not
been met through brokering and collaborative programs, the
institution may explore the option of beginning its own gradu-
ate-level program leading to the granting of a master's degree.
The institution may begin its own master's degree program if
it can meet the following conditions as determined by the
commission:

(A) Demonstrate that the institution has successfully
completed each of the steps required before exploring develop-
ment of its own master's degree program;

(B) Provide evidence based on experience gained in the
brokering and collaborative arrangements that a sustained
demand exists for the program;
(C) Demonstrate that the baccalaureate institution has the capacity to provide the program;

(D) Demonstrate that the core mission of the baccalaureate institution will not be impaired by offering the graduate program;

(E) Provide evidence that the graduate program has a reasonable expectation of being accredited;

(F) Demonstrate that the need documented in subdivision (B) of this subsection is not currently being met by any other state institution of higher education; and

(G) The commission may designate one of the institutions listed in subsection (d) of this section to develop and implement no more than four of its own masters level programs as a pilot project: Provided, That the selected institution shall move toward and achieve regional accreditation of the masters program within a reasonable time as determined by the commission. The institution shall be selected based on the following:

(i) Sufficient credentialed faculty to offer quality programs in the areas selected;

(ii) Sufficient unmet demand for the programs; and

(iii) Sustainable unmet demand based on generally accepted projections for population growth in the region served by the institution.

The programs authorized by this clause may not be restricted by the provisions of subdivisions (1), (2) and (3) of this subsection nor by the provisions of subsection (e) of this section.
(e) There is an urgent need for master’s degree programs for teachers in disciplines or subject areas, such as mathematics, science, history, literature, foreign languages and the arts. Currently, master’s-level courses in education that are offered in the regions served by the state universities are primarily in areas such as guidance and counseling, administration, special education and other disciplines unrelated to teaching in subject areas. If this need is not being met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan a master’s degree program in education focused on teaching in subject area fields in which the demand is not being met. No institution may begin a graduate program under the provisions of this section until the program has been reviewed and approved by the commission. The commission shall approve only those programs, as authorized by this subsection, that emphasize serving the needs of teachers and schools in the colleges’ immediate regions. In determining whether a program should be approved, the commission also shall rely upon the recommendations of the statewide task force on teacher quality provided for in section eight, article fourteen of this chapter.

(f) The commission shall review all graduate programs being offered under the provisions of this section and, using the criteria established for program startup in subsection (d) of this section, determine which programs should be discontinued.

(g) At least annually, the governing boards shall evaluate graduate programs developed pursuant to the provisions of this section and report to the commission on the following:

(1) The number of programs being offered and the courses offered within each program;

(2) The disciplines in which programs are being offered;

(3) The locations and times at which courses are offered;
(4) The number of students enrolled in the program; and

(5) The number of students who have obtained master’s degrees through each program.

The governing boards shall provide the commission with any additional information the commission requests in order to make a determination on the viability of a program.

(h) In developing any graduate program under the provisions of this section, institutions shall consider delivering courses at times and places convenient to adult students who are employed full time. Institutions shall place an emphasis on extended degree programs, distance learning and off-campus centers which utilize the cost-effective nature of extending existing university capacity to serve the state rather than duplicating the core university capacity and incurring the increased cost of developing master’s degree programs at other institutions throughout the state.

(i) Brokering institutions shall invite proposals from other public institutions of higher education for service provision prior to contracting with other institutions: Provided, That if institutions propose providing graduate programs in service areas other than in their responsibility district, the institution seeking to establish a program shall work through the district’s lead institution in providing those services.

(j) In addition to the approval required by the commission, authorization for any institution to offer a master’s degree program under the provisions of this section is subject to the formal approval processes established by the governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.
§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-1B-4. Powers and duties of higher education policy commission.

§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

§18B-1B-6. Appointment of institutional presidents; evaluation.

§18B-1B-11. Study of licensing and oversight of certain institutions providing post-secondary education.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

There is hereby created the "higher education policy commission", hereinafter referred to as the "commission". It is the intent of the Legislature that the commission be responsible to develop, gain consensus around and oversee the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter under the following conditions:

(a) It is the responsibility of the commission to work collaboratively with the council to develop and gain consensus around the public policy agenda for community and technical colleges.

(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.

(c) All matters of governance not specifically assigned to the commission or council by law are the duty and responsibility of the governing boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
(a) The commission is comprised of ten members. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools, ex officio. One is the chair of the West Virginia council for community and technical college education who is an ex officio, nonvoting member.

(b) The other seven members of the commission are citizens of the state, appointed by the governor, by and with the advice and consent of the Senate. Prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates. Each member appointed to the commission by the governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in said section.

(c) The governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an appointee or employee of any governing board; or an immediate family member of any employee under the jurisdiction of the commission, the council or any governing board. Of the members appointed by the governor from the public at large, no more than four thereof may belong to the same political party and at least two shall be appointed from each congressional district.
(d) The terms of the members appointed by the governor are for overlapping terms of four years.

(e) The governor shall appoint a member to fill any vacancy among the seven members appointed by the governor, by and with the advice and consent of the Senate. Any member appointed to fill a vacancy serves for the unexpired term of the vacating member. The governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(f) A member appointed by the governor may not serve more than two consecutive terms.

(g) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(h) A member of the commission appointed by the governor may not be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

§18B-1B-4. Powers and duties of higher education policy commission.

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia council for community and technical college educa-
To that end, the commission has the following powers and duties relating to the institutions under its jurisdiction:

1. Develop, oversee and advance the public policy agenda pursuant to section one, article one-a of this chapter to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section nine of this article for the purpose of accomplishing the mandates of this section;

2. Develop, oversee and advance the implementation jointly with the council of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

   A. Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

   B. Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

   C. Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

   D. Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia council for community and technical college education pursuant to the provisions of section six, article two-b of this chapter;
(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the governor and specifically from the state board of education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;
(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two, article one-a of this chapter;

(10) Annually report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to section one, article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority;
(D) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments. It is the responsibility of the commission to assure a fair distribution of funds for capital projects between the commission and the council. To that end the commission shall take the following steps:

(A) Receive the list of priorities developed by the council for capital investment for the institutions under the council’s jurisdiction pursuant to subsection (b), section six, article two-b of this chapter;

(B) Place the ranked list of projects on the agenda for action within sixty days of the date on which the list was received;

(C) Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council.

(12) Maintain guidelines for institutions to follow concerning extensive capital projects. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed one million dollars in cost. Such a project may not be pursued by an institution without the approval of the commission. An institution may not participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed one million dollars in cost;
(13) Acquire legal services as are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the attorney general for legal assistance and representation as provided by law;

(14) Employ a chancellor for higher education pursuant to section five of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with the provisions of article four of this chapter;

(16) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;
(19) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the state board of education and the state superintendent of schools;

(21) Review and approve or disapprove capital projects as described in subdivision (11) of this subsection;

(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology such as the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system;

(23) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits
earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics, as in the commission's discretion is critical for
the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(28) Develop, establish and implement guidelines for higher education governing boards and institutions to follow when considering capital projects. The guidelines shall include, but not be limited to, the following:

(A) That the governing boards and institutions not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects are in the best interest of the students, the institution and the community to be served; and

(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government a budget that reflects recommended appropriations from the commission and the institutions under its jurisdiction. The commission shall submit as part of its budget proposal the separate recommended appropriations it received from the council both for the council and the institutions under the council’s jurisdiction. The commission annually shall submit the proposed institutional allocations based on each institution’s progress toward meeting the goals of its institutional compact;
(30) The commission has the authority to assess institutions under its jurisdiction for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where this code requires appointments from the state college system board of directors or the university of West Virginia system board of trustees which were abolished effective the thirtieth day of June, two thousand, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(34) Determine when a joint rule among the governing boards of the institutions under its jurisdiction is necessary or
required by law and, in those instances and in consultation with
governing boards, promulgate the joint rule;

(35) Implement a policy jointly with the council whereby
course credit earned at a community and technical college
transfers for program credit at any other state institution of
higher education and is not limited to fulfilling a general
education requirement; and

(36) Promulgate a joint rule with the council establishing
tuition and fee policy for all institutions of higher education.
The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the commission and council
consider appropriate.

(b) In addition to the powers and duties listed in subsection
(a) of this section, the commission has the following general
powers and duties related to its role in developing, articulating
and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and
visible role in setting the state’s policy agenda and in serving as
an agent of change;

(2) Policy analysis and research focused on issues affecting
the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional
mission definitions including use of incentive funds to influ-
ence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for institutions under its jurisdiction including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of any rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state pursuant to the findings and policy recommendations to be determined as set forth in section eleven of this article;
Development, implementation and oversight of statewide and regionwide projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

Quality assurance that intersects with all other duties of the commission particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided for in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any governing board of an institution under its jurisdiction for a period not to exceed two years if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the board of governors to carry out its duties and responsibilities.
(4) The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

(a) The commission, created pursuant to section one of this article, shall employ a chancellor for higher education who is the chief executive officer of the commission and who serves at its will and pleasure.

(b) The commission shall set the qualifications for the position of chancellor and shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

1. Possesses an excellent academic and administrative background;

2. Demonstrates strong communication skills;

3. Has significant experience and an established national reputation as a professional in the field of higher education;

4. Is free of institutional or regional biases; and

5. Holds or retains no other administrative position within a system of higher education while employed as chancellor.

(c) The commission shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the commission shall review the evalua-
tions and make a determination by vote of its members on continuing employment and compensation level.

(d) When filling a vacancy in the position of chancellor, the commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(e) The chancellor shall be compensated on a basis in excess of, but not to exceed twenty percent greater than, the base salary of any president of a state institution of higher education or the administrative head of a governing board.

(f) The commission may employ a vice chancellor for health sciences who serves at the will and pleasure of the commission. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of vice chancellor of health sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

(g) The commission shall employ a vice chancellor for administration pursuant to section two, article four of this chapter.

(h) The commission may employ a vice chancellor for state colleges who serves at the will and pleasure of the commission. It is the duty and responsibility of the vice chancellor for state colleges to:
Provide assistance to the commission, the chancellor and the state colleges on matters related to or of interest and concern to these institutions;

Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college;

Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

Perform all duties assigned by the chancellor, the commission and state law.

In addition, the vice chancellor for state colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable.

On behalf of the commission, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law.

The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the institutions under its jurisdiction:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in
section one-a, article one of this chapter and in the institutional compacts;

(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors:

(4) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(5) To perform all other duties and responsibilities assigned by the commission or by state law.

(k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(l) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law.

(m) The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda articulated by the commission. In those instances where the initiatives to be
proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the chancellor for higher education and the chancellor for community and technical college education shall design and develop the initiatives jointly for consideration by the commission and the council.

(n) The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

1. Development and implementation of a seamless kindergarten-through-college system of education; and
2. Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor serves as an ex officio, nonvoting member of the state board of education.

§18B-1B-6. Appointment of institutional presidents; 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 governing board of the institution appoints a president for Bluefield state college, Concord college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, West Liberty state college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

2. Subject to the approval of the council and to the provisions of article three-c of this chapter, the governing board of West Virginia University appoints the president of the
regional campus known as West Virginia university at Parkersburg. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided for in section one, article six of this chapter.

Subject to the approval of the commission, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia university institute of technology. The president of each regional campus serves at the will and pleasure of the appointing governing board.

(3) Subject to the approval of the council, the governing board of the community and technical college appoints a president for eastern West Virginia community and technical college, southern West Virginia community and technical college and West Virginia northern community and technical college.

(4) Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each administratively linked community and technical colleges which shares a physical campus location with the sponsoring institution, including Fairmont state community and technical college, Marshall community and technical college, the community and technical college at West Virginia university institute of technology and West Virginia state community and technical college.

(5) Subject to the approval of the council, the governing board of the community and technical college appoints a president for each administratively linked community and technical college which does not share a physical campus location with the sponsoring institution, including New River community and technical college and the community and technical college of Shepherd.
Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each of these two community and technical colleges until the institution gains independent accreditation.

(b) Other appointments. -- Effective the first day of July, two thousand five, the institutional president shall appoint a provost to be the administrative head of the Potomac campus of West Virginia University.

(c) Evaluation of presidents. -- The appointing governing board shall conduct written performance evaluations of each institution's president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, 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-11. Study of licensing and oversight of certain institutions providing post-secondary education.

(a) The commission and the council shall conduct a joint study of current policies relating to licensing and oversight of both public and private degree-granting and nondegree-granting entities providing post-secondary education programs or courses within the state or from locations outside this state through distance learning or any technology methods.

(b) The study shall include, but is not limited to, the following:
(1) The strengths and weaknesses of current state and higher education policies including a determination of how well the policies protect consumers and whether such protection should be expanded;

(2) The appropriate entity within public higher education to assume licensing and oversight of each type of institution;

(3) The standards to be used for program approval or a method to develop such standards; and

(4) The requirements for fees and bonding.

The commission and the council shall report their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the legislative oversight commission on education accountability by the first day of December, two thousand four.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.


§18B-2A-6. University status for public baccalaureate institutions of higher education.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) A board of governors is continued at each of the following institutions: 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, the West
Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(b) For the community and technical college of Shepherd and New River community and technical college the institutional board of advisors remains in place until the institution achieves independent accreditation as provided in section eight, article three-c of this chapter.

(1) As long as the institutional board of advisors remains in place, the chairperson of the board of advisors serves as an ex officio, voting member of the board of governors of the sponsoring institution;

(2) When the community and technical college achieves independent accreditation, the board of advisors is abolished and a board of governors is established with members appointed pursuant to this section;

(3) When a board of governors is established for the community and technical college:

(A) The chairperson of the governing board of the sponsoring institution serves as an ex officio, nonvoting member of the governing board of the community and technical college board of governors; and

(B) The chairperson of the governing board of the community and technical college serves as an ex officio, nonvoting member of the governing board of the sponsoring institution.

(4) In making the initial appointments to these boards of governors, the governor shall appoint those persons who are lay members of the institutional boards of advisors, except in the case of death, resignation or failure to be confirmed by the Senate.
(c) The institutional board of governors for Marshall university consists of sixteen persons and the institutional board of governors for West Virginia university consists of seventeen persons. Each other board of governors consists of twelve persons.

(d) Each board of governors includes the following members:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the institutional board of governors at Marshall university, twelve lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of Marshall community and technical college serving as an ex officio, voting member.

(5) For the institutional board of governors at West Virginia university, twelve lay members appointed by the governor by and with the advice and consent of the Senate pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the community and technical college at West Virginia university institute of technology and West Virginia university at Parkersburg.
(6) For each institutional board of governors of an institution that does not have an administratively linked community and technical college under its jurisdiction, nine lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section.

(7) For each institutional board of governors which has an administratively linked community and technical college under its jurisdiction:

(A) Eight lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the administratively linked community and technical college; and

(B) Of the eight lay members appointed by the governor, one shall be the superintendent of a county board of education from the area served by the institution.

(e) Of the eight or nine members appointed by the governor, no more than five may be of the same political party. Of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, no more than seven may be of the same political party. Of the eight or nine members appointed by the governor, at least six shall be residents of the state. Of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, at least eight shall be residents of the state.

(f) The student member serves for a term of one year. Each term begins on the first day of July.

(g) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are
eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(h) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(i) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term.

(j) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than two consecutive years.

(k) The appointed members of the institutional boards of governors serve staggered terms of four years.

(l) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(1) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors, a member of an institutional board of advisors of any public institution of higher education, an employee of any institution of higher education,
an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors or the superintendent of a county board of education from being members of the governing boards.

(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of an institutional board of advisors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors from being members of the governing boards.

(m) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(n) A member of a governing board appointed by the governor may not be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor.
(o) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction except the administratively linked community and technical colleges which retain an institutional board of advisors shall develop their master plans subject to the provisions of section one, article six of this chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors, or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission or council, as appropriate. Each master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;
(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary;

(c) Prescribe for the institutions under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the institutions under its jurisdiction, such request to relate directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;

(e) Consider, revise and submit to the commission or council, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institu-
tional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(g) The governing boards shall ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;

(h) Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(i) Utilize faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;
(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article six-a, chapter twenty-nine of this code is the exclusive mechanism for hearing prospective employee grievances and appeals. In construing the application of said article to grievances of higher education employees, the following apply:

(1) "Chief administrator" means the president of a state institution of higher education as to those employees employed by the institution and the appropriate chancellor as to those employees employed by the commission or council;

(2) The state division of personnel may not be a party to nor have any authority regarding a grievance initiated by a higher education employee; and

(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one;

(1) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;
(m) Appoint a president for the institutions under its jurisdiction subject to the provisions of section six, article one-b of this chapter;

(n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;

(o) Employ all faculty and staff at the institution under its jurisdiction. Such employees operate under the supervision of the president, but are employees of the governing board;

(p) Submit to the commission or council, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

(q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community;

(r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the
provisions of this subsection, it shall notify the appropriate chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part;

(t) Unless changed by the commission or the council, as appropriate, the governing boards shall continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(u) Each governing board, or its designee, shall consult, cooperate and work with the state treasurer and the state auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date but, in any event, within fifteen days of receipt in the state auditor's office;

(v) The governing boards in consultation with the appropriate chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing board and the department of finance and administration;
(w) Notwithstanding any other provision of this code to the contrary, the governing boards may transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated. The governing boards may transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated;

(x) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the attorney general for legal assistance and representation as provided by law; and

(y) Each governing board which has under its jurisdiction an administratively linked community and technical college or a regional campus offering community and technical college education programs shall create within the administrative structure of its governing board a subcommittee for community and technical college education. The subcommittee shall have at least four members, one of whom is the chairperson of the board of advisors of the community and technical college or, in the case of the governing board of West Virginia university, both the member representing the community and technical college and the member representing the regional campus;

§18B-2A-6. University status for public baccalaureate institutions of higher education.
(a) The purpose of this section is to redesignate certain existing public baccalaureate institutions as universities and to provide a mechanism for other public baccalaureate institutions to become universities. The change in name is based on each institution's ability to meet minimum standards developed and adopted by the commission.

(b) Each governing board of a public baccalaureate institution is authorized to make changes which would further its eligibility to attain university status:

(1) If the college meets the eligibility requirements established by the commission to attain university status and if the commission grants university status, then the governing board shall determine the effective date on which the public baccalaureate institution becomes a university; and

(2) On and after the effective date designated by the governing board, the baccalaureate institution shall be designated a university.

(c) Concord college, Fairmont state college, Shepherd college and West Virginia state college, having met the eligibility requirements established by the commission to attain university status, are hereby designated as universities on the effective date of this section.

(d) An institution may not request or seek additional state appropriations as a result of the redesignation provided for in this section. No consequences, including the need to meet future accreditation requirements in order to maintain university status, which arise as a result of designating an existing state college as a university, provide sufficient justification for an institution to request or in any way seek additional state funds.

(e) Notwithstanding any provision of this code to the contrary, Marshall university and West Virginia university are,
ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-1. Legislative findings; intent; purpose.

(a) The Legislature hereby finds that:

1 The goals, objectives and purposes contained in enrolled Senate Bill No. 653, passed during the two thousand regular legislative session, reflected the research findings available to the Legislature at the time; since then, however, additional research indicates that, while enrolled Senate Bill No. 653 moves in the appropriate direction of independent accreditation and meeting essential conditions for public community and technical colleges, the legislation does not take the final steps that are considered to be necessary by independent researchers. This position is clearly demonstrated by the recent research findings and recommendations cited below:

(A) "West Virginia: A Vision Shared! Economic Development: A Plan for West Virginia's Future", hereinafter cited in this article and article two-c of this chapter as the Market Street Report, is a research document commissioned by the West Virginia council for community and economic development to
assess the economic competitiveness of the state. The report makes a number of findings and recommendations important to public community and technical college education:

(i) The state needs to adopt and implement a specific focus on technical education; in particular, it needs to move away from the traditionally isolated and limited vocational programming towards a systematic approach of teaching technical skills that employers need today;

(ii) The state needs to establish a strong technical education system that is separate from the university system and is responsive to the needs of business throughout the state;

(iii) The state needs to establish as a high-level priority the training and retraining of its working-age adults to help them acquire and maintain the competitive skills they need to succeed in today's economy; and

(iv) The state needs to emphasize the role of lifelong learning as a critical piece of its overall education and training system if the state is to make the transition to the new economy.

(B) The Report to the Legislative Oversight Commission on Education Accountability, hereinafter cited in this article and article two-c as the McClenney Report, is a study required by provisions of enrolled Senate bill no. 653 and conducted by Dr. Kay McClenney. The research found that:

(i) The participation rate in West Virginia community and technical college education is substantially lower than will be necessary if the state is to achieve its goals for economic development and prosperity for its citizens;

(ii) The low visibility of the component community and technical colleges effectively restricts access for the West
Virginians who most need encouragement to participate in post-secondary education and training;

(iii) It is not clear that the parent institutions of the component community colleges actually embrace the community college mission;

(iv) The community and technical college developmental education programs are underserving by far the evident needs of the population, especially as that service relates to nontraditional students;

(v) Adults over age twenty-five are under represented in the community and technical college student populations;

(vi) Technical education program development and enrollment are not at the levels necessary to serve the needs of the state;

(vii) Independent accreditation and the essential conditions required by enrolled Senate bill no. 653 are necessary, but not sufficient alone to provide a strong enough tool to accomplish the state's goal to strengthen community and technical college education;

(viii) The community and technical college will not be able to operate optimally until they move out of the shadow of their "parent" institutions, with the flexibility and autonomy to establish a uniquely community college identity, culture, program mix, outreach capacity and approach to teaching and learning;

(ix) The development of stronger support mechanisms for the community and technical colleges should be an extension of the ongoing step-by-step process for achieving the goals for post secondary education in the state;
(x) Building on the foundations laid in enrolled committee substitute for Senate bill no. 547 and enrolled Senate bill no. 653, the Legislature should now establish the further systemic and policy supports that are needed for the community and technical college to thrive, perform and meet state goals;

(xi) Implementation will necessarily be incremental;

(xii) The consistent focus at the state level should be on the statewide mission of raising educational attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(xiii) The solution must ensure a high degree of flexibility and autonomy at the local level, preserving the ability of community and technical colleges to respond rapidly and effectively to local needs;

(xiv) At the same time, there is serious and recognized need for statewide leadership, coordination and support for the work of the community and technical colleges and the advocacy for the public priorities that these institutions are charged to address;

and therefore

(xv) The state needs to create a community college support capacity at the state level that will bring leadership, coordination, technical support, advocacy and critical mass to a statewide network of local community and technical college campuses.

(C) The Report and Recommendations of the Implementation Board to the West Virginia Higher Education Policy Commission, hereinafter cited in this article and article two-c of this chapter as the Implementation Board Report, is a study required by enrolled Senate bill no. 653 to determine the most effective and efficient method to deliver community and technical college
services in the former responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. The Implementation Board Report states its goals and vision for community and technical college education in the advantage valley region as one of a dynamic, vital and vibrant community college network which offers:

(i) Affordable, quality training and education to students;

(ii) Represents a recognized path of choice to success in the knowledge economy for thousands of West Virginians; and

(iii) Provides West Virginia businesses with the highly skilled workforce necessary to meet their evolving needs in the global knowledge economy.

(D) In furtherance of their goals, the Implementation Board Report recommended formation of the advantage valley community college network:

(i) To enhance economic development through coordinated leadership and a delivery system for education and training initiatives;

(ii) To provide accountability through a separate compact and through independent accreditation of each of the affected community and technical colleges; and

(iii) To enhance education opportunities for the citizens of the area and assist in overcoming the barrier of accessibility in higher education.

(b) Based on the recent research cited above, the Legislature further finds that:

(1) The recommendations of the Market Street Report clearly point out the shortcomings of the state's current approach
to providing post-secondary education and programs and show
the consequences of failing to change appropriately;

(2) The research, findings, vision and goals set forth in the
McClenney Report and the Implementation Board Report are
noteworthy and, although written, in part, to address specific
institutions, have broad application statewide for community and
technical colleges;

(3) The research shows that:

(A) A need exists to enhance community and technical
college education in West Virginia through the delivery of
services that meet the goals of this chapter and that are delivered
pursuant to the process for meeting the essential conditions
established in section three, article three-c of this chapter;

(B) A need exists for statewide leadership, coordination and
support for the work of the community and technical colleges
and for advocacy for the public priorities these institutions are
charged to address;

(C) Community and technical colleges need to be efficient,
avoiding duplication and the burden of bureaucracy while
recognizing fiscal realities;

(D) Community and technical colleges need a high degree of
flexibility and local autonomy to preserve and expand their
ability to respond rapidly and effectively to local or regional
needs;

(E) Community and technical colleges need state-level
support and leadership that recognize differences among regions
of the state and among institutions and accept the reality that
institutions are at different stages in their development and have
different challenges and capabilities;
(F) Clear benchmarks and regular monitoring are required to assess the progress of community and technical colleges toward meeting the established goals and for meeting the essential conditions, including independent accreditation, established in this chapter;

(G) Implementation will necessarily be incremental;

(4) Certain acts to streamline accountability, to make maximum use of existing assets to meet new demands and target funding to initiatives designed to enhance and reorient existing capacity and to provide incentives for brokering and collaboration require that the role of the joint commission for vocational-technical-occupational education be reexamined.

(c) Legislative intent. -- The intent of the Legislature in enacting this article is to address the research findings cited above by reconstituting the joint commission for vocational-technical-occupational education as the West Virginia council for community and technical college education in order to reorient the mission, role and responsibilities consistent with and supportive of the mission, role and responsibilities of the commission, the goals for post-secondary education and accountability for assisting the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission in achieving the state's public policy agenda.

(d) Purpose. -- The purpose of this article is to provide for the development of a leadership and support mechanism for the community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission to assist them in meeting the essential conditions and in the step-by-step implementation process for achieving the goals for community and technical college education as provided for in article three-c of this chapter and to promote coordination
and collaboration among secondary and post-secondary vocational-technical-occupational and adult basic education programs as provided for in this chapter and chapter eighteen of this code. The focus of this leadership and support mechanism is to encourage development of a statewide mission to raise education attainment, increase adult literacy, promote workforce and economic development and ensure access to secondary and post-secondary education for the citizens of the state while maintaining the local autonomy and flexibility necessary to the success of community and technical education.


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

(a) "Adult basic education" means adult basic skills education designed to improve the basic literacy needs of adults, including information processing skills, communication skills and computational skills, leading to a high school equivalency diploma under the jurisdiction of the state board of education.

(b) "Post-secondary vocational-technical-occupational education" means any course or program beyond the high school level that results in, or may result in, the awarding of a two-year associate degree, certificate or other credential from an institution under the jurisdiction of a governing board or other public or private education provider.

(c) "Secondary vocational-technical-occupational education" means any course or program at the high school level that results in, or may result in, a high school diploma or its equivalent under the jurisdiction of the state board of education.

(d) "Chancellor for community and technical college education" means the chief executive officer of the West
Virginia council for community and technical college education employed pursuant to section three, article two-b of this chapter. Any reference in this code to the vice chancellor for community and technical college education and workforce development means the chancellor for community and technical college education.

(e) "West Virginia council for community and technical college education" or "council" means the council established pursuant to section three of this article. Any reference in this code to the joint commission for vocational-technical-occupational education means the West Virginia council for community and technical college education.

§18B-2B-3. West Virginia council for community and technical college education; supervision of chancellor; chief executive officer.

(a) There is continued the West Virginia council for community and technical college education. The council has all the powers and duties assigned by law to the joint commission for vocational-technical-occupational education prior to the effective date of this section and such other powers and duties as may be assigned by law.

(b) The council shall employ a chancellor for community and technical college education. The chancellor serves as chief executive officer of the council at the will and pleasure of the council. The chancellor shall be compensated at a level set by the council not to exceed eighty percent of the annual salary of the chancellor for higher education.

(1) The vice chancellor for community and technical college education and workforce development, as the current chief executive officer of the council, shall continue in such capacity upon the effective date of this section, and shall be the chancellor for community and technical college education.
(A) The council shall conduct a written performance evaluation of the chancellor one year after the effective date of this section. The council shall report the results of the evaluation to the legislative oversight commission on education accountability during the legislative interim meeting period following the evaluation.

(B) After reviewing the evaluation, the council shall make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(C) After the initial contract period, the council shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract of longer term, but not to exceed three years. At the end of each contract period, the council shall review the evaluations and make a determination by vote of its members on continuing employment and level of compensation.

(D) When a vacancy occurs in the position of chancellor, the council shall enter into an initial employment contract for one year with the candidate selected to fill the vacancy. At the end of the initial period, the council shall make a determination by vote of its members on continuing employment and compensation level for the chancellor and shall continue thereafter as set forth in paragraph (C) of this subdivision.

(2) The chancellor maintains all benefits of employment held, accrued and afforded as the vice chancellor for community and technical college education and workforce development. Such benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, any insurance coverage and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, the chancellor is not a new employee, and the prohibition on conversion does not apply if
the chancellor was eligible for leave conversion while serving as vice chancellor on the day preceding the effective date of this section. On the effective date of this section, for the purpose of section thirteen, article sixteen, chapter five of this code, the chancellor:

(A) Maintains all sick and annual leave accrued, and all rights to convert the leave that had been accrued as vice chancellor; and

(B) Continues to maintain his or her status for eligibility under the provisions and application of said section as applied while serving as vice chancellor on the day preceding the effective date of this section.

§18B-2B-4. Appointment, composition and terms of council.

(a) The council is comprised of thirteen members selected as follows:

(1) Eight members appointed by the governor, with the advice and consent of the Senate:

(A) One member shall be appointed from each community and technical college consortia district as established in this section.

(B) Prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine

*CLERK'S NOTE: This section was also amended by S. B. 524 (Chapter 109), which passed prior to this act.*
to participate in interviewing potential candidates. Each member appointed to the council by the governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in section one-a, article one of this chapter.

(2) The chairperson of the West Virginia workforce investment council;

(3) The executive director of the West Virginia development office, or designee;

(4) The president of the West Virginia AFL-CIO, or a designee;

(5) The chair of the higher education policy commission who serves as an ex officio, nonvoting member of the council; and

(b) Any appointed member shall be a citizen of the state, shall represent the public interest and shall understand and be committed to achieving the goals and objectives set forth in section one-a, article one of this chapter, the essential conditions set forth in article three-c of this chapter, and the goals for secondary and post-secondary vocational-technical-occupational and adult basic education in the state. Any appointed member shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the education needs of the various regions, attainment levels and age groups within the state.

(c) The governor may not appoint any person to be a member of the council who is an officer, employee or member of an advisory board of any state college or university, the holder of any other public office or public employment under the
government of this state or any of its political subdivisions, an
appointee or employee of any governing board or an immediate
family member of any employee under the jurisdiction of the
commission or any governing board. An individual may not
serve on the council who is engaged in providing, or employed
by a person or company whose primary function is to provide,
workforce development services and activities.

(d) Members of the council serve for staggered terms of four
years. Notwithstanding the provisions of subdivision (1),
subsection (a) of this section, on the effective date of this section
any current member of the council maintains his or her appoint-
ment to the council and continues to serve for the remainder of
the term for which originally appointed. Any additional
appointment required by the provisions of said subdivision shall
represent a consortia district not otherwise represented on the
council.

§18B-2B-5. Meetings and compensation.

(a) The council shall hold at least eight meetings annually
and may meet more often at the call of the chairperson. One
such meeting shall be a public forum for the discussion of the
goals and standards for workforce development, economic
development and vocational education in the state.

(b) The council shall hold an annual meeting each June for
the purpose of electing officers for the next fiscal year. At the
annual meeting, the council shall elect from its appointed
members a chairperson and other officers as it may consider
necessary or desirable. The chairperson and other officers are
elected for two-year terms commencing on the first day of July
following the annual meeting. The chairperson of the board may
serve no more than two consecutive two-year terms as chair,
except that the member serving as chairperson of the council on
the effective date of this section is eligible to serve a two-year
(c) Members of the council serve without compensation. Members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of their expenses. An ex officio member of the council who is an employee of the state is reimbursed by the employing agency.

(d) A majority of the members appointed constitutes a quorum for conducting the business of the council. All action taken by the council shall be by majority vote of the members present.


(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the system of community and technical college education as a whole, including community and technical college education programs as defined in section two, article one of this chapter.

(b) As relates to the authority established in subsection (a) of this section, the council has the following powers and duties:

(1) Develop, oversee and advance the public policy agenda as it relates to community and technical college education to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement
the master plan described in section nine of this article for the purpose of accomplishing the mandates of this section;

(2) Jointly with the commission, develop, oversee and advance the implementation of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Establish for incorporation into the financing policy for higher education in West Virginia a plan for strategic funding to strengthen capacity for support of community and technical college education;

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the governor and specifically from the state board of education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs
of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council's jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the community and technical college institutions and the community and technical college system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) To develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(5) To provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agenda approved by the commission and council. For the institutions under their jurisdiction, this responsibility includes, but is not limited to:

(A) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(B) Holding the institutions and the system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(6) To review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section two, article one-a of this chapter;

(7) Serve as the accountability point to:
(A) The governor for implementation by the community and technical colleges of their role in advancing the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;

(8) Jointly with the commission, promulgate a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;

(10) Review the progress of community and technical colleges in every region of West Virginia. The review includes, but is not limited to, evaluating and reporting annually to the legislative oversight commission on education accountability on the step-by-step implementation required in article three-c of this chapter;

(11) Annually report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of the community and technical college system during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;
(B) The priorities established for capital investment needs pursuant to subdivision (12) of this subsection and the justification for such priority;

(C) Recommendations of the council for statutory changes necessary to further the goals and objectives set forth in section one-a, article one of this chapter;

(12) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments. When the needs have been determined, the council shall take the following steps:

(A) Develop a ranked list of the top ten projects for capital investment for the institutions under its jurisdiction;

(B) Convey the ranked list to the commission for its consideration pursuant to section four, article one-b of this chapter;

(13) Draw upon the expertise available within the governor’s workforce investment office and the West Virginia development office as a resource in the area of workforce development and training;

(14) Acquire legal services as are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the attorney general for legal assistance and representation as provided by law;

(15) Employ a chancellor for community and technical college education pursuant to section three of this article;
(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

(17) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(18) Provide suitable offices in Charleston for the chancellor and other staff;

(19) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(20) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(21) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;
(22) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as in the council's discretion is critical for the performance of their duties as members for the purpose of keeping abreast of community and technical college education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(23) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(25) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter.

(26) Consider and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that:

(A) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(B) Considers the progress of each institution toward meeting the goals established in its institutional compact;
(27) Administer and distribute the independently accredited community and technical college development account;

(28) Establish a plan of strategic funding to strengthen capacity for support of community and technical college education in all areas of the state;

(29) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

(30) Assume the principal responsibility for overseeing the implementation of the step-by-step process for achieving independent accreditation and for meeting the essential conditions pursuant to article three-c of this chapter;

(31) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(32) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(33) Provide a mechanism that serves two or more institutions to facilitate joint problem-solving in areas including, but not limited to:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;
(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(34) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in the state;

(35) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each of the community and technical colleges is responsible;

(36) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(37) Serve aggressively as an advocate for development of a seamless curriculum;

(38) Cooperate with the governor's P-20 council of West Virginia to remove barriers relating to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

(39) Encourage the most efficient utilization of available resources;

(40) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;
(41) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the state board of education and the state superintendent of schools;

(42) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education.

(43) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(44) Review and approve all institutional master plans for the community and technical colleges;

(45) Establish policies or rules for promulgation that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(46) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the council;

(47) Establish benchmarks and performance indicators for community and technical colleges to measure institutional progress toward meeting the goals as outlined in section one-a,
article one of this chapter and in meeting the essential conditions established in article three-c of this chapter;

(48) Develop for inclusion in the higher education report card, as defined in section eight, article one-b of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (47) of this subsection;

(49) Facilitate continuation of the advantage valley community college network under the leadership and direction of Marshall community and technical college;

(50) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(51) Develop with the state board of education state plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(52) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.
In distributing funds the council shall use the following guidelines:

(A) The board of education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the board of education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the board of education before proposing a rule;

(C) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(D) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(E) Analyze and report to the West Virginia board of education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

(F) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;
(57) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

(58) Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

(59) Meet annually between the months of October and December with the advisory committee of community and technical college presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(60) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(61) Assume the powers set out in section five, article three of this chapter. The rules previously promulgated by the state college system board of directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(62) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The council and commission shall promulgate a uniform joint legislative rule for the purpose of
standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(63) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(64) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the commission and council consider appropriate;

(65) In cooperation with the West Virginia division of highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the legislative oversight commission on education accountability regarding any recommendations and required costs; and

(66) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(c) In addition to the powers and duties listed in subsections (a) and (b) of this section, the council has the following general
powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state’s policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college system as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and accountability systems, including
maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs pursuant to the findings and policy recommendations to be determined as set forth in section eleven, article one-b of this chapter;

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(d) The council is authorized to withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or
(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(e) In addition to the powers and duties provided for in subsections (a) and (b), (c) and (d) of this section and any other powers and duties as may be assigned to it by law, the council has:

(1) Such other powers and duties as may be necessary or expedient to accomplish the purposes of this article; and

(2) All powers, duties and responsibilities directly related to community and technical colleges and community and technical college education that were vested in the commission prior to the effective date of this section.

(f) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and
(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

§18B-2B-6a. Transfer of funds; council authority to expend funds.

On the effective date of this section, the unexpended balance remaining in the appropriation for the West Virginia council for community and technical education is transferred from the commission to the authority of the council to be expended by the council to carry out the purposes of this article.


The chancellor for community and technical college education is the chief executive officer of the council and as such may exercise the powers and duties assigned by the council. The chancellor has the following powers and duties:

(1) To serve as the principal accountability point for the council for implementation of the public policy agenda as it relates to community and technical colleges;

(2) To assume principal responsibility for directing and assisting the work of the council; and

(3) To supervise and direct staff of the council as necessary and appropriate to carry out the duties and responsibilities of this article.

(A) On the effective date of this section, all personnel employed by the commission and under the supervision of the vice chancellor for community and technical college education and workforce development on the first day of January, two thousand four, are transferred to the jurisdiction of the council
and are under the direct supervision of the chancellor for community and technical college education.

(B) Prior to the first day of October, two thousand four, any such employee, including the chief executive officer of the council, may not be terminated or have his or her salary or benefit level reduced as the result of the governance reorganization set forth in this article.

(4) On behalf of the council, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned to the council by state law.

(5) The chancellor is responsible for the day-to-day operations of the council and has the following responsibilities:

(A) To carry out policy and program directives of the council;

(B) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts;

(C) To prepare and submit to the council for its approval the proposed budget of the council including the office of the chancellor and necessary staff;

(D) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions
under the jurisdiction of the council is applied in a uniform manner; and

(E) To perform all other duties and responsibilities assigned by the council or by state law.

(6) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(7) The council is the primary advocate for community and technical college education and, with the chancellor, advises the Legislature on matters of community and technical college education in West Virginia. The chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about community and technical college education issues and that the council fully understands the goals for higher education that the Legislature has established by law.

(8) The chancellor may design and develop for consideration by the council new statewide or regional initiatives directly related to community and technical college education and in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda.

(9) The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

(A) Development and implementation of a seamless kindergarten-through-college system of education; and

(B) Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the council and the state board of education, the chancellor serves as an ex officio, nonvoting member of the state board of education.

(a) There is continued the state advisory committee of community and technical college presidents. For the purposes of this section, the state advisory committee of community and technical college presidents is referred to as the "advisory committee".

(b) Each president of a public community and technical college, as defined in section one, article six of this chapter, is a member of the advisory committee. An administrative head of a component, branch, center, regional center or other delivery site with a community and technical college mission may be a member if considered appropriate.

(c) The chancellor serves as chair of the advisory committee. The advisory committee shall meet at least once each quarter and may meet at such other times as called by the chair or by a majority of the members.

(d) The advisory committee shall communicate to the council on matters of importance to the group. It shall meet annually between the months of October and December with the council to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest.

(e) The chancellor shall prepare meeting minutes which shall be made available, upon request, to the public.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.
§18B-2C-4. Authority of council in creating West Virginia community and technical college.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

(a) The council annually shall review and analyze all the public community and technical colleges, and any branches, centers, regional centers or other delivery sites with a community and technical college mission, to determine their progress toward meeting the goals and objectives set forth in section one-a, article one of this chapter and toward advancing the purposes, goals and objectives set forth in article three-c of this chapter.

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators required to be promulgated by the council in section six, article two-b of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the council shall make a determination whether any one or more of the following conditions exists:

(1) One or more of the component community and technical colleges required to do so has not achieved or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;
(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) It is in the best interests of the people of the state or a region of the state to have one accredited institution able to extend accreditation to institutions and entities required to seek independent accreditation;

(5) One or more of the public community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission requests from the council the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the council include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals for post-secondary education established in section one-a, article one of this chapter, in meeting the essential conditions set forth in section three, article three-c of this chapter, or in establishing and implementing regional networks.

(6) One or more public community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission has not met, or is not making sufficient, satisfactory progress toward meeting, the goals set forth in section one-a, article one of this chapter; and

(7) The council determines that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The council may not make a determination subject to the provisions of subsection (c) of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.
(e) By the first day of December annually, the council shall prepare and file with the legislative oversight commission on education accountability a written report on the findings and determinations required by this section, together with a detailed history of any actions taken by the council under the authority of this article.

§18B-2C-4. Authority of council in creating West Virginia community and technical college.

(a) Subject to the provisions of subsection (c), section three of this article, if the council makes a determination that one or more of the conditions exists, then the council is authorized to create the West Virginia community and technical college.

(b) As soon as practicable after the council determines that the college should be created, the council shall notify the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability of the proposed actions. The council shall conduct a study regarding the procedures, findings and determinations considered necessary prior to any creation of the college and shall report its findings to the legislative oversight commission on education accountability. The council may not create the college prior to the report being received by the legislative oversight commission on education accountability.

(c) On or before the first day of December of the year in which the college is created, the council shall certify to the legislative oversight commission on education accountability proposed legislation to accomplish the purposes of this article for those matters requiring statutory change.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-2. Purposes of article.
§18B-3C-3. Essential conditions for community and technical college programs and services.
§18B-3C-2. Purposes of article.

The general purposes of this article are the following:

(a) To establish community and technical college education that is well articulated with the public schools and four-year colleges; that makes maximum use of shared facilities, faculty, staff, equipment and other resources; that encourages traditional and nontraditional students and adult learners to pursue a lifetime of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs;

(b) To charge the respective governing boards with providing community and technical college education at state institutions of higher education under their jurisdiction that has the administrative, programmatic and budgetary control necessary to allow maximum flexibility and responsiveness to district and community needs. Education services shall be provided consistent with the goal of sharing facilities, faculty, staff, equipment and other resources within and among the districts, the other systems of public and higher education and other education and training programs;

(c) To establish the essential conditions for community and technical college programs and services, as defined in section three of this article, necessary to ensure that each region of West
Virginia is served by a community and technical college meeting the needs of the people of the region;

(d) To establish a mechanism for assuring that, where applicable, a transition plan for meeting the essential conditions is developed by each relevant community and technical college;

e) To establish community and technical college consortia districts for each of the community and technical colleges to ensure accountability that the full range of community and technical college education programs and services is provided in all areas of the state, including the implementation of seamless curricula and the West Virginia EDGE, "Earn a Degree Graduate Early" program;

(f) To define the full range of programs and services that each community and technical college has the responsibility to provide; and

(g) To establish such other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and services that can be provided through a comprehensive system of community and technical colleges.

§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 higher learning commission of the north central association of colleges and schools (NCA), by the first day of July, two thousand five, 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. An institution meets this requirement if on such date the council determines that the institution is on target to meet independent accreditation status. A community and technical college continues to share the accreditation of the sponsoring institution until such time as independent accreditation is achieved;

(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 president who is the chief executive officer of the community and technical college appointed and serving pursuant to the terms of section six, article one-b of this chapter. The president reports directly to the institutional board of governors. It is the responsibility of the board of governors to provide sufficient time at each meeting for the president to discuss issues relevant to the mission of the community and technical college;

(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:

   (1) College and university faculty, to teach community college courses; and

   (2) 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, workload 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.

(l) Full budgetary authority for the president of the institution, 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. Community and technical college consortia planning districts.

(a) Unless otherwise designated, the president of each community and technical college facilitates the formation of community and technical college consortia in the state, which includes representatives of community and technical colleges, public vocational-technical education centers, and public baccalaureate institutions offering associate degrees. The community and technical college consortium shall:

(1) Complete a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long-term workforce development needs of the district;

(2) Coordinate efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decisionmaking;

(3) Plan and develop a unified effort between the community and technical colleges and public vocational-technical education to meet the documented workforce development needs of the district through individual and cooperative programs, shared
facilities, faculty, staff, equipment and other resources and the
development and use of distance learning and other education
technologies;

(4) Regularly review and revise curricula to ensure that the
workforce needs are met, develop new programs and phase out
or modify existing programs as appropriate to meet such needs,
streamline procedures for designing and implementing custom-
ized training programs;

(5) Increase the integration of secondary and post-secondary
curriculum and programs that are targeted to meet regional labor
market needs, including implementation of seamless curricula
project in all major career pathways and the West Virginia
EDGE, “Earn a Degree Graduate Early” program;

(6) Plan and implement integrated professional development
activities for secondary and post-secondary faculty, staff and
administrators;

(7) Ensure that program graduates have attained the compet-
tencies required for successful employment through the involve-
ment of business, industry and labor in establishing student
credentialing;

(8) Performance assessment of student knowledge and skills
which may be gained from multiple sources so that students gain
credit toward program completion and advance more rapidly
without repeating course work in which they already possess
competency;

(9) Cooperate with workforce investment boards in estab-
lishing one-stop-shop career centers with integrated employment
and training and labor market information systems that enable
job seekers to assess their skills, identify and secure needed
education training and secure employment and employers to
locate available workers;
(10) Increase the integration of adult literacy, adult basic education, federal Work Force Investment Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and

(11) Establish a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college consortia planning districts are established and defined as follows:

(1) Northern panhandle community and technical college district includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia northern community and technical college.

(B) Participating institutions include West Virginia northern community and technical college; John Marshall high school; Cameron high school; John D. Rockefeller center; and other public vocational technical schools offering post-secondary programs.

(2) North central West Virginia community and technical college district includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.
(A) The facilitating institution is Fairmont state community and technical college.

(B) Participating institutions include Fairmont state community and technical college; Glenville state college; Randolph county vocational-technical center; Monongalia county technical education center; united technical center; Marion county technical center; Fred W. Eberly technical center; and other public vocational technical schools offering post-secondary programs.

Mid-Ohio valley community and technical college district includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia university at Parkersburg.

(B) Participating institutions includes West Virginia university at Parkersburg; West Virginia northern community and technical college; Roane-Jackson technical center; Gaston Caperton center; Wood County technical center; and other public vocational technical schools offering post-secondary programs.

Potomac highlands community and technical college district includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is eastern West Virginia community and technical college.

(B) Participating institutions include eastern West Virginia community and technical college; South Branch career and technical center; Mineral County technical center; and other public vocational technical schools offering post-secondary programs.
(5) Shenandoah valley community and technical college district includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is the community and technical college of Shepherd.

(B) Participating institutions include the community and technical college of Shepherd; James Rumsey technical institute; and other public vocational technical schools offering post-secondary programs.

(6) Advantage valley community and technical college district includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution is Marshall community and technical college.

(B) Every five years the council shall:

(i) Evaluate the progress of the advantage valley consortia toward achieving the goals and benchmarks of its compact;

(ii) Evaluate the progress of each community and technical college in the district toward achieving the goals and benchmarks of its institutional compact;

(iii) Determine which community and technical college in the district would best serve the needs of the district for the following five-year period if serving as the facilitating institution; and

(iv) Designate the community and technical college selected pursuant to subparagraph (iii) of this paragraph to serve as the facilitating institution for the following five-year period.

(C) Participating institutions include Marshall community and technical college; the community and technology college at
West Virginia university institute of technology; West Virginia state community and technical college; Carver career center; Garnet career center; Ben Franklin career center; Putnam County vocational-technical-occupational center; Cabell County career-technical center; and other public vocational technical schools offering post-secondary programs.

(7) Southern mountains community and technical college district includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is southern West Virginia community and technical college.

(B) Participating institutions include southern West Virginia community and technical college; New River community and technical college; Boone County career and technical center; Wyoming County vocational-technical center; Ralph R. Willis Career and technical center; McDowell County career and technology center; Mingo County vocation-technical center; Charles Yeager technical center; and other public vocational technical schools offering post-secondary programs.

(8) Southeastern community and technical college district includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River community and technical college.

(B) Participating institutions include New River community and technical college; southern West Virginia community and technical college; the community and technical college at West Virginia university institute of technology; Bluefield state college; academy of careers and technology; Fayette plateau vocation-technology center; Summers County high school; Monroe County technical center; Mercer County technical
center; and other public vocational technical schools offering post-secondary programs.

(d) In the role of the facilitating institution of the community and technical college district, the college:

(1) Communicates to the council;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article; and

(3) Facilitates development of statement of commitment signed by all participating institutions in the region as to how community and technical college education will be delivered.

(e) Participating institutions are not subordinate to the facilitating institution but will sign the statement of commitment to participate.

(f) The council shall:

(1) Establish guidelines for community and technical college consortia development;

(2) Set goals for each consortium based upon legislative goals for the delivery of comprehensive community and technical college education; and

(3) Establish a format for development of a consortium compact outlining plans for achieving stated goals to be submitted to the council for approval on or before the fifteenth day of November, two thousand four.

(g) On or before the fifteenth day of November, two thousand four, each consortium shall submit to the council for approval a compact which outlines plans for obtaining the stated
goals. Each compact shall include the implementation of seamless curricula and the West Virginia EDGE, "Earn a Degree Graduate Early" program, and be updated annually.

(h) The council annually shall evaluate the progress made in meeting the compact goals for each community and technical college consortia through the development and collection of performance indicator data.

§18B-3C-5. Appointment of community and technical college presidents.

The administrative head of a community and technical college is the president who is chosen pursuant to the terms of section six, article one-b of this chapter. Any individual employed as provost of an administratively linked community and technical college on the first day of January, two thousand four, continues as the administrative head of the institution and becomes the community and technical college president on the effective date of this section.

§18B-3C-6. Community and technical college programs.

(a) The mission of each community and technical college includes the following programs which may be offered on or off campus, at the work site, in the public schools and at other locations and at times that are convenient for the intended population:

(1) Career and technical education skill sets, certificates, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement and career mobility;
(2) Transfer education associate of arts and associate of science degree programs for students whose education goal is to transfer into a baccalaureate degree program;

(3) Developmental/remedial education courses, literacy education, tutorials, skills development labs and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

(4) Workforce training and retraining and contract education with business and industry to train or retrain employees;

(5) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure and literacy training;

(6) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community; and

(7) Cooperative arrangements with the public school system for the seamless progression of students through programs of study which are calculated to begin at the secondary level and conclude at the community and technical college level.

(b) All administrative, programmatic and budgetary control over community and technical college education within the institution is vested in the president, subject to rules adopted by the council. The president with the institutional board of governors or institutional board of advisors, as appropriate, is responsible for the regular review, revision, elimination and establishment of programs within the institution to assure that the needs of the community and technical college consortia district are met. It is the intent of the Legislature that the program review and approval process for community and
technical college education be separate and distinct from baccalaureate education and subject to the provisions of section nine of this article.

(c) Independently accredited community and technical colleges shall serve as higher education centers for their regions by brokering with colleges, universities and other providers, in state and out of state, to ensure the coordinated access of students, employers and other clients to needed programs and services.

§18B-3C-8. Process for achieving independently accredited community and technical colleges.

(a) By the first day of July, two thousand five, West Virginia shall have 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 or West Virginia university at Parkersburg.

(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 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 to the satisfaction of the council 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 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. --

(A) There is continued the multicampus entity known as New River community and technical college, administratively linked to Bluefield state college. New River community and technical college is headquartered in the Beckley higher education center and incorporates the campuses of Greenbrier community college center of New River community and technical college and Nicholas community college center of New River community and technical college. New River community and technical college shall be an independently accredited community and technical college. The council 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. The board of advisors shall become the
board of governors pursuant to section one, article two-a of this chapter when the institution achieves independent accreditation.

(B) Bluefield state college may continue associate degree programs 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 through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(C) Bluefield state college may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River community and technical college or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

(D) By the first day of July, two thousand five, New River community and technical college shall be independently accredited. The president and the board of governors of Bluefield state college are responsible for obtaining independent
accréditation de la communauté et collège technique. Si le
multicampus entity known as New River community and
technical college has not obtained independent accreditation by
this date, the council 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.

(E) The president and the board of governors of Bluefield
state college also are accountable to the council 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.

(F) 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.

(G) New River community and technical college shall
participate in the planning and development of a unified effort
involving multiple providers to meet the documented education
and workforce development needs in the region. Nothing in this
subsection prohibits or limits any existing, or the continuation
of any existing, affiliation between mountain state university,
West Virginia university institute of technology and West
Virginia university. 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 is an independently accredited community and technical college. The community and technical college is developed on the base of the 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 council, 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. Fairmont state college may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(3) *Marshall community and technical college.* -- Marshall community and technical college is an independently accredited community and technical college. The new community and technical college is developed on the base of the 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 council, 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. Marshall university may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(4) The community and technical college of Shepherd. -- The community and technical college of Shepherd shall become an independently accredited community and technical college. The new community and technical college is developed on the base of the 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 council, 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...
college will remain administratively linked to Shepherd college. Shepherd college may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(5) West Virginia state community and technical college.--West Virginia state community and technical college shall become an independently accredited community and technical college. The new community and technical college is developed on the base of the 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 council, 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. West Virginia state college may continue associate degree programs 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. Any such program shall be
delivered under the authority of the council and through contract
with the community and technical college. The terms of the
contract shall be negotiated between the council and the governing
board of the sponsoring institution. The final contract is
approved by the council. Such a program shall be evaluated
according to the benchmarks and indicators for community and
technical college education developed by the council. If the
council determines that the program is making insufficient
progress toward accomplishing the benchmarks, the program
shall thereafter be delivered by the community and technical
college.

(6) The community and technical college at West Virginia
university institute of technology. -- The community and
technical college at West Virginia university institute of technol-
gy is an independently accredited community and technical
college. The new community and technical college is developed
on the base of the 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 accred-
ited 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. West
Virginia university institute of technology may continue
associate degree programs 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. Any such program shall be delivered under the
authority of the council and through contract with the commu-
nity and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(d) For each administratively linked community and technical college which fails to achieve independent accreditation by the first day of July, two thousand five, the council shall choose one of the following options:

(1) Create the administratively linked institution as a freestanding community and technical college; or

(2) Assign the responsibility for obtaining independent accreditation to another state institution of higher education.

The president and the board of governors of each sponsoring institution is accountable to the council for ensuring that the community and technical college is able to meet the conditions for independent accreditation and adheres to the essential conditions pursuant to section three of this article.

§18B-3C-9. Increasing flexibility for community and technical colleges.

(a) Notwithstanding any rules or procedures of the governing boards to the contrary, the community and technical colleges have the authority and the duty to:

(1) Incorporate the most effective and efficient use of technology in accessing and delivering courses and programs in
order to make the best use of available resources and to control
costs;

(2) Incorporate a model to offer occupational program
curricula in smaller modules to accommodate specific student
and employer needs and to gain sufficient flexibility in format-
ting courses;

(3) Serve as a facilitator for education programs from
outside delivery sources to meet the needs of the residents and
employers of the district; and

(4) Employ faculty in the most effective manner to serve the
core mission of the community and technical college.

(A) To that end, the freestanding community and technical
colleges may employ faculty for an indefinite period without a
grant of tenure and shall work toward a staffing goal of no more
than twenty percent of the faculty holding tenure or being
tenure-track employees. Tenured faculty employed by the
freestanding community and technical colleges before the first
day of July, one thousand nine hundred ninety-nine, are not
affected by this provision.

(B) All community and technical colleges, other than those
set forth in paragraph (A) of this subdivision, may employ
faculty for an indefinite period without a grant of tenure. The
immediate goal is to use this provision as a tool to assist the
community and technical colleges in meeting the essential
conditions provided for in section three of this article and in
gaining independent accreditation status. The ultimate goal is to
provide the flexibility community and technical colleges need to
meet the needs of the state by working toward having no more
than twenty percent of the core faculty holding tenure or being
tenure-track employees. Tenured faculty employed by commu-
nity and technical colleges other than freestanding community
and technical colleges on the thirtieth day of June, two thousand,
may not be affected by this provision. Tenure may not be denied to a faculty member solely as a result of change in employing institution necessitated by the change to independently accredited community and technical colleges.

(b) The governing boards shall adopt a model of program approval for the community and technical colleges that permits occupational programs to be customized to meet needs without requiring approval by any governing board or other agency of government. The model shall incorporate a post-audit review of such programs on a three-year cycle to determine the effectiveness of the programs in meeting district needs.

(c) The council shall promulgate rules to implement the provisions of this section and shall file these rules for review and approval with the chancellor no later than the first day of December, two thousand four.

§18B-3C-10. Freestanding community and technical colleges; tuition and fees.

(a) Each governing board may fix tuition and establish and set such other fees to be charged students at its community and technical college as it considers appropriate, subject to the provisions of this subsection and article ten of this chapter.

(1) The governing board, in consultation with the council, also may establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. The council shall determine which fees, if any, do not apply to the entire student population and to which students such fees do not apply. Such special fees may be used only for the purposes for which collected.

(2) A community and technical college may contract with any other state institution of higher education for the partici-
tion of its students in programs, activities or services of the other institution and for the use of such fees collected.

(b) All tuition and fee charges in the total aggregate shall comply with the terms of the institution's compact approved by the council, based on peer comparisons or cost of instruction as set forth in the goals for post-secondary education pursuant to section one-a, article one of this chapter.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

(a) Intent and purposes. --

(1) It is the intent of the Legislature to establish community and technical colleges in every region of the state that meet the essential conditions of section three of this article.

(2) The Legislature finds that, in order to increase efficiency, reduce costs and, generally, to facilitate the effective transition from community and technical colleges which are components of existing institutions of higher education to community and technical colleges which meet the essential conditions, it is appropriate to maintain an administrative link between the community and technical colleges and the sponsoring institutions.

(3) This section defines the relationship between an administratively linked community and technical college and its sponsoring institution.

(b) Where an independently accredited community and technical college is linked administratively to a sponsoring state college or university in order to ensure efficient use of limited resources, the following conditions apply:
(1) The community and technical college shall be accredited separately from the sponsoring institution;

(2) All state funding allocations for the community and technical college shall be transferred directly to the community and technical college. The sponsoring institution may charge fees for administrative overhead costs subject to a schedule approved by the council.

(A) By the first day of December, two thousand four, the council shall develop a new model, or select an existing model, for services to be provided by sponsoring institutions and the fees to be charged administratively linked community and technical colleges for the services. The fee schedule shall be based upon the reasonable and customary fee for any service and shall bear a rational relationship to the cost of providing the service. Nothing in this paragraph requires the council to adopt a particular model for service delivery.

(B) With the approval of the council, a community and technical college and the sponsoring institution may customize the model to fit their needs;

(3) Policies shall be formally established to ensure the separation of academic and faculty personnel policies of the community and technical college from those of the sponsoring institution. These policies include, but are not limited to, appointment, promotion, workload and, if appropriate, tenure; and

(4) The council may authorize a community and technical college to decline any service of the sponsoring institution provided in subsection (c) of this section if the council determines that the service is not appropriate for the community and technical college, or that declining the service is in the best interest of the community and technical college. Any service
declined may be obtained from an alternate source with the approval of the council.

(c) The sponsoring institution which is administratively linked to a community and technical college shall provide the following services:

(1) Personnel management;

(2) Recordkeeping;

(3) Payroll;

(4) Accounting;

(5) Legal services;

(6) Registration;

(7) Student aid;

(8) Student records; and

(9) Such other services as determined to be necessary and appropriate by the council.

d) The institutional governing board shall appoint the president of the community and technical college, who serves at the will and pleasure of the governing board.

e) The governing board and the council are responsible for the step-by-step development of the community and technical college and for compliance with the essential conditions, all as required by this article.

f) The president of the community and technical college has such responsibilities, powers and duties in the development of the community and technical college and in compliance with the
essential conditions, as directed by the governing board or as are necessary for the proper implementation of the provisions of this act.

(g) Notwithstanding any other provision of this code to the contrary, the commission shall take necessary steps to ensure that institutional bonded indebtedness is secure and that each administratively linked community and technical college assumes its fair share of any institutional debt acquired while it was part of the baccalaureate institution.

(h) The community and technical college is encouraged to secure academic services from the sponsoring institution when it is in the best interests of the students to be served, the community and technical college and the sponsoring institution. In determining whether or not to secure services from the sponsoring institution, the community and technical college shall consider the following:

(1) The cost of the academic services;

(2) The quality of the academic services;

(3) The availability, both as to time and place, of the academic services; and

(4) Such other considerations as the community and technical college finds appropriate taking into account the best interests of the students to be served, the community and technical college, and the sponsoring institution. Nothing in this article prohibits any state institution of higher education from purchasing or brokering remedial or developmental courses from a community and technical college.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.
§18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

(1) Each chancellor serves at the will and pleasure of the hiring body.

(2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

(3) Each chancellor is responsible for carrying out the directives of the body by whom employed and shall work with that body in developing policy options.

(4) The commission shall designate a limited number of positions that are under the direct control and supervision of the chancellor for higher education. These positions form the nuclear staff of the chancellor's office and may equal no more than fifteen percent of the total number of staff employed by the commission.

Nevertheless, regardless of the number or title of the positions so designated, the commission is responsible to the council and the chancellor for community and technical college education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications,
human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the vice chancellor for administration.

(5) For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff of the institutions under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, the vice chancellor for administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.

(c) The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine.

(d) Suitable offices for the vice chancellor of administration and other staff shall be provided in Charleston.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

(a) By and with the advice and consent of the council, the commission shall employ a vice chancellor for administration who may not be dismissed without the consent of the council:

(1) The individual serving as vice chancellor for administration on the effective date of this section may continue to serve on an interim basis until the commission and the council have agreed, jointly, on a candidate to fill the position;
(2) The interim vice chancellor for administration may be considered as a candidate for the position;

(3) The position shall be filled on a permanent basis no later than the first day of October, two thousand four; and

(4) Any vacancy occurring in this position shall be filled pursuant to the requirements of this section.

(b) Any reference in this chapter or chapter eighteen-c of this code to the senior administrator means the vice chancellor for administration.

(c) The vice chancellor for administration has a ministerial duty, in consultation with and under direction of the chancellors, to perform such functions, tasks and duties as may be necessary to carry out the policy directives of the council and commission and such other duties as may be prescribed by law.

(d) The vice chancellor for administration shall supervise such professional, administrative, clerical and other employees as may be necessary to these duties and shall delineate staff responsibilities as considered desirable and appropriate. It is the responsibility of the vice chancellor for administration, within the parameters of the total resources available, to supervise and direct the staff in such a way that the staff and resource needs of the council, the commission and the offices of the chancellors are met.

(e) Any employee of the commission or the council whose job duties meet criteria listed in the system of job classifications as stated in article nine of this chapter is accorded the job title, compensation and rights established in the article as well as all other rights and privileges accorded classified employees by the provisions of this code.
(f) The office of the vice chancellor for administration and all personnel, except for the chancellor for community and technical college education and staff transferred to the jurisdiction of the council pursuant to subsection (a), section seven, article two-b of this chapter, who are employed on the first day of January, two thousand four, within the higher education central office and the West Virginia network for educational telecomputing remain under the jurisdiction of the commission. Prior to the first day of October, two thousand four, any such employee may not be terminated or have his or her salary and benefit levels reduced as the result of the higher education reorganization that occurs on the effective date of this section.

(g) The vice chancellor for administration shall follow state and national education trends and gather data on higher education needs.

(h) The vice chancellor for administration, in accordance with established guidelines and in consultation with and under the direction of the chancellors, shall administer, oversee or monitor all state and federal student assistance and support programs administered on the state level, including those provided for in chapter eighteen-c of this code.

(i) The vice chancellor for administration has a fiduciary responsibility to administer the tuition and registration fee capital improvement revenue bond accounts of the governing boards.

(j) The vice chancellor for administration shall administer the purchasing system or systems of the council and commission, the offices of the chancellors and the governing boards. By mutual agreement, the commission and the council may delegate authority for the purchasing systems or portions thereof to the institution presidents.
(k) The vice chancellor for administration is responsible for the management of the West Virginia network for educational telecomputing (WVNET). The vice chancellor for administration shall establish a computer advisory board, which shall be representative of higher education and other users of the West Virginia network for educational telecomputing as the commission and council determine appropriate. It is the responsibility of the computer advisory board to recommend to the commission and the council policies for a statewide shared computer system.

(l) The central office, under the direction of the vice chancellor for administration, shall provide necessary staff support to the commission, the council and offices of the chancellors.

(m) The vice chancellor for administration may administer any program or service authorized or required to be performed by the board of trustees or the board of directors on the thirtieth day of June, two thousand, and not specifically assigned to another agency. In addition, the vice chancellor for administration may administer any program or service authorized or required to be performed by the commission, council or chancellors, but not assigned specifically to the commission, council or chancellors. Any such program or service may include, but is not limited to, telecommunications activities and other programs and services provided for under grants and contracts from federal and other external funding sources.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

The council shall make rules for the accreditation of community and technical colleges in this state and shall determine the minimum standards for conferring degrees. The commission shall make rules for the accreditation of colleges
and universities in this state and shall determine the minimum standards for conferring degrees. An institution of higher education may not confer any degree on any basis of work or merit below the minimum standards prescribed by the council or commission. Nothing in this section infringes upon the rights, including rights to award degrees, granted to any institution by charter given according to law, or by actions of the council or commission or their predecessors, prior to the effective date of this section. With the approval of the commission, governing boards of institutions which currently offer substantial undergraduate course offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the state of West Virginia to any institution, association or organization within the state, nor may any such degree be awarded, until the condition of conferring the degree has first been approved in writing by the council or commission.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, 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 council or commission, as appropriate, and the state institutions of higher education under their jurisdiction. The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. The rules shall assure that the council, commission and governing boards:
(1) Do not preclude any person from participating and making sales thereof to the governing board or to the council or 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, council or 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;

(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) Provide for vendor notification of bid solicitation and emergency purchasing;

(9) Provide that competitive bids are not required for purchases of twenty-five thousand dollars or less; and

(10) Provide for not fewer than three bids where bidding is required. If fewer than three bids are submitted, an award may be made from among those received.

(b) The council, 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 council or 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, council or 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, council and 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, council and 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. A record in the purchase file may not 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 been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the legislative auditor. All files, no matter the storage method, shall be open for inspection by the legislative auditor upon request.

(e) The commission and council also jointly 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 a person may not 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 this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and 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 the council 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, council and commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or 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 the council 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 council or 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 is considered approved if the attorney general has not responded within fifteen days of presentation of the contract. 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, council or commission shall make all contracts available for inspection by the state auditor. The governing board, council or 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, council or 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 is void and of no effect.

(k) Any governing board or the council or 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, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing and the director of purchases shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon such request.

(l) Each governing board or the council or 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 council or commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the council or 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 council or commission, as appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the council or 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, council and 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, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or 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, council or 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 or council, as appropriate, 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, never constitutes an indebtedness of the state of West Virginia or any department, agency or political subdivision 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. Such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement 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 and council. In addition, any lease-purchase agreement which exceeds one hundred thousand dollars total shall be approved by the attorney general of West Virginia. The interest component of any lease-purchase obligation is 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 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is 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 contrary, the commission, council and 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 accordance with this paragraph and as provided below:

(1) The commission, council and 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, council or governing boards for the institutions under their jurisdiction. The chief executive officer of the commission, council 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, council or institution;

(B) That the commission, council 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 currently owned or leased by the commission, council or the institution.

Before executing any rental contract or lease, the commission, council 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, council and 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
260 exceed forty years. Any purchase of real estate, any
261 lease-purchase agreement and any construction of new buildings
262 or other acquisition of buildings, office space or grounds
263 resulting therefrom, pursuant to the provisions of this subsection
264 shall be presented by the policy commission or council, as
265 appropriate, to the joint committee on government and finance
266 for prior review. Any such lease shall contain, in substance, all
267 the following provisions:

268 (A) That the commission, council or governing board, as
269 lessee, has the right to cancel the lease without further obligation
270 on the part of the lessee upon giving thirty days' written notice
271 to the lessor at least thirty days prior to the last day of the
272 succeeding month;

273 (B) That the lease is considered canceled without further
274 obligation on the part of the lessee if the Legislature or the
275 federal government fails to appropriate sufficient funds therefor
276 or otherwise acts to impair the lease or cause it to be canceled;
277 and

278 (C) That the lease is considered renewed for each ensuing
279 fiscal year during the term of the lease unless it is canceled by
280 the commission, council or governing board before the end of
281 the then-current fiscal year.

282 (3) The commission, council or institution which is granted
283 any grounds, buildings, office space or other space leased in
284 accordance with this section may not order or make permanent
285 changes of any type thereto, unless the commission, council or
286 governing board, as appropriate, has first determined that the
287 change is necessary for the proper, efficient and economically
288 sound operation of the institution. For purposes of this section,
289 a "permanent change" means any addition, alteration, improve-
290 ment, remodeling, repair or other change involving the expendi-
ture 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, council
or governing board, may be signed by the chief executive officer
of the commission, council or institution. Any lease or instru-
ment 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 and council jointly may promulgate
rules they consider necessary to carry out the provisions of this
section.

ARTICLE 6. ADVISORY COUNCILS AND BOARDS.

§18B-6-1. Institutional boards of advisors for regional campuses and certain
administratively linked community and technical colleges.
§18B-6-1a. Definitions.
§18B-6-2. State advisory council of faculty.
§18B-6-3. Institutional faculty senate.
§18B-6-4. State advisory council of students.
§18B-6-5. State advisory councils of classified employees.
§18B-6-6. Institutional classified employee council.

§18B-6-1. Institutional boards of advisors for regional campuses
and certain administratively linked community and
technical colleges.

(a) There is hereby continued or established institutional
boards of advisors as follows:

(1) For each regional campus. The chairperson of the board
of advisors of West Virginia university at Parkersburg serves as
an ex officio, voting member of the governing board of West Virginia university;

(2) For administratively linked community and technical colleges which share a physical location with the sponsoring institution. This category includes Fairmont state community and technical college, Marshall community and technical college, West Virginia state community and technical college and the community and technical college at West Virginia university institute of technology. The chairperson of the board of advisors of each administratively linked community and technical college serves as an ex officio, voting member of the sponsoring institution’s board of governors or, in the case of the community and technical college at West Virginia university institute of technology, the chairperson of the board of advisors serves as an ex officio voting member of the governing board of West Virginia university;

(3) For New River community and technical college and the community and technical college of Shepherd, until these institutions achieve independent accreditation. As long as New River community and technical college or the community and technical college of Shepherd retains a board of advisors and remains administratively linked to the baccalaureate institution, the chairperson of that board of advisors serves as an ex officio, voting member of the governing board of Bluefield state college or Shepherd college, respectively.

(b) The lay members of the institutional boards of advisors for the regional campuses are appointed by the board of governors.

(c) The lay members of the institutional boards of advisors established for the administratively linked community and
(d) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; a member from the institutional classified employees duly elected by the classified employees of the respective institution; and twelve lay persons appointed pursuant to this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the respective institution and no more than a simple majority may be of the same political party.

(e) The student member serves for a term of one year beginning upon appointment in July, two thousand four, and ending on the thirtieth day of April, two thousand five. Thereafter the term shall begin on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning upon appointment in July, two thousand four, and ending on the thirtieth day of April, two thousand five. Thereafter the term shall begin on the first day of May; and the twelve lay members serve terms of four years each beginning upon appointment in July, two thousand four. Thereafter, the term shall begin on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the remainder of the unexpired term within thirty days of the occurrence thereof in the same manner.
as the original appointment or election. Except in the case of a vacancy:

(1) Commencing in two thousand five, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term; and

(2) Terms of members begin on the first day of May following election, except for two thousand four only, terms begin upon appointment in July.

(f) Each board of advisors shall hold a regular meeting at least quarterly, commencing in May of each year. Additional meetings may be held upon the call of the chairperson, president of the institution or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(g) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year, except that the chairperson elected in two thousand four shall be elected in July. No member may serve as chairperson for more than two consecutive years.

(h) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the boards of advisors and the institutions under this section shall be paid from funds allocated to the institutions for that purpose.
(i) Prior to the submission by the president to its governing board, the board of advisors shall review all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(j) Prior to their implementation by the president, the board of advisors shall review all proposals regarding institution-wide personnel policies. The board of advisors may comment on the proposals in writing.

(k) The board of advisors shall provide advice and assistance to the president and the governing board in areas including, but not limited to, the following:

(1) Establishing closer connections between higher education and business, labor, government and community and economic development organizations to give students greater opportunities to experience the world of work. Examples of such experiences include business and community service internships, apprenticeships and cooperative programs;

(2) Communicating better and serving the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills.
upgrading and retraining and the needs of employers for specific
programs of limited duration; and

(3) Assessing the performance of the institution's graduates
and assisting in job placement.

(l) When a vacancy occurs in the office of president of the
institution, the board of advisors shall serve as a search and
screening committee for candidates to fill the vacancy under
guidelines established by the council. When serving as a search
and screening committee, the board of advisors and its governing
board are each authorized to appoint up to three additional
persons to serve on the committee as long as the search and
screening process is in effect. The three additional appointees of
the board of advisors shall be faculty members of the institution.
For the purposes of the search and screening process only, the
additional members shall possess the same powers and rights as
the regular members of the board of advisors, including reim-
bursement for all reasonable and necessary expenses actually
incurred. Following the search and screening process, the
committee shall submit the names of at least three candidates to
the council, or to the governing board in the case of West
Virginia university institute of technology, for consideration. If
the council or governing board rejects all candidates submitted,
the committee shall submit the names of at least three additional
candidates and this process shall be repeated until the council or
governing board approves one of the candidates submitted. In
all cases, the governing board shall make the appointment with
the approval of the council or the commission in the case of
West Virginia university institute of technology. The governing
board or the council shall provide all necessary staff assistance
to the board of advisors in its role as a search and screening
committee.
The boards of advisors shall develop a master plan for those administratively linked community and technical colleges which retain boards of advisors. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of these institutional master plans, including periodic updates, resides with the council. The plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

§18B-6-1a. Definitions.
For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) "Advisory council of classified employees" or "classified council" means the state advisory organization of classified employees created pursuant to section five of this article.

(b) "Advisory council of faculty" or "faculty council" means the state advisory organization of faculty created pursuant to section two of this article.

(c) "Advisory council of students" or "student advisory council" means the state advisory organization of students created pursuant to section four of this article.

(d) "Classified employee", in the singular or plural, means any regular full-time or regular part-time employee of a governing board, the commission, the council or the West Virginia network for educational telecomputing who holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by law.

(e) "Community and technical college" means eastern West Virginia community and technical college, Fairmont state community and technical college, Marshall community and technical college, New River community and technical college, West Virginia northern community and technical college, the community and technical college of Shepherd, southern West Virginia community and technical college, West Virginia state community and technical college, the community and technical college at West Virginia university institute of technology, West Virginia university at Parkersburg and any other community and technical college so designated by the Legislature.
(f) "Council" means the West Virginia council for community and technical college education created pursuant to section three, article two-b of this chapter.

(g) "Institutional classified employee council" or "staff council" means the advisory group of classified employees formed at a state institution of higher education pursuant to section six of this article.

(h) "Institutional faculty senate", "faculty senate" or "faculty assembly" means the advisory group of faculty formed at a state institution of higher education pursuant to section three of this article.

(i) "State institution of higher education", in the singular or plural, means the institutions as defined in section two, article one of this chapter and, additionally, Fairmont state community and technical college, Marshall community and technical college, New River community and technical college, Potomac state college of West Virginia university, Robert C. Byrd health sciences Charleston division of West Virginia university, the community and technical college of Shepherd, West Virginia state community and technical college, West Virginia university at Parkersburg, West Virginia university institute of technology, the community and technical college at West Virginia university institute of technology, the higher education policy commission, the West Virginia council for community and technical college education, the West Virginia network for educational telecomputing and any other institution so designated by the Legislature.

§18B-6-2. State advisory council of faculty.

(a) There is continued the state advisory council of faculty.

(b) Election of members and terms of office. --
(1) During the month of April of each odd-numbered year, each president of a state institution of higher education, at the direction of the faculty council and in accordance with procedures established by the faculty council, shall convene a meeting or otherwise institute a balloting process to elect one faculty member from each institution of higher education to serve on the faculty council.

(2) Terms of the members are for two years and begin on the first day of July of each odd-numbered year. Members are eligible to succeed themselves.

(3) For the year two thousand four only, each president of an administratively linked community and technical college shall consult with the faculty council during the month of July to establish procedures and convene a meeting or otherwise institute a balloting process to elect one faculty member from that institution to serve on the faculty council. Members so elected shall take office upon election and serve until the next regularly scheduled election held pursuant to this section; thereafter, faculty members elected to represent administratively linked community and technical colleges serve a regular two-year term.

(c) The faculty council shall meet at least once each quarter and may meet at such other times as called by the chairperson or by a majority of its members. One of the quarterly meetings shall be during the month of July, at which meeting the faculty council shall elect a chairperson from among its members. The chairperson may serve no more than two consecutive terms as chair. A member may not vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the faculty council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, and in the manner prescribed by
this section for the election of a chairperson, the faculty council shall elect a member to preside over meetings in the absence of the chairperson. If the chairperson vacates the position, the faculty council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The faculty council, through its chairperson and in any appropriate manner, shall communicate to the commission or the council, as appropriate, matters of higher education in which the faculty members have an interest.

(e) The commission and council each shall meet annually between the months of October and December with the faculty council to discuss matters of higher education in which the faculty members or the commission or council may have an interest.

(f) Members of the faculty council serve without compensation. Members are entitled to reimbursement for actual and necessary expenses, including travel expenses, incurred in the performance of their official duties. Expenses are paid from funds allocated to the state institution of higher education which the member serves.

(g) The faculty council shall prepare minutes of its meetings, which minutes shall be available, upon request, to any faculty member of a state institution of higher education represented on the faculty council.

§18B-6-3. Institutional faculty senate.

(a) Effective the first day of July, two thousand four, a faculty senate is established at each institution of higher education, except for those institutions which choose to establish a faculty assembly. In the latter case, all faculty participate in the faculty assembly and the requirements of subsections (b) and (c)
of this section do not apply. Members and officers of an organized, campus-level advisory group of faculty who are serving prior to the effective date of this section may continue to serve with all the rights, privileges and responsibilities prescribed herein until the time that members elected as set forth in subsection (b) of this section assume office.

(b) Members of each faculty senate are elected as follows:

(1) During the month of April of each even-numbered year, each president of a state institution of higher education, at the direction of the faculty and in accordance with procedures established by the faculty, shall convene a meeting or otherwise institute a balloting process to elect the members of the faculty senates, except that for two thousand four only, the election shall take place in July.

(2) Selection procedures shall provide for appropriate representation of all academic units within the institution.

(3) The faculty member who is elected to serve on the faculty council is an ex officio, voting member of the faculty senate and reports to the faculty senate on meetings of the faculty council and the board of governors.

(c) Members serve a term of two years, which term begins on the first day of July of each even-numbered year, except for the year two thousand four when terms begin upon election. Members of the faculty senate are eligible to succeed themselves.

(d) Each faculty senate shall elect a chairperson from among its members. The chairperson serves a term of two years, and may serve no more than two consecutive terms as chairperson.
(e) The faculty senate meets quarterly and may meet at such other times as called by the chairperson or by a majority of the members. With appropriate notification to the president of the institution, the chairperson may convene a faculty senate meeting for the purpose of sharing information and discussing issues affecting faculty and the effective and efficient management of the institution.

(f) The president of the institution shall meet at least quarterly with the faculty senate to discuss matters affecting faculty and the effective and efficient management of the institution.

(g) The governing board of the institution shall meet at least annually with the faculty senate to discuss matters affecting faculty and the effective and efficient management of the institution.

§18B-6-4. State advisory council of students.

(a) There is continued the state advisory council of students.

(b) During the month of April of each year, each student government organization at each institution of higher education shall elect a student to serve on the student advisory council. Terms of the members of the student advisory council are for one year and begin on the first day of September of each year. A duly elected member currently serving on the advisory council of students may continue to serve until a new member from that institution is elected pursuant to the provisions of this section. Members of the student advisory council are eligible to succeed themselves.

(c) The student advisory council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of September, at which meeting the student advisory
council shall elect a chairperson. A member may not vote by
proxy at the election. In the event of a tie in the last vote taken
for the election, a member authorized by the student advisory
council shall select the chairperson by lot from the names of
those persons tied. Immediately following the election of a
chairperson, the student advisory council shall elect, in the
manner prescribed by this section for the election of a chairper-
son, a member of the council to preside over meetings in the
absence of the chairperson. If the chairperson vacates the
position, the student advisory council shall meet and elect a new
chairperson to fill the unexpired term within thirty days follow-
ing the vacancy.

(d) The student advisory council, through its chairperson and
in any appropriate manner, shall communicate to the commission
or the council, as appropriate, matters of higher education in
which the student members have an interest.

(e) At the request of the chairperson of the student advisory
council, the commission and council each shall meet annually,
between the months of October and December, with the student
advisory council to discuss matters of higher education in which
the student members or the commission or council have an
interest.

(f) Members of the student advisory council serve without
compensation, but are entitled to reimbursement for actual and
necessary expenses, including travel expenses, incurred in the
performance of their official duties. Expenses are paid from
funds allocated to the state institution of higher education in
which the student is enrolled.

(g) The student advisory council shall prepare minutes of its
meetings. The minutes shall be available, upon request, to any
§18B-6-5. State advisory councils of classified employees.

(a) There is hereby continued the state advisory council of classified employees.

(b) Election of members and terms of office. --

(1) During the month of April of each odd-numbered year, each president of a state institution of higher education, at the direction of the classified council and in accordance with procedures established by the classified council, shall convene a meeting or otherwise institute a balloting process to elect one classified employee from each institution of higher education to serve on the classified council.

(2) Terms of the members are for two years and begin on the first day of July of each odd-numbered year. Members are eligible to succeed themselves.

(3) For the year two thousand four only, each president of an administratively linked community and technical college shall consult with the classified council during the month of July to establish procedures and convene a meeting or otherwise institute a balloting process to elect one classified employee from that institution to serve on the classified council. Members so elected take office upon election and serve until the next regularly scheduled election held pursuant to this section; thereafter, classified employees elected to represent administratively linked community and technical colleges serve a regular two-year term.

(c) The classified council shall meet at least once each quarter and may meet at such other times as called by the
chairperson or by a majority of its members. One of the
quarterly meetings shall be during the month of July, at which
meeting the classified council shall elect a chairperson from
among its members. The chairperson may serve no more than
two consecutive terms as chairperson. A member may not vote
by proxy at the election. In the event of a tie in the last vote
taken for the election, a member authorized by the classified
council shall select the chairperson by lot from the names of
those persons tied. Immediately following the election of a
chairperson, the classified council shall elect, in the manner
prescribed by this section for the election of a chairperson, a
member of the classified council to preside over meetings in the
absence of the chairperson. If the chairperson vacates the
position, the classified council shall meet and elect a new
chairperson to fill the unexpired term within thirty days follow-
ing the vacancy.

(d) The classified council, through its chairperson and in any
appropriate manner, shall communicate to the commission or the
council, as appropriate, matters of higher education in which the
classified employees have an interest.

(e) The commission and council each shall meet annually,
between the months of October and December, with the classi-
fied council to discuss matters of higher education in which the
classified employees or the commission or council have an
interest.

(f) Members of the classified council serve without compen-
sation, but are entitled to reimbursement for actual and necessary
expenses, including travel expenses, incurred in the performance
of their official duties. Expenses are paid from funds allocated
to the state institution of higher education which the member
serves.
(g) The classified council shall prepare minutes of its meetings. The minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the classified council.

§18B-6-6. Institutional classified employee council.

(a) There is continued at each institution of higher education an institutional classified employee advisory council to be known as the staff council.

(b) During the month of April of each odd-numbered year, each president of a state institution of higher education, at the direction of the staff council and in accordance with procedures established by the staff council, shall convene a meeting or otherwise institute a balloting process to elect members of the staff council, except that for two thousand four only, the election shall take place in July. Members are elected as follows:

1. Two classified employees from the administrative/managerial sector;
2. Two classified employees from the professional/nonteaching sector;
3. Two classified employees from the paraprofessional sector;
4. Two classified employees from the secretarial/clerical sector;
5. Two classified employees from the physical plant/maintenance sector;
6. The classified employee who is elected to serve on the advisory council of classified employees serves as an ex officio,
(7) 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.

(c) Members serve a term of two years, which term begins on the first day of July of each odd-numbered year. Members of the staff council are eligible to succeed themselves.

(d) Classified employees shall select one of their members to serve as chairperson. All classified employees at the institution are eligible to vote for the chairperson by any method approved by a majority of their members. The chairperson is eligible to succeed himself or herself.

(e) The staff council shall meet at least monthly or at the call of the chairperson. With appropriate notification to the president of the institution, the chairperson 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.

(f) The president of the institution shall meet at least quarterly with the staff council to discuss matters affecting classified employees.

(g) The governing board of the institution shall meet at least annually with the staff council to discuss matters affecting classified employees and the effective and efficient management of the institution.

ARTICLE 7. PERSONNEL GENERALLY.
§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-12. Maintenance of benefits for employees.

§18B-7-1. **Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.**

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter, except that the provisions of this section apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year. This section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply. Any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by the appropriate governing board, the council or commission or its agents at state institutions of higher education concerning reductions in workforce of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution desires to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other
equivalent or lower job class for which the senior employee is qualified. If an employee refuses to accept a position in a lower job class, the employee retains all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in workforce is placed upon a preferred recall list and is recalled to employment by the institution on the basis of seniority. An employee's listing with an institution remains active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classifications in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list does not forfeit the right to recall by the institution if compelling reasons require the employee to refuse an offer of reemployment by the institution.

The institution shall notify all employees maintaining active listings on the preferred recall list of all position openings that periodically exist. The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. A position opening may not be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.
(d) A nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the institution where currently employed, whether the job is a lateral transfer or a promotion, shall be transferred or promoted before a new person is hired.

(1) This subsection does not apply if the hiring is affected by:

(A) Mandates in affirmative action plans; or

(B) The requirements of Public Law 101-336, the Americans with Disabilities Act.

(2) This subsection applies to any nonexempt classified employee, including:

(A) One who has not accumulated a minimum total of one thousand forty hours during the calendar year; and

(B) One whose contract does not extend over at least nine months of a calendar year.

(3) If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee is awarded the position. In instances where the classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that institution is awarded the position.

(4) A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.
(e) In addition to any other information required, any application for personnel governed by the provisions of this section shall include the applicant’s social security number.

(f) Regardless of the level of seniority for any employee, for the purposes of this section:

(1) In the case of a reduction in force, an employee at a community and technical college may not displace any employee of an institution under the jurisdiction of the commission.

(2) In the case of a reduction in force, an employee at an institution under the jurisdiction of the commission may not displace any employee of a community and technical college.

(3) For the purpose of this subsection, an employee performing a dual service for a sponsoring institution and an administratively linked community and technical college is an employee at an institution under the jurisdiction of the commission if the sponsoring institution receives a fee from the administratively linked community and technical college for the service performed by that employee.

§18B-7-12. Maintenance of benefits for employees.

(a) On the effective date of this section, any individual employed on the day preceding the effective date of this section by the chancellor for higher education or commission maintains all benefits of employment held, accrued and afforded prior to the effective date of this section. Such benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, any insurance coverage, and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, an employee is not a new employee, and the prohibition on conversion does not apply if the employee was eligible for leave
conversion on the day preceding the effective date of this section. For the purpose of section thirteen, article sixteen, chapter five of this code:

(1) Each employee maintains all sick and annual leave accrued, and all rights to convert the leave that had been accrued on the day preceding the effective date of this section; and

(2) Each employee continues to maintain his or her status for eligibility under the provisions and application of said section thirteen as applied to the employee on the day preceding the effective date of this section.

(b) Prior to the first day of October, two thousand four, an employee may not be terminated, or have his or her salary or benefit levels reduced as the result of the higher education reorganization set forth in this article.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-1. Legislative purpose.


§18B-9-1. Legislative purpose.

The purpose of the Legislature in the enactment of this article is to require the commission and council jointly to establish, control, supervise and manage a complete, uniform system of personnel classification in accordance with the provisions of this article for all employees other than faculty and nonclassified employees at state institutions of higher education.


As used in this article:
(a) "Classified employee" or "employee" means any regular full-time or regular part-time employee of a governing board, the commission or the council, including all employees of the West Virginia network for educational telecomputing, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by this article or by the commission and council;

(b) "Nonclassified employee" means an individual who is responsible for policy formation at the department or institutional level, or reports directly to the president, or is in a position considered critical to the institution by the president pursuant to policies adopted by the governing board. The percentage of personnel placed in the category of "nonclassified" at any given institution may not exceed ten percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That an additional ten percent of the total number of employees of that institution as defined in this subsection may be placed in the category of "nonclassified" if they are in a position considered critical to the institution by the president. Final approval of such placement shall be with the appropriate governing board;

(c) "Job description" means the specific listing of duties and responsibilities as determined by the appropriate governing board, the commission or council and associated with a particular job title;

(d) "Job title" means the name of the position or job as defined by the appropriate governing board, the commission or council;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or
to rectify salary inequities or accommodate competitive market
conditions in accordance with rules established by the governing
boards, the commission or council;

(f) "Pay grade" means the number assigned by the commis-
sion and council to a particular job title and refers to the vertical
column heading of the salary schedule established in section
three of this article;

(g) "Personnel classification system" means the process of
job categorization adopted by the commission and council
jointly by which job title, job description, pay grade and
placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid
through the state treasury per annum to a classified employee;

(i) "Schedule" or "salary schedule" means the grid of annual
salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a
person has been an employee of the state of West Virginia and
refers to the horizontal column heading of the salary schedule
established in section three of this article. For the purpose of
placement on the salary schedule, employment for nine months
or more equals one year of experience, but a classified employee
may not accrue more than one year of experience during any
given fiscal year. Employment for less than full time or less
than nine months during any fiscal year shall be prorated. In
accordance with rules established by the commission and council
jointly, a classified employee may be granted additional years of
experience not to exceed the actual number of years of prior,
relevant work or experience at accredited institutions of higher
education other than state institutions of higher education.
ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1b. Special equity fee; purpose; exemptions.

§18B-10-2. Higher education resource fee.

§18B-10-1b. Special equity fee; purpose; exemptions.

1 In addition to the other fees provided in this article, each governing board has the authority to impose, collect and expend the proceeds of a special equity fee under the following conditions:

2 (a) The fee shall be used solely for the purpose of complying with the athletic provisions of 20 U. S. C. 1681, et seq., known as Title IX of the Education Amendment of 1972;

3 (b) The fee is exempt from limitations on fee increases set forth in this article for three years from the effective date of this section;

4 (c) The fee may not be used by an institution to advance its classification of participation in its athletics governing body; and

5 (d) The fee may not be imposed upon part-time students or students enrolled in an administratively linked community and technical college.

§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in section one of this article, all students enrolled for credit at a state institution of higher education shall pay a higher education resource fee. The commission and council jointly shall fix the fee rates for the various institutions and classes of students under their respective jurisdictions and may from time to time change these rates. The amount of the fee charged at each institution
shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education.

Ninety percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. Up to ten percent of the fee collections from institutions under the jurisdiction of the commission shall be deposited in a special fund and expended or allocated by the commission to meet general operating expenses of the commission or to fund statewide programs. Up to ten percent of the fee collections from institutions under the jurisdiction of the council shall be deposited in a special fund and expended or allocated by the council to meet general operating expenses of the council or to fund statewide programs. The boards shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.

The commission and council each shall, on or before the first day of July annually, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-3f, relating to establishing the priority for early childhood education in the basic skills of reading, mathematics and English language arts; making certain findings; stating intent and purpose; limiting scope of statewide assessments in early childhood; and requiring state board rule.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-3f, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3f. Building the basics early childhood curriculum; legislative findings; state board rule.

(a) Legislative findings. — The Legislature makes the following findings:

(1) Children entering early childhood education programs have significant differences in their cognitive development, mastery of the early basic skills and readiness for instruction in a formal setting;
(2) Mastery of the basic skills of reading, mathematics and English language arts is the foundation for all further learning and, therefore, providing the instruction necessary for each child to attain mastery in these basic skills must be the priority for early childhood education programs;

(3) Deficiencies in the basic skills of reading, mathematics and English language arts that persist in children beyond the early childhood years become more difficult to overcome as they retard further progress in building the basics and lead to significant gaps in the basic knowledge needed to comprehend more advanced content in other subject areas; and

(4) Intensive instruction, early detection and intervention to correct student deficiencies in the basic skills of reading, mathematics and English language arts during early childhood education are more effective strategies for improving student performance than the alternatives such as grade level retention, social promotion and referral for special services and can lessen the prevalence of low basic skills as a contributing factor in student truancy, delinquency and dropout rates.

(b) Intent and purpose. — The intent and purpose of this section is to establish the priority for early childhood education to provide intensive instruction in the basic skills of reading, mathematics and English language arts, along with early detection and intervention strategies to correct student deficiencies, to address the findings of this section.

(c) State board rule. — On or before the first day of July, two thousand four, the state board shall adopt rules to effectuate the intent and purpose of this section, including, but not limited to, provisions that address the following:

(1) Reading, mathematics and English language arts are the only subjects that are required to be taught daily in kindergarten through grade two early childhood education programs;
(2) Instruction in other subject matter in kindergarten through grade two shall be oriented to reinforce instruction in reading, mathematics and English language arts;

(3) Strategies for the early detection and intervention to correct student deficiencies in reading, mathematics and English language arts shall be employed throughout the instructional term in each of the early childhood grades to help students achieve mastery in these subjects, including allowing flexibility in student schedules to provide additional time and instruction for students who are below mastery in these subjects in grades three and four;

(4) Accountability for student performance on the statewide assessment of student performance in the early childhood grades shall only include the basic skills of reading, mathematics and English language arts; and

(5) Any other provisions considered necessary by the state board to achieve the intent and purpose of this section.

CHAPTER 94

(H. B. 4669 — By Delegates Tabb, Williams, Paxton, Beach, Crosier, Swartzmiller and Long)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-3g, relating to requiring establishment of special five-year demonstration professional development school project; making certain findings;
providing certain powers and duties of state superintendent with respect to project; requiring reports; and excluding requirement of specific appropriations.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-3g, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3g. Special demonstration professional development school project for improving academic achievement.

(a) The Legislature makes the following findings:

(1) Well-educated children and families are essential for maintaining safe and economically sound communities;

(2) Low student achievement is associated with increased delinquent behavior, higher drug use and pregnancy rates, and higher unemployment and adult incarceration rates;

(3) Each year, more students enter school with circumstances in their lives that schools are ill-prepared to accommodate;

(4) Ensuring access for all students to the rigorous curriculum they deserve requires effective teaching strategies that include, but are not limited to, using a variety of instructional approaches, using varied curriculum materials, engaging parent and community involvement and support in the educational process, and providing the professional development, support and leadership necessary for an effective school; and
(5) The achievement of all students can be dramatically improved when schools focus on factors within their control, such as the instructional day, curriculum and teaching practices.

(b) The purpose of this section is to provide for the establishment of a special five-year demonstration professional development school project to improve the academic achievement of all children. The program shall be under the direction of the state superintendent and shall be for a period of five years beginning with the two thousand four – two thousand five school year. The intent of this section is to provide a special demonstration environment wherein the public schools included in the demonstration project may work in collaboration with higher education, community organizations and the state board to develop and implement strategies that may be replicated in other public schools with significant enrollments of disadvantaged, minority and under-achieving students to improve academic achievement. For this purpose, the state superintendent has the following powers and duties with respect to the demonstration project:

(1) To select for participation in the demonstration project three public elementary or middle schools with significant enrollments of disadvantaged, minority and under-achieving students in each county in which the number of the African American students is five percent or more of the total second month enrollment;

(2) To require cooperation from the county board of the county wherein a demonstration project school is located to facilitate program implementation and avoid any reallocation of resources for the schools that are disproportionate with those for other schools of the county of similar classification, accreditation status and federal Title I identification;
(3) To require specialized training and knowledge of the needs, learning styles and strategies that will most effectively improve the performance of disadvantaged, minority and under-achieving students in demonstration project schools. These powers include, but not limited to, the authority to craft job descriptions with requirements regarding training and experience and the right to specify job duties which are related to job performance that reflect the mission of the demonstration project school;

(4) To provide specifications and direct the county board to post the positions for school personnel employed at the demonstration project school that encompass the special qualifications and any additional duties that will be required of the personnel as established in the job descriptions authorized pursuant to subdivision (3) of this section. The assertion that the job descriptions and postings are narrowly defined may not be used as the basis for the grievance of an employment decision for positions at a demonstration project school;

(5) To direct the department of education, the center for professional development and the regional educational service agency to provide any technical assistance and professional development necessary for successful implementation of the demonstration school programs, including, but not limited to, any early intervention or other programs of the department to assist low performing schools;

(6) To collaborate and enter into agreements with colleges and universities willing to assist with efforts at a demonstration school to improve student achievement, including, but not limited to, the operation of a professional development school program model: Provided, That the expenditure of any funds appropriated for the state board or department for this purpose shall be subject to approval of the state board;
(7) To require collaboration with local community organizations to improve student achievement and increase the involvement of parents and guardians in improving student achievement;

(8) To provide for an independent evaluation of the demonstration school project, its various programs and their effectiveness on improving student academic achievement; and

(9) To recommend to the state board and the county board the waiver of any of their respective policies that impede the implementation of demonstration school programs.

(c) The state superintendent shall make status reports to the legislative oversight commission on education accountability and to the state board annually and may include in those reports any recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs. The state superintendent shall make a recommendation to the Legislature not later than its regular session, two thousand ten, for continuation or termination of the program, which recommendation shall be accompanied by the findings and recommendations of the independent evaluation and these findings and recommendations shall be a major factor considered by the superintendent in making his or her recommendation.

(d) Nothing in this section shall require any specific level of appropriation by the Legislature.
AN ACT to amend and reenact §18-2E-5 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-5-7a of said code, all relating to education; state board of education; county boards of education; modifying powers and authorities; legislative findings, purpose and intent; process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments; and disposition of school property in flood control projects.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-5-7a of said code be amended and reenacted, all to read as follows:

Article

2E. High Quality Educational Programs.

5. County Board of Education.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and
school system approval; intervention to correct impairments.

(a) Legislative findings, purpose and intent. —

(1) The Legislature finds that the process for improving education includes four primary elements, these being:

(A) Standards which set forth the things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(2) The Legislature further finds that as the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable, and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the governor.
(3) The Legislature also finds that as the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the things that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability, and by providing for the necessary capacity and its efficient use.

(4) Therefore, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(5) The intent of the Legislature in enacting this section is to establish a process through which the Legislature, the governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine, when necessary, the performance and progress of students, schools and school systems and consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) Unified county and school improvement plans. — The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a
unified school improvement plan for each public school in this state. The rules shall specify that the unified school improvement plan shall include all appropriate plans required by law including, but not limited to, the following:

1) The report required to be delivered to the county-wide council on productive and safe schools pursuant to subsection (f), section two, article five-a of this chapter;

2) Plans or applications required in the area of technology pursuant to 20 U.S.C. §6845, section seven, article two-e of this chapter, state board policy or rule or any other county, state or federal law;

3) The strategic plan to manage the integration of special needs students as required by section five, article five-a of this chapter; and


The plans are required to be included only to the extent permitted by state and federal law.

(c) High quality education standards and efficiency standards. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

1) Curriculum;

2) Workplace readiness skills;

3) Finance;
(4) Transportation;

(5) Special education;

(6) Facilities;

(7) Administrative practices;

(8) Training of county board members and administrators;

(9) Personnel qualifications;

(10) Professional development and evaluation;

(11) Student performance and progress;

(12) School and school system performance and progress;

(13) A code of conduct for students and employees;

(14) Indicators of efficiency; and

(15) Any other areas determined by the state board.

(d) Performance measures. — The standards shall assure that all graduates are prepared for gainful employment or for continuing post-secondary education and training and that schools and school systems are making progress in achieving the education goals of the state.

The standards shall include measures of student performance and progress and measures of school and school system performance, progress and processes that enable student performance. The measures of student performance and progress and school and school system performance, progress and processes shall include, but are not limited to, the following:
(1) The acquisition of student proficiencies as indicated by student performance and progress by grade level measured, where possible, by a uniform statewide assessment program;

(2) School attendance rates;

(3) The student dropout rate;

(4) The high school graduation rate;

(5) The percentage of graduates who enrolled in college and the percentage of graduates who enrolled in other post-secondary education within one year following high school graduation;

(6) The percentage of graduates who received additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and

(7) The percentage of students who enrolled in and the percentage of students who successfully completed advanced placement, dual credit and honors classes, respectively, by grade level.

(e) Indicators of efficiency. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update indicators of efficiency for student and school system performance and processes in the following areas:

(1) Curriculum delivery including, but not limited to, the use of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;
(5) Personnel;

(6) Utilization of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency, or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

(f) Assessment and accountability of school and school system performance and processes. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance, progress and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board, the Legislature and the governor in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided.

The system of education performance audits shall include:

(1) The assessment of student performance and progress, school and school system performance and progress, and the processes in place in schools and school systems which enable student performance and progress;

(2) The review of school and school system unified improvement plans; and

(3) The periodic on-site review of school and school system performance and progress and compliance with the standards.
(g) Uses of school and school system assessment information. — The state board and the process for improving education council established pursuant to section five-c of this article shall use information from the system of education performance audits to assist them in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following: (1) Determining school accreditation and school system approval status; (2) holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and (3) targeting additional resources when necessary to improve performance and progress. Primary emphasis in determining school accreditation and school system approval status is based on student performance and progress, school and school system performance and progress and such other measures as selected by the state board. The state board shall make accreditation information available to the Legislature, the governor, the general public and to any individuals who request the information, subject to the provisions of any act or rule restricting the release of information.

Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the department of education, the regional educational service agencies, the center for professional development and the principals academy, as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate, and,
if necessary, making appropriate recommendations to the
process for improving education council.

(h) *Office of education performance audits.* —

(1) To assist the state board and the process for improving
education council in the operation of a system of education
performance audits that will enable them to evaluate whether a
thorough and efficient education is being provided, and to assist
the state board in making determinations regarding the accredit-
tion status of schools and the approval status of school
systems, the state board shall establish an office of education
performance audits which shall be operated under the direction
of the state board independently of the functions and supervi-
sion of the state department of education and state superinten-
dent. The office of education performance audits shall report
directly to and be responsible to the state board in carrying out
its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be
appointed by the state board and who shall serve at the will and
pleasure of the state board. The salary of the director shall not
exceed the salary of the state superintendent of schools.

(3) The state board shall organize and sufficiently staff the
office to fulfill the duties assigned to it by law and by the state
board. Employees of the state department of education who are
transferred to the office of education performance audits retain
their benefit and seniority status with the department of
education.

(4) Under the direction of the state board, the office of
education performance audits shall receive from the West
Virginia education information system staff research and
analysis data on the performance and progress of students,
schools and school systems, and shall receive assistance, as
determined by the state board, from staff at the state department
of education, the regional education service agencies, the center
for professional development, the principals academy and the
state school building authority to carry out the duties assigned
to the office.

(5) In addition to other duties which may be assigned to it
by the state board or by statute, the office of education perfor-
mance audits also shall:

(A) Assure that all statewide assessments of student
performance are secure as required in section one-a of this
article;

(B) Administer all accountability measures as assigned by
the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the
approval of school systems. These processes shall focus on
those measurable criteria related to student performance and
progress and to the delivery of instruction which will enable
student performance and progress; and

(ii) Recommendations to the state board on appropriate
action, including, but not limited to, accreditation and approval
action;

(C) Determine, in conjunction with the assessment and
accountability processes, what capacity may be needed by
schools and school systems to meet the standards established by
the Legislature and the state board, and recommend to the
school, the school system, the state board and the process for
improving education council, plans to establish those needed
capacities;

(D) Determine, in conjunction with the assessment and
accountability processes, whether statewide system deficiencies
exist in the capacity to establish and maintain a thorough and
efficient system of schools, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board and the process for improving education council;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the Legislature and the state board, and make recommendations to the state board, the process for improving education council, the center for professional development, the regional educational service agencies, the higher education policy commission, and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board and the process for improving education council for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence; and

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, compliance with limitations on the number of pupils per teacher in a classroom and the number of split grade classrooms. Information contained in the reporting formats shall be examined during an on-site review to determine compliance with laws, policies and standards. Intentional
and grossly negligent reporting of false information is ground
for dismissal.

(i) On-site reviews. —

(1) At the direction of the state board or by weighted
selection by the office of education performance audits, an on-
site review shall be conducted by the office of education
performance audits of any school or school system for pur-
poses, including, but not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Documenting compliance with policies and laws;

(C) Evaluating the effectiveness and implementation status
of school and school system unified improvement plans;

(D) Investigating official complaints submitted to the state
board that allege serious impairments in the quality of educa-
tion in schools or school systems;

(E) Investigating official complaints submitted to the state
board that allege that a school or county board is in violation of
policies or laws under which schools and county boards
operate; and

(F) Determining and reporting whether required reviews
and inspections have been conducted by the appropriate
agencies, including, but not limited to, the state fire marshal,
the health department, the school building authority and the
responsible divisions within the department of education, and
whether noted deficiencies have been or are in the process of
being corrected. The office of education performance audits
may not conduct a duplicate review or inspection nor mandate
more stringent compliance measures.
The selection of schools and school systems for an on-site review shall use a weighted sample so that those with lower performance and progress indicators and those that have not had a recent on-site review have a greater likelihood of being selected. The director of the office of education performance audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days prior to commencing an on-site review of an individual school: Provided, That the state board may direct the office of education performance audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

The office of education performance audits may conduct on-site reviews which are limited in scope to specific areas in addition to full reviews which cover all areas.

An on-site review of a school or school system shall include a person or persons who has expert knowledge and experience in the area or areas to be reviewed and who is designated by the state board from the department of education and the agencies responsible for assisting the office. If the size of the school or school system being reviewed necessitates the use of an on-site review team or teams, the person or persons designated by the state board shall advise and assist the director to appoint the team or teams. The person or persons designated by the state board shall be the team leaders.

The persons designated by the state board shall be responsible for completing the report on the findings and recommendations of the on-site review in their area of expertise. It is the intent of the Legislature that the persons designated by the state board participate in all on-site reviews that involve their area of expertise to the extent practicable so that the on-site review
359 process will evaluate compliance with the standards in a
360 uniform, consistent and expert manner.

(5) The office of education performance audits shall
361 reimburse a county board for the costs of substitutes required to
362 replace county board employees while they are serving on a
363 review team.

(6) At the conclusion of an on-site review of a school
365 system, the director and team leaders shall hold an exit confer-
366 ence with the superintendent and shall provide an opportunity
367 for principals to be present for at least the portion of the
368 conference pertaining to their respective schools. In the case of
369 an on-site review of a school, the exit conference shall be held
370 with the principal and the superintendent shall be provided the
371 opportunity to be present.

(7) The office of education performance audits shall report
374 the findings of the on-site reviews to the state board for
375 inclusion in the evaluation and determination of a school’s or
376 county board’s accreditation or approval status as applicable.
377 The report on the findings of an on-site review shall be submit-
378 ted to the state board within thirty days following the conclu-
379 sion of the on-site review and to the county superintendent and
380 principals of schools within the reviewed school system within
381 forty-five days following the conclusion of the on-site review.
382 A copy of the report shall be provided to the process for
383 improving education council.

(j) School accreditation. — The state board annually shall
385 review the information from the system of education perfor-
386 mance audits submitted for each school and shall issue to every
387 school one of the following approval levels: Exemplary
388 accreditation status, full accreditation status, temporary
389 accreditation status, conditional accreditation status, or seri-
390 ously impaired status.
(1) Full accreditation status shall be given to a school when the school’s performance and progress on the standards adopted by the state board pursuant to subsections (c) and (d) of this section are at a level which would be expected when all of the high quality education standards are being met. A school which meets or exceeds the measures of student performance and progress set forth in subsection (d) of this section, and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board, shall remain on full accreditation status for six months following an on-site review in which other deficiencies are noted. The school shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the measure of the school’s performance and progress is below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised to increase the performance and progress of the school to a full accreditation status level. The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance and progress on the standards adopted by the state board are below the level required for full accreditation, but the school’s unified improvement plan has been revised to achieve full accreditation status by a date certain, the plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.
(4) Exemplary accreditation status shall be given to a school when the school’s performance and progress on the standards adopted by the state board pursuant to subsections (c) and (d) of this section substantially exceed the minimal level which would be expected when all of the high quality education standards are being met. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance and progress to identify exemplary schools.

(5) The state board shall establish and adopt standards of performance and progress to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, the following:

(i) The failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board;

(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan; or

(iii) The failure of a school to achieve full accreditation by the date specified in the revised plan.

(B) Whenever the state board determines that the quality of education in a school is seriously impaired, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. When the state board approves the recommendations, they shall be communicated to the county board. If
progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:

(i) Improving personnel management;

(ii) Establishing more efficient financial management practices;

(iii) Improving instructional programs and rules; or

(iv) Making any other improvements that are necessary to correct the impairment.

(C) If the impairment is not corrected by a date certain as set by the state board:

(i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;

(ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school
cannot be made without additional targeted resources, in which case, it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;

(iii) If the impairment is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the impairment and may intervene in the operation of the school to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the impairments, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: Provided, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the impairment are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(I) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;
(II) The principal who was removed shall be placed on the preferred recall list for all positions in the county for which the principal is certified, as defined in section seven, article four of this chapter; and

(III) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term;

(6) The county board shall take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.

(k) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, any student attending the school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(l) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval, or nonapproval.

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance, progress and processes adopted by the state board and whose schools have all been given full, temporary or conditional
accreditation status. A school system which meets or exceeds the measures of student performance and progress set forth in subsection (d) of this section, and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board, shall remain on full accreditation status for six months following an on-site review in which other deficiencies are noted. The school shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan to increase the performance and progress of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain for achieving full approval. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria:

(i) The plan has been revised to achieve full approval status by a date certain;

(ii) The plan has been approved by the state board; and

(iii) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan

within a reasonable time period as defined by the state board or
which fails to meet the objectives and time line of its revised
unified county improvement plan or fails to achieve full
approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional
standards to identify school systems in which the program may
be nonapproved and the state board may issue nonapproval
status whenever extraordinary circumstances exist as defined by
the state board.

(B) Whenever a county board has more than a casual
deficit, as defined in section one, article one of this chapter, the
county board shall submit a plan to the state board specifying
the county board’s strategy for eliminating the casual deficit.
The state board either shall approve or reject the plan. If the
plan is rejected, the state board shall communicate to the county
board the reason or reasons for the rejection of the plan. The
county board may resubmit the plan any number of times.
However, any county board that fails to submit a plan and gain
approval for the plan from the state board before the end of the
fiscal year after a deficit greater than a casual deficit occurred
or any county board which, in the opinion of the state board,
fails to comply with an approved plan may be designated as
having nonapproval status.

(C) Whenever nonapproval status is given to a school
system, the state board shall declare a state of emergency in the
school system and shall appoint a team of improvement
consultants to make recommendations within sixty days of
appointment for correcting the emergency. When the state
board approves the recommendations, they shall be communi-
cated to the county board. If progress in correcting the emer-
gency, as determined by the state board, is not made within six
months from the time the county board receives the recommen-
dations, the state board shall intervene in the operation of the
school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions, and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(iv) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(v) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and
(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code;

(m) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (l) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(2) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(n) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies.
When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.

The state board shall recommend to the appropriate body including, but not limited to, the process for improving education council, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

1. Examining reports and unified improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

2. Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system;

3. Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;

4. Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;
(5) Recommending priority funding from the school building authority based on identified needs;

(6) Requesting special staff development programs from the center for professional development, the principals academy, higher education, regional educational service agencies and county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-7a. Disposition of school property in flood control projects.

(a) If at any time the board ascertains that any land or part thereof then being used for school purposes is to be included in any federal flood control project the board may:

(1) Sell, dismantle, remove or relocate any buildings thereon;

(2) Contract with the United States of America, or any instrumentality, agency or political subdivision thereof, for the
(3) Without auction sell or exchange its interest in the land
or any part thereof to the United States of America, or any
instrumentality, agency or political subdivision thereof, in
accordance with the terms and provisions of the contract.

(b) If the flood control project is proposed in a county
where the state board of education has intervened in the
operation of the county school system pursuant to the provi-
sions of section five, article two-e of this chapter or any other
constitutional or statutory authority to intervene, the powers
granted in this section are vested in the state board.

(c) Notwithstanding the provisions of section seven of this
article, neither the grantor of the land or any part thereof nor his
heirs or assigns has the right to purchase the land or any part
thereof or have any other rights whatever under section seven
of this article.

CHAPTER 96

(Com. Sub. for H. B. 4001 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]
AN ACT to amend and reenact §18-2E-7 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7, all relating to an education technology strategic plan for public education and higher education; including basic skills and SUCCESS in plan; findings; intent, purpose and goals; education technology strategic plan advisory committee; strategies to be included in plan; state board of education and higher education policy commission approval and adoption; expenditures in accordance with the plan; and the report to the legislative oversight commission on education accountability and joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That §18-2E-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7, all to read as follows:

Article
2E. High Quality Educational Programs.
2J. Public and Higher Education Technology Strategic Plan.

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 ensure that the resources to be used to provide services to students in the earliest grade level and higher grade levels as resources become available are included in the education technology strategic plan required by article two-j of this chapter. The provision of services to students shall be based on a plan developed by each individual school team.

Computer hardware and software shall be purchased in accordance with the education technology strategic plan adopted pursuant to article two-j of this chapter.

The state board shall develop and provide a program to ensure adequate teacher training, continuous teacher support and updates. The program shall be consistent with the education technology strategic plan adopted pursuant to article two-j of this chapter.

To the extent practicable, the technology shall be used 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 use 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, the implementation should provide a technology infrastructure at the middle schools, junior high schools and high schools capable of supporting multiple technology based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure 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 also shall 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 in the education technology strategic plan required by article two-j of this chapter.

ARTICLE 2J. PUBLIC AND HIGHER EDUCATION TECHNOLOGY STRATEGIC PLAN.

§18-2J-1. Findings.
§18-2J-2. Intent and purpose; goals.
§18-2J-3. Education technology strategic plan advisory committee.
§18-2J-4. Education technology strategic plan.
§18-2J-5. State board and higher education policy commission approval and adoption.
§18-2J-6. Allocation and expenditure of appropriations.
§18-2J-7. Report to the legislative oversight commission on education accountability.

§18-2J-1. Findings.

(a) The Legislature finds that:

(1) Technology is being used in public schools as an instructional tool that enables teachers to meet the individual instructional needs of students who differ in learning styles, learning rates and the motivation to learn;

(2) Technology is being used in public schools as an effective resource for providing corrective, remedial and enrichment activities to help students achieve proficiency at grade level or above in the basic skills of reading, composition and arithmetic that are essential for advancement to more
rigorous curriculum and success in higher education, occupational and avocational pursuits;

(3) Technology is being used in public schools to ensure that all students have a basic level of computer literacy that will enable them to participate fully in a society in which computers are an ever more prevalent medium for social, economic, and informational interaction;

(4) Technology is being used in public schools to provide greater access for students to advanced curricular offerings, virtual field trips, problem solving and team building exercises, reference information and source knowledge than could be provided efficiently through traditional on-site delivery formats;

(5) Technology is being used in public schools to help students obtain information on post-secondary educational opportunities, financial aid, and the credentials and skills required in various occupations that will help them better prepare for a successful transition following high school;

(6) Technology is being used in public schools to help students learn to think critically, apply academic knowledge in real life situations, make decisions, and gain an understanding of the modern workplace environment through simulated workplace programs;

(7) Technology is being used in public schools as a resource for teachers by providing them with access to sample lesson plans, curriculum resources, on-line staff development, continuing education and college course-work;

(8) Technology is being used in public schools as a tool for managing information, reporting on measures of accountability,
analyzing student learning and helping to improve student, school and school system performance;

(9) Technology is being used in state institutions of higher education for teaching, learning and research for all students across all disciplines and programs;

(10) Technology is being used in state institutions of higher education by students, staff and faculty to discover, create, communicate and collaborate, as well as to enhance research and economic development activities;

(11) Technology is being used in state institutions of higher education for digital age literacy, problem solving, creativity, effective communication, collaboration and high productivity skills essential for West Virginia citizens in a rapidly changing global economy;

(12) Technology is being used by libraries in higher education to offer reference services in a virtual environment online;

(13) Technology is being used by libraries in higher education to create and share cataloging records. It is possible to create a seamless resource for sharing these resources between public and higher education; and

(14) Technology is being used in libraries in higher education to offer electronic document delivery services to distance education students and to a multitude of professionals throughout the state.

(b) Each use of technology set forth in this section shall apply to public education, higher education or both, as appropriate. The determination of whether the use of technology applies to public education, higher education or both shall be
§18-2J-2. Intent and purpose; goals.

(a) The intent and purpose of this article is to establish a unified approach to the administration and allocation of funds for technology that is used for public education and higher education purposes in this state which meets the following goals:

1. Maintaining a reasonable balance in the resources allocated among the customary diverse uses of technology in the public schools and the state institutions of higher education, while allowing flexibility to address unanticipated priority needs and unusual local circumstances;

2. Providing for uniformity in technological hardware and software standards and procedures to achieve interoperability between public schools and higher education to the extent that the uniformity is considered prudent for reducing acquisition cost, avoiding duplication, promoting expeditious repair and maintenance and facilitating user training, while allowing flexibility for local innovations and options when the objectives relating to uniformity are reasonably met;

3. Preserving the integrity of governance, administration, standards and accountability for technology in the public schools and institutions of higher education under the jurisdiction of the state board and the higher education policy commission, while encouraging collaborative service delivery and infrastructure investments with other entities that will reduce cost, avoid duplication or improve services, particularly with respect to other entities such as the educational broadcasting
system, public libraries and other governmental agencies with compatible technology interests;

(4) Improving the long-term ability of the state board and the higher education policy commission to efficiently manage and direct the resources available for technology in the public schools and the institutions of higher education concurrent with evolving technological capabilities and applications;

(5) Fostering closer communication between faculty, students and administrators;

(6) Providing for individualized instruction, accommodating a variety of learning styles of students or faculty members;

(7) Advancing new and traditional ways of learning through alternative approaches in curriculum to integrate education, research and technology into life long learning strategies;

(8) Offering new approaches to administration and accountability within the education system through technology application;

(9) Promoting the collaboration of schools, libraries, researchers, community members, state agencies, organizations, business and industry, post-secondary institutions and public virtual learning environments to meet the needs of all learners;

(10) Recognizing that information literacy is a fundamental competency for life-long learning and information literacy is incorporated into the curricula of higher education and the workplace;

(11) Creating the appropriate infrastructure to ensure, as required, a sustainable, cost effective and transparent migration to new technology platforms;
(12) Creating and maintaining compatible and secure technology systems that enhance the efficient operation of all educational systems;

(13) Assessing, evaluating and publicizing the effects of technology use by educators and students toward student learning and achievement; and

(14) Increasing student access to high quality blended distance learning curriculum using real time interactive and online distance education tools.

(b) Each goal set forth in this section shall apply to public education, higher education or both, as appropriate. The determination of whether a goal applies to public education, higher education or both shall be made by the education technology strategic plan advisory committee, the state board and the higher education policy commission.

§18-2J-3. Education technology strategic plan advisory committee.

(a) On or before the first day of July, two thousand four, there is established an education technology strategic plan advisory committee to be composed of sixteen members. The Governor shall appoint, by and with the advice and consent of the Senate, the following eleven voting members to the advisory committee:

(1) Five voting members representing public education some or all of which may be from a list of five recommended appointees which shall be submitted by the state board;

(2) Five voting members representing higher education some or all of which may be from a list of five recommended
12 appointees which shall be submitted by the higher education 
13 policy commission; and 

14 (3) One voting member who is a business representative 
15 with knowledge of technology management practices of large 
16 corporations and has contributed and advanced technology in 
17 education in West Virginia. 

18 (b) The chief technology officer of Marshall university, or 
19 a designee, and the chief technology officer of West Virginia 
20 university, or a designee, shall be ex officio nonvoting members 
21 of the advisory committee. The state superintendent shall 
22 designate two positions within the department of education, and 
23 the persons employed in those position shall be ex officio 
24 nonvoting members of the advisory committee. Additionally, 
25 the West Virginia library commissioner shall be an ex officio 
26 nonvoting member. 

27 (c) The business representative shall serve as chair of the 
28 advisory committee. The advisory committee shall meet as 
29 necessary, but shall hold no less than four meetings annually. 
30 A majority of the voting members constitutes a quorum for 
31 conducting the business of the advisory committee. 

32 (d) Voting members of the advisory committee shall serve 
33 for terms of three years, except that of the original appoint-
34 ments, three members shall be appointed for one year; four 
35 members shall be appointed for two years; and four members 
36 shall be appointed for three years. No member may serve more 
37 than two consecutive full terms nor may any member be 
38 appointed to a term which results in the member serving more 
39 than six consecutive years. 

40 (e) Members of the advisory committee shall serve without 
41 compensation, but shall be reimbursed by the Governor for all
reasonable and necessary expenses actually incurred in the
performance of their official duties under this article upon
presentation of an itemized sworn statement of their expenses,
except that any member of the advisory committee who is an
employee of the state shall be reimbursed by the employing
agency.

§18-2J-4. Education technology strategic plan.

(a) The education technology strategic plan advisory
committee shall develop an education technology strategic plan
that achieves the intent and purpose of this article. The plan
shall be a continuing plan that covers a period of not less than
three and not more than five years and is updated annually. In
addition to other strategies considered necessary for achieving
the intent and purpose of this section, the education technology
strategic plan shall address the following:

(1) The strategy for using technology in the public schools
and in the institutions of higher education of the state consistent
with the intent and purpose of this article for each of the
purposes for which the Legislature finds that technology is used
in public schools and institutions of higher education as
described in section one of this article and for any other
purposes considered necessary by the state board and the higher
education policy commission for using technology in the public
schools and institutions of higher education to improve perfor-
man ce and progress;

(2) The strategy for allocating the resources available and
developing the capacity necessary to achieve the purposes
addressed in the plan. The strategy shall allow for reasonable
flexibility for:
(A) County boards and regional education service agencies to receive assistance with the development and implementation of technological solutions designed to improve performance, enrich the curriculum and increase student access to high level courses;

(B) County boards, regional education service agencies and institutional boards of governors to implement technological solutions that address local priorities consistent with achieving the major objectives set forth in the education technology strategic plan; and

(C) Using the most cost effective alternative allowable pursuant to section six of this article for expending funds for technology acquisition and implementation consistent with the goals of the plan;

(3) For public education, the strategy for using technology to maintain equity in the array and quality of educational offerings and professional qualifications among the counties notwithstanding circumstances of geography and population density;

(4) For public education, the strategy for developing and using the capacity of the public school system to implement, support and maintain technology in the public schools through the allocation of funds either directly or through contractual agreements with county boards and regional education service agencies for labor, materials and other costs associated with the installation, set-up, internet hook-up, wiring, repair and maintenance of technology in the public schools and state institutions of higher education;

(5) The strategy for ensuring that the capabilities and capacities of the technology infrastructure within the state and
its various regions is adequate for acceptable performance of
the technology being implemented in the public schools and the
state institutions of higher education, for developing the
necessary capabilities and capacities, or for pursuing alternative
solutions;

(6) The strategy for maximizing student access to learning
tools and resources at all times including before and after
school or class, in the evenings, on weekends and holidays, and
for public education, non-instructional days, and during
vacations for student use for homework, remedial work,
independent learning, career planning and adult basic educa-
tion;

(7) The strategy for providing access to individualized
instruction through computer-based technology, video and other
technology-based instruction;

(8) The strategy for improving teaching and learning and
the ability to meet individual students’ needs to increase student
achievement;

(9) The strategy for improving curriculum delivery to help
meet the needs for educational equity across the state;

(10) The strategy for improving delivery of professional
development;

(11) The strategy for improving the efficiency and product-
tivity of administrators;

(12) The strategy for encouraging development by the
private sector and acquisition by districts of technologies and
applications appropriate for education;
(13) The strategy for ensuring efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education;

(14) The strategy for taking advantage of bulk purchasing abilities to the maximum extent feasible. This may include, but is not limited to:

(A) A method of recording all technology purchases across both the public education system and the higher education system;

(B) Combining the purchasing power of the public education system and the higher education system with the purchasing power of other state entities or all state entities; or

(C) A method of allowing public education and higher education to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the American TelEdCommunications Alliance;

(15) A strategy for seeking funding through grants, gifts, donations or any other source for uses related to education technology; and

(16) A strategy for allowing any other flexibility that is determined to be needed for the effective use of technology in public education and higher education.

(b) Each strategy to be included in the education technology strategic plan pursuant to this section shall apply to public education, higher education or both, as appropriate. The determination of whether the strategy applies to public education, higher education or both shall be made by the education
technology strategic plan advisory committee, the state board
and the higher education policy commission.

(c) Nothing in this section may be construed to conflict
with a state higher education institution’s mission as set forth
in its compact.

§18-2J-5. State board and higher education policy commission
approval and adoption.

On or before the first day of November, two thousand four,
and each year thereafter, the education technology strategic
plan advisory committee shall submit the education technology
strategic plan to the state board and the higher education policy
commission for approval and adoption. This time line also shall
be in accordance with the federal E-rate discount program. If
the state board, the higher education policy commission or both
do not approve and adopt the plan, the state board, the higher
education policy commission and the education technology
strategic plan advisory committee shall collaborate in address-
ing any objection, agree to a plan and then formally approve
and adopt the plan agreed to. The procedure for collaboration
shall be determined through agreement of the state board, the
higher education policy commission and the education technol-
ygy strategic plan advisory committee. The plan shall become
effective the school year following the time of approval and
adoption by both the state board and the higher education policy
commission.

§18-2J-6. Allocation and expenditure of appropriations.

(a) The state board, regional education service agencies, the
higher education policy commission and the state institutions of
higher education shall allocate and expend appropriations for
technology in the public schools or the state institutions of
higher education, as appropriate, in accordance with the education technology strategic plan except that expenditures from grants which can only be used for certain purposes are not subject to this requirement. For public education, the expenditures shall be made directly, or through lease-purchase arrangements pursuant to the provisions of article three, chapter five-a of this code, or through contractual agreements or grants to county boards and regional education service agencies or any combination of the foregoing options as shall best implement the strategic plan in the most cost effective manner.

(b) Nothing in this section requires any specific level of appropriation by the Legislature.

§18-2J-7. Report to the legislative oversight commission on education accountability.

The state board and the higher education policy commission shall report to the legislative oversight commission on education accountability annually as soon as practical following the annual adoption and approval of the education technology strategic plan. Additionally, as soon as practical following the annual adoption and approval of the education technology strategic plan, the state board and the higher education policy commission shall submit copies of the report to the joint committee on government and finance. The report shall summarize the expenditures and other related activities undertaken to achieve the objectives of the plan during the past fiscal year, all modifications made in the updated education technology strategic plan and any other matters considered important by the state board and the higher education policy commission to inform the Legislature on the state of education technology in the public schools and the institutions of higher education.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22b, relating to permitting public and private school students to self-administer asthma medication when certain conditions are met; providing for revocation of permission; limiting liability for injury; providing certain definitions; and providing for state board rule.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-22b, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.

(a) For the purposes of this section, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) “Medication” means asthma medicine, prescribed by:

(A) A physician licensed to practice medicine in all its branches; or
(B) A physician assistant who has been delegated the authority to prescribe asthma medications by a supervising physician; or

(C) An advanced practice registered nurse who has a written collaborative agreement with a collaborating physician. Such agreement shall delegate the authority to prescribe the medications for a student that pertain to the student’s asthma and that have an individual prescription label.

(2) “Self-administration” or “self-administer” means a student’s discretionary use of prescribed asthma medication.

(b) A student enrolled in a public, private, parochial or denominational school located within this state may possess and self-administer asthma medication subject to the following conditions:

(1) The parents or guardians of the student have provided to the school:

(A) A written authorization for the self-administration of asthma medication; and

(B) A written statement from the physician or advanced practice registered nurse which contains the name, purpose, appropriate usage and dosage of the student’s medication and the time or times at which, or the special circumstances under which, the medication is to be administered;

(2) The student has demonstrated the ability and understanding to self-administer asthma medication by:

(A) Passing an assessment by the school nurse evaluating the student’s technique of self-administration and level of understanding of the appropriate use of the asthma medication; or
(B) In the case of nonpublic schools that do not have a
school nurse, providing to the school from the student’s
physician or advanced practice registered nurse written verifica-
tion that the student has passed such an assessment; and

(3) The parents or guardians of the student have acknowled-
ged in writing that they have read and understand a notice
provided by the county board or nonpublic school that:

(A) The school, county school board or nonpublic school
and its employees and agents are exempt from any liability,
except for willful and wanton conduct, as a result of any injury
arising from the self-administration of asthma medication by
the student; and

(B) The parents or guardians indemnify and hold harmless
the school, the county board of education or nonpublic school
and its employees or guardians and agents against any claims
arising out of the self-administration of the medication by the
student.

(c) The information provided to the school pursuant to
subsection (b) of this section shall be kept on file in the office
of the school nurse or, in the absence of a school nurse, in the
office of the school administrator.

(d) Permission for a student to self-administer asthma
medication is effective for the school year for which it is
granted and shall be renewed each subsequent school year if the
requirements of this section are met.

(e) Permission to self-administer medication may be
revoked if the administrative head of the school finds that the
student’s technique of self-administration and understanding of
the use of the asthma medication is not appropriate or is
willfully disregarded.
A student with asthma who has met the requirements of this section may possess and use asthma medication:

(1) In school;

(2) At a school-sponsored activity;

(3) Under the supervision of school personnel; or

(4) Before or after normal school activities, such as before school or after school care on school operated property.

The state board shall promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

CHAPTER 99

(H. B. 4737 — By Delegates Romine, Poling, Stemple, Williams, Renner, Fragale and Paxton)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18-7A-14b of the code of West Virginia, 1931, as amended, relating to providing options for members of teachers retirement to make contributions for periods of temporary total disability.

Be it enacted by the Legislature of West Virginia:

That §18-7A-14b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer, may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds within two years of the end of the disability period for which credit is sought to be purchased: Provided, however, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: Provided further, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed two: And provided further, That each year purchased under this section shall count as a year of experience for purposes of the increment set forth in section two or section eight-a, article four, chapter eighteen-a of this code, as applicable.
AN ACT to amend and reenact §18-7A-38 of the code of West Virginia, 1931, as amended; to amend and reenact §18A-2-3 of said code; and to amend and reenact §18C-4-2 of said code, all relating to the maximum number of days a retired teacher may accept employment; the employment of retired teachers in areas of critical need and shortage; defining area of critical need and shortage; adding conditions for expanding use of retired teachers to provide service as substitute teachers in areas of critical need and shortage; requiring certain vacancies to continue to be posted; providing for future expiration of provisions; providing priority for certain applicants for the Underwood-Smith scholarships; and technical amendments.

Be it enacted by the Legislature of West Virginia:

That §18-7A-38 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; and that §18C-4-2 of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.
18C. Student Loans; Scholarships and State Aid.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.
§18-7A-38. Maximum number of days a retired teacher may accept employment; calculating days worked for retirants engaged in substitute teaching.

(a) The Legislature finds that:

(1) The consolidated public retirement board has determined that retired substitute teachers should not perform substitute teaching without limit;

(2) The consolidated public retirement board has established, by rule, a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced; and

(3) There have been inconsistencies in the manner in which county boards calculate the maximum number of days established by rule.

(b) The consolidated public retirement board may not set forth in rule a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced that is less than one hundred forty days.

(c) For the purpose of calculating whether a retired substitute teacher has exceeded the maximum number of days in which a substitute teacher may accept employment without incurring a reduction in his or her retirement benefit, the number of days worked shall be determined by:

(1) Totaling the number of hours worked; and

(2) Dividing by the standard number of hours that a full-time teacher works per day.

CHAPTER 18A. SCHOOL PERSONNEL.
ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties: (1) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (2) to fill a teaching position of a regular teacher on leave of absence; and (3) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law. The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one, of this chapter.

(c)(1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to
provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under the provisions of article seven-a of this chapter or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage;

(B) The policy sets forth the areas of critical need and shortage in the county in accordance with the definition of area of critical need and shortage set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis in areas of critical need and shortage as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;
(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage as provided in this subsection; and

(G) Prior to employment of a substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the consolidated public retirement board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

(5) When a retired teacher is employed as a substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher.
(6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state board, annually, shall report to the joint committee on government and finance prior to the first day of February of each year. Additionally, a copy shall be provided to the legislative oversight commission on education accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on expanding the use of retired substitute teachers to address areas of critical need and shortage.

(7) The provisions of this subsection shall expire on the thirtieth day of June, two thousand six.

(d)(1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable
professional personnel per one hundred professional personnel
employed in a county or twenty-five full-time prospective
employable professional personnel in a county, whichever is
less.

(4) Prospective employable professional personnel shall be
granted benefits at a cost to the county board and as a condition
of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable
professional personnel may be obtained only in accordance with
the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of
employing personnel under the provisions of subsection (d) of
this section and annually shall report to the legislative oversight
commission on education accountability on or before the first
day of November of each year. The report shall include, but not
be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

(C) The teaching fields in which personnel were hired;

(D) The venue from which personnel were employed;

(E) The place of residency of the individual hired; and

(F) The state board's recommendations on the prospective
employable professional personnel program.

CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PRO-
GRAM.

§18C-4-2. Selection criteria and procedures.
(a) The governor shall designate an existing scholarship selection agency or panel to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including preschool teachers, and parents.

(b) Eligibility for an Underwood-Smith teacher scholarship award shall be limited to West Virginia resident students who:

1. Have graduated or are graduating from high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the American college test;

2. Have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education;

3. Are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen-a of this code and who have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education; or

4. Are graduate students at the master's degree level who have graduated or are graduating in the top ten percent of their college graduating class.

(c) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients that reflect the purposes of this article and the areas in which particular efforts
will be made in the selection of scholars as set forth in section one of this article and which also may include, but not be limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as expressed in an essay written by the applicant. Such criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients: Provided, That the qualified applicants with the highest academic abilities who intend to pursue teaching careers in areas of critical need and shortage as determined by the state board of education shall be given priority.

(d) In developing the selection criteria and procedures to be used by the panel, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. These views: (1) Shall be solicited by means of written and published selection criteria and procedures in final form for implementation; and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the vice chancellor for administration may determine to be appropriate to gather the information.

(e) The vice chancellor for administration shall make application forms for Underwood-Smith teacher scholarships available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields.
AN ACT to amend and reenact §18-9-3a of the code of West Virginia, 1931, as amended, relating to lengthening the time period within which county boards are required to publish a year-end financial statement; and increasing the threshold dollar amount paid to persons, firms and corporations that must be revealed in the statement.

Be it enacted by the Legislature of West Virginia:

That §18-9-3a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.

The county board of every county, within ninety days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and the state superintendent of free schools, and cause to be published a statement revealing: (a) The receipts and expenditures of the board during the previous fiscal year arranged under descriptive headings; (b) the name of each firm, corporation, and person who received more than two hundred fifty dollars in the aggregate from all funds during the previous fiscal year, together with the aggregate amount received from all funds and the purpose for which
Provided, That such statement shall not include the name of any person who has entered into a contract with this board pursuant to the provisions of sections two, three, four and five, article two, chapter eighteen-a of this code; and (c) all debts of the board, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The county board shall pay the cost of publishing such statement from the maintenance fund of the board.

As soon as is practicable following the close of the fiscal year, a copy of the published statement herein required shall be filed by the county board with the state tax commissioner and with the state superintendent of free schools.

The county board shall transmit to any resident of the county requesting the same a copy of the published statement for the fiscal year designated, supplemented by a list of the names of all school personnel employed by the board during such fiscal year showing the amount paid to each, and a list of the names of each firm, corporation, and person who received less than five hundred dollars from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

CHAPTER 102

(H. B. 4601 — By Delegates Mezzatesta, Williams, Tabb, Renner, Swartzmiller, Kuhn and Hartman)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact §18-9A-7 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code, all relating to public education; suspending basic foundation allocation for bus replacement and providing allocation for academic trips for one school year; school building authority; redefining certain terms; correct references; allowing expenditure of certain moneys for vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encouraging cooperation relating to vocational technical facilities; authorizing appropriation of up to certain amount of school construction funds for budget purposes for next school year only; providing that excess lottery revenues not be transferred to school construction fund for the next school year only, with funds made available for legislative appropriation; project submission and evaluation; requiring facilities plan as condition of receiving funds; providing for certain guidelines and procedures by authority for plans, plan modifications and evaluating projects; clarifying that certain revenues can only be expended on projects authorized in accordance with the guidelines and procedures section; and providing for certified list of projects to joint committee.

Be it enacted by the Legislature of West Virginia:

That §18-9A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

Article

9A. Public School Support.
9D. School Building Authority.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


1 The allowance in the foundation school program for each
2 county for transportation shall be the sum of the following
3 computations:
(1) Eighty-five percent of the transportation cost within each high-density county and ninety percent of the transportation cost within each low-density county for maintenance, operation and related costs, exclusive of all salaries: Provided, That for any county that uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the operation of all or any portion of its school bus system, the allowance in the foundation school program for the county for that portion of its school bus system shall be ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That the premiums were procured through competitive bidding;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses. Buses purchased after the first day of July, one thousand nine hundred ninety-nine, that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board: Provided, That for the school year beginning on the first day of July, two thousand four, only, the allowance in the foundation school program for each county for transportation shall not include an amount for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. The state superintendent shall make a decision
regarding each application based upon an analysis of the individual school district’s net enrollment history and transportation needs: Provided, however, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Eighty-five percent of the cost of contracted transportation services and public utility transportation within each high-density county and ninety percent of the cost of contracted transportation services and public utility transportation within each low-density county;

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county; and

(6) Ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center.

The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county: Provided, however, That one half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity: Provided further, That for the school year beginning on the first day of July, two thousand four, only the transportation allowance of each county shall include an allocation for the purpose of trips related to academic classroom curriculum and not related to any extracurric-
ular activity. The allocation shall equal the amount distributed to the county for this purpose in the school year beginning on the first day of July, two thousand three: And provided further, That any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year: And provided further, That the state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

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 the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.
§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; etc.
§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.


The following terms, wherever used or referred to in this article, have the following meanings unless a different meaning clearly appears from the context:

(1) “Authority” means the school building authority of West Virginia or, if the authority is abolished, any board or
officer succeeding to the principal functions of the school
building authority or to whom the powers given to the authority
are given by law;

(2) “Bonds” means bonds issued by the authority pursuant
to this article;

(3) “Construction project” means a project in the further-
ance of a facilities plan with a cost of the project greater than
five hundred thousand dollars for the new construction,
expansion or major renovation of facilities, buildings and
structures for school purposes, including the acquisition of land
for current or future use in connection with the construction
project, as well as new or substantial upgrading of existing
equipment, machinery, furnishings, installation of utilities and
other similar items convenient in connection with placing the
construction project into operation: Provided, That a construc-
tion project may not include such items as books, computers or
equipment used for instructional purposes, fuel, supplies,
routine utility services fees, routine maintenance costs, ordinary
course of business improvements and other items which are
customarily considered to result in a current or ordinary course
of business operating charge: Provided, however, That a
construction project may not include a major improvement
project;

(4) “Cost of project” means the cost of construction,
expansion, renovation, repair and safety upgrading of facilities,
buildings and structures for school purposes; the cost of land,
equipment, machinery, furnishings, installation of utilities and
other similar items convenient in connection with placing the
project into operation; and the cost of financing, interest during
construction, professional service fees and all other charges or
expenses necessary, appurtenant or incidental to the foregoing,
including the cost of administration of this article;
(5) "Facilities plan" means a ten-year countywide comprehensive educational facilities plan established by the county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that: (i) Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board; (ii) best serves the needs of the individual student, the general school population and the communities served by the facilities; (iii) includes a school major improvement plan as defined in this section; (iv) is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and (v) is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) "Project" means a construction project or a major improvement project;

(7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

(8) "Revenue" or "revenues" means moneys deposited in the school building capital improvements fund pursuant to the operation of section ten, article nine-a of this chapter; moneys deposited in the school construction fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code and pursuant to the operation of section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited in the school building debt service fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited in the school major improvement fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code; any moneys received, directly or indirectly, from any source for use in any project completed
pursuant to this article; and any other moneys received by the
authority for the purposes of this article;

(9) “School major improvement plan” means a ten-year
school maintenance plan that: (i) Is prepared by a county board
of education in accordance with the guidelines established by
the authority and incorporated in its countywide comprehensive
educational facilities plan or is prepared by the state board of
education or the administrative council of an area vocational
educational center in accordance with the guidelines if the
entities seek funding from the authority for a major improve-
ment project; (ii) addresses the regularly scheduled mainte-
nance for all school facilities of the county or under the
jurisdiction of the entity seeking funding; (iii) includes a
projected repair and replacement schedule for all school
facilities of the county or of entity seeking funding; (iv)
addresses the major improvement needs of each school within
the county or under the jurisdiction of the entity seeking
funding; and (v) is required prior to the distribution of state
funds for a major improvement project pursuant to this article
to the county board, state board or administrative council; and

(10) “School major improvement project” means a project
with a cost greater than fifty thousand dollars and less than five
hundred thousand dollars for the renovation, expansion, repair
and safety upgrading of existing school facilities, buildings and
structures, including the substantial repair or upgrading of
equipment, machinery, building systems, utilities and other
similar items convenient in connection with such renovation,
repair or upgrading in the furtherance of a school major
improvement plan: Provided, That a major improvement project
may not include such items as books, computers or equipment
used for instructional purposes, fuel, supplies, routine utility
services fees, routine maintenance costs, ordinary course of
business improvements and other items which are customarily
§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 the 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 authorized in accordance with the
provisions of section sixteen of this article 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,
58 article twenty-two, chapter twenty-nine of this code. All
59 amounts deposited in the fund shall be pledged to the repay-
60 ment of the principal, interest and redemption premium, if any,
61 on any revenue bonds or refunding revenue bonds authorized by
62 this article: Provided, That deposited moneys may not be
63 pledged to the repayment of any revenue bonds issued prior to
64 the first day of January, one thousand nine hundred ninety-four,
65 or with respect to revenue bonds issued for the purpose of
66 refunding revenue bonds issued prior to the first day of January,
67 one thousand nine hundred ninety-four. Additionally, the
68 authority may provide in the resolution and in the trust agree-
69 ment for priorities on the revenues paid into the school building
70 debt service fund that are necessary for the protection of the
71 prior rights of the holders of bonds issued at different times
72 under the provisions of this article. On or prior to the first day
73 of May of each year, the authority shall certify to the state
74 lottery director the principal and interest and coverage ratio
75 requirements for the following fiscal year on any revenue bonds
76 issued on or after the first day of January, one thousand nine
77 hundred ninety-four, and for which moneys deposited in the
78 school building debt service fund have been pledged, or will be
79 pledged, for repayment pursuant to this section.

80 After the authority has issued bonds authorized by this
81 article and after the requirements of all funds have been
82 satisfied, including coverage and reserve funds established in
83 connection with the bonds issued pursuant to this article, any
84 balance remaining in the school building debt service fund may
85 be used for the redemption of any of the outstanding bonds
86 issued under this article which, by their terms, are then redeem-
87 able or for the purchase of the outstanding bonds at the market
88 price, but not to exceed the price, if any, at which the bonds are
89 redeemable and all bonds redeemed or purchased shall be
90 immediately canceled and shall not again be issued: Provided,
91 That after the authority has issued bonds authorized by this
92 article and after the requirements of debt service and all
associated funds have been satisfied for the fiscal year, including 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 discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article 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 and section eighteen-a, article twenty-two, chapter twenty-nine of this code, together with any moneys appropriated to the fund by the Legislature: Provided, That for the school year beginning the first day of July, two thousand and four, only, funds from the excess lottery allocated in section eighteen-a, article twenty-two, chapter twenty-nine of this code shall not be transferred to the school construction fund and, in lieu thereof, made available for legislative appropriation: Provided, however, That for the school year beginning the first day of July, two thousand and four, only, up to five million dollars of the amounts in the fund may be appropriated by the Legislature for budget shortfalls. Expenditures from the school construction fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements 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 (k), 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 Legisla-
ture. 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, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said Constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate face value of bonds that may be issued by the authority, for which the moneys in the school building debt service fund are to be pledged, is four hundred million dollars. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the school building authority which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the
The resolution shall prescribe the rights and duties of the bondholders and the school building authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: Provided, however, That revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, which are secured by lottery proceeds shall mature at such time or times not exceeding ten years from their respective dates.

(b) The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached to the bonds shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.
(c) Any pledge of revenues made by the school building authority for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge, and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds
with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

(e) After the issuance of any of revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof.

(g) To meet the operational costs of the school building authority, the school building authority may transfer to a special revenue account in the state treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection with the bonds for expenditure in accordance with legislative appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section shall be issued on parity with any existing school building authority bonds previously issued under this article.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; etc.
(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 determinations 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 individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) 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 authorized in accordance with the provisions of section sixteen of this article 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 vocational 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 authorized in accordance with the provisions of section sixteen of this article 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.
Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational schools cooperating with community and technical college programs, or both. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation: 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 facilities plan: 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 projects 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 projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. 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 for projects funded 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 authorized in accordance with 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 invest-
ment 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 any terms and
conditions that 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 section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter
is ineligible for further allocations pursuant to this section until it 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 for any project under this article unless the responsible entity has a facilities plan approved by the state board and the school building authority and is 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 improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article; Provided, That the moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project 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 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 for projects
authorized in accordance with the provisions of section sixteen
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.

(1) 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 subsec-
tion, 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 docu-
ments: Provided, That a vendor who has been debarred pursu-
ant 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 over a period of 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 a period
of 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 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. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

(a) The authority shall establish guidelines and procedures to promote the intent and purposes of this article and assure the prudent and resourceful expenditure of state funds for projects under this article including, but not limited to, the following:

(1) Guidelines and procedures for the facilities plans, school major improvement plans and projects submitted in the furtherance of the plans that address, but are not limited to, the following:

(A) All of the elements of the respective plans as defined in section two of this article;

(B) The procedures for a county to submit a preliminary plan, a plan outline or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a
consultation meeting between representatives of the county and members of the authority, including at least one citizen member, which shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the authority;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article 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;

(E) Any project specifications and maintenance specifications considered appropriate by the authority including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations in accordance with the objective criteria formulated by the school building authority in accordance with this section. The priority list is one of the
criteria that shall be considered by the authority deciding how the available funds should be expended:

(G) The objective means to be set forth in the plan and used in evaluating implementation of the overall plan and each project included in the plan. The evaluation must measure how the plan addresses the goals of this article and any guidelines adopted under this article, and how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, as well as the importance of the project to the overall success of the facilities plan or school major improvement plan and the overall goals of the authority; and

(H) Any other matters considered by the authority to be important reflections of how a construction project or a major improvement project or projects will further the overall goals of this article.

(2) Guidelines and procedures which may be adopted by the authority 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 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.

(3) Guidelines and procedures for evaluating project proposals that are submitted to the authority that address, but are not limited to, the following:

(A) Any project funded by the authority must be in furtherance of the facilities plan or school major improvement plan
and in compliance with the guidelines established by the authority;

(B) If a 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;

(C) If a county board proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (f), 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; and

(D) The objective criteria for the evaluation of projects which shall include, but are not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan meets the following:

(I) Student health and safety including, but not limited to, critical health and safety needs;

(II) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility use and pupil-teacher ratios;

(III) Reasonable travel time and practical means of addressing other demographic considerations;

(IV) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;
(V) Curriculum improvement and diversification, including the use of instructional technology, distance learning and access to advanced courses in science, mathematics, language arts and social studies;

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

(VIII) The history of efforts taken by the county board to propose or adopt local school bond issues or special levies to the extent constitutionally permissible; and

(IX) Regularly scheduled preventive maintenance; and

(ii) How the project will assure the prudent and resourceful expenditure of state funds and achieve the purposes of this article for constructing, expanding, renovating or otherwise improving and maintaining school facilities for a thorough and efficient education.

(4) Guidelines and procedures for evaluating projects for funding that address, but are not limited to, the following:

(A) Requiring each county board’s facilities plan and school major improvement plan to 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 shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall 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;
(B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the authority to fund or not to fund the project; and

(C) The allocation and expenditure of funds in accordance with this article, subject to the availability of funds.

(b) Prior to final action on approving projects for funding under this article, the authority shall submit a certified list of the projects to the joint committee on government and finance.

(c) 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.

(d) 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.
AN ACT to amend and reenact §18-10L-3, §18-10L-4 and §18-10L-5 of the code of West Virginia, 1931, as amended, all relating generally to the Ron Yost personal assistance services act; modifying definitions; clarifying requirements to receive personal assistance services; providing that the division of rehabilitation services shall directly or through contract administer program; providing that the statewide independent living council shall appoint members of board; duties of board members; board to approve contracts proposed by division of rehabilitation services; providing that no member of board can receive services through program; and duties of recipients.

Be it enacted by the Legislature of West Virginia:

That §18-10L-3, §18-10L-4 and §18-10L-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-3. Definitions.
§18-10L-4. Program requirements.
§18-10L-5. Funding.

§18-10L-3. Definitions.

The following words and phrases, when used in this article, have the following meanings unless the context clearly indicates otherwise:
(1) “Personal assistance services” means:

(A) Those basic and ancillary services that enable eligible individuals to live in their homes and communities rather than in institutions and to carry out functions of daily living, self-care and mobility;

(B) Basic services include, but are not limited to, getting in and out of a bed, wheelchair or motor vehicle; assistance with routine bodily functions, such as health maintenance activities; bathing and personal hygiene; dressing and grooming; and feeding, including preparation and cleanup.

(2) “Personal assistant” means an individual of the consumer’s choice who provides personal assistance services for the eligible individual.

(3) “Recipient” means any individual receiving funds through the Ron Yost personal assistance program.

(4) “Ron Yost personal assistance program functional assessment tool” means the written and physical evaluation used to determine eligibility of individuals to receive services and the hours of service to be provided under this article.

§18-10L-4. Program requirements.

(a) To be eligible for assistance from the Ron Yost personal assistance program, a recipient must have a physical, mental or sensory impairment that affects one or more major life activity, and who:

(1) Experiences any physical, mental or sensory impairment, or combination of impairments, which can be expected to recur or last for a period of not less than twelve months as determined by the evaluation conducted using the Ron Yost personal assistance program functional assessment tool;
(2) Requires assistance to complete functions of daily living, self-care and mobility, including, but not limited to, those functions included in the definition of personal assistance services;

(3) Must apply for medicaid and provide written documentation of eligibility or denial to the board; and

(4) Is currently not receiving personal assistance services through medicaid.

(b) The division of rehabilitation services shall, directly or through contract approved by the Ron Yost personal assistance services board:

(1) Administer the personal assistance services program in accordance with the state plan for independent living established pursuant to the provisions of section seven, article ten-m of this chapter; and

(2) Provide training, information, and referral services relating to state and federal payroll taxes, deductions and withholding, and wage withholding for child support and workers' compensation, to recipients as necessary.

(c) The West Virginia statewide independent living council, established pursuant to section six, article ten-m of this chapter, shall:

(1) Appoint members to the Ron Yost personal assistance services board to fulfill the functions as set forth in subsection (d) of this section. The board shall be composed of individuals with disabilities: Provided, That one member shall be a representative of the West Virginia statewide independent living council with a disability; and

(2) Develop and update as necessary, the Ron Yost personal assistance program functional assessment tool.
(d) The Ron Yost personal assistance services board shall:

(1) Determine eligibility and approve hours of service for all applicants based on functional assessments conducted using the Ron Yost personal assistance program functional assessment tool. Each determination shall be in writing, a copy of which shall be provided to the applicant;

(2) Monitor disbursements and utilization of the program;

(3) Survey consumer satisfaction and recommend program revisions to the division of rehabilitation services;

(4) Develop and maintain a waiting list for those eligible individuals who cannot be served immediately;

(5) Contract with public or private entities to assist in fulfilling the functions set forth in this subsection;

(6) Approve contracts proposed by the division of rehabilitation services with a public or private entity for the fiscal management of the program established under this article; and

(7) Establish operating procedures.

(e) No member of the board is eligible to receive personal assistance services through the program provided for in this article.

(f) Recipients shall:

(1) Apply for services through medicaid and provide a copy of that determination to the board;

(2) Comply with the employer responsibilities of hiring, supervising and, if needed, terminating the employment of a personal assistant;
(3) Manage his or her own financial and legal affairs regarding the Ron Yost personal assistance program; and

(4) Designate an individual, if necessary, to assist in fulfilling the functions set forth in this subsection.

§18-10L-5. Funding.

(a) There is hereby created in the state treasury a special fund designated the "Ron Yost Personal Assistance Services Fund". The fund shall be an appropriated account within the division of rehabilitation services and the moneys shall be expended exclusively for the purposes of this article.

(b) Funds made available for programs under this article may be used only for the planning, designing, delivering and administering of personal assistance services and training. The division of rehabilitation services may use not more than seven percent of the total allocation for administrative costs.

(c) The division of rehabilitation services may apply for and use all funding sources to carry out this program, including state and federal funds, program fees and other allocated moneys.

(d) Funds shall be disbursed in a manner that ensures maximum consumer control of the services provided under the program.

(e) Personal assistance services shall be available only to the extent funding is available through annual appropriations of state, federal and other allotted funds.

(f) Funds or services provided to eligible individuals by the personal assistance services program under this article shall not be considered as income to those individuals for any purpose.
Be it enacted by the Legislature of West Virginia:

That §18A-3-1 Enacting Section of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

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

(b) The state board of education, after consultation with the secretary of education and the arts and the chancellor for higher education who shall represent the interests of teacher preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code, shall adopt standards for the education of professional educators in the state and for the awarding of certificates valid in the public schools of this state subject to the following conditions:

(1) The standards approved by the board for teacher preparation shall include a provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;
(2) Effective the first day of January, one thousand nine hundred ninety-three, the standards approved by the board shall also include a provision for the study of classroom management techniques and shall include methods of effective management of disruptive behavior which shall include societal factors and their impact on student behavior; and

(3) Effective on the effective date of this section, any teacher who has graduated from a teacher preparation program at a regionally accredited institution of higher education and who holds a valid teaching certificate or certificates issued by another state shall be, upon application, awarded a teaching certificate or certificates for the same grade level or levels and subject area or areas valid in the public schools of this state, subject only to the provisions of section ten of this article.

(c) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification, the state board of education may enter into an agreement with county boards for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include: (1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

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

(e) In consultation with the secretary of education and the
arts and the chancellor for higher education, institutions of
higher education approved for teacher preparation may cooper-
ate with each other, with the center for professional develop-
ment and with one or more county boards in the organization
and operation of centers to provide selected phases of the
teacher preparation program such as student teaching, begin-
ing teacher internship programs, instruction in methodology
and seminar programs for college students, teachers with
provisional certification, professional support team members
and supervising teachers.

The institutions of higher education, the center for profes-
sional development and county boards may by mutual agree-
ment budget and expend funds for the operation of the centers
through payments to the appropriate fiscal office of the particip-
ating institutions, the center for professional development and
the county boards.

(f) The provisions of this section shall not be construed to
require the discontinuation of an existing student teacher
training center or school which meets the standards of the state
board of education.
(g) All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

CHAPTER 105

(H. B. 4552 — By Delegates Tabb, Williams, Renner, Shelton, Crosier, Long and Canterbury)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18A-3-6 of the code of West Virginia, 1931, as amended, relating to grounds for the revocation of teacher certificates; providing additional specification of grounds; and limitations.

Be it enacted by the Legislature of West Virginia:

That §18A-3-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

The state superintendent may, after ten days’ notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness;
cruelty; immorality; the conviction of a felony or a guilty plea
or a plea of no contest to a felony charge; the conviction, guilty
plea or plea of no contest to any charge involving sexual
misconduct with a minor or a student; or for using fraudulent,
unapproved or insufficient credit to obtain the certificates:

Provided, That the certificates of a teacher may not be revoked
for any matter for which the teacher was disciplined, less than
dismissal, by the county board that employs the teacher, nor for
which the teacher is meeting or has met an improvement plan
determined by the county board, unless it can be proven by
clear and convincing evidence that the teacher has committed
one of the offences listed in this subsection and his or her
actions render him or her unfit to teach: Provided, however,
That in order for any conduct of a teacher involving intemper-
ance; cruelty; immorality; or using fraudulent, unapproved or
insufficient credit to obtain the certificates to constitute grounds
for the revocation of the certificates of the teacher, there must
be a rational nexus between the conduct of the teacher and the
performance of his or her job. The state superintendent may
designate the West Virginia commission for professional
teaching standards or members thereof to conduct hearings on
revocations or certificate denials and make recommendations
for action by the state superintendent.

It shall be the duty of any county superintendent who
knows of any acts on the part of any teacher for which a
certificate may be revoked in accordance with this section to
report the same, together with all the facts and evidence, to the
state superintendent for such action as in the state superinten-
dent’s judgment may be proper.

If a certificate has been granted through an error, oversight,
or misinformation, the state superintendent has authority to
recall the certificate and make such corrections as will conform
to the requirements of law and the state board.
AN ACT to amend and reenact §18A-4-7a of the code of West Virginia, 1931, as amended, relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position.

Be it enacted by the Legislature of West Virginia:

That §18A-4-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1. (a) A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.

2. (b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

3. (c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:
(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make a decision affecting the filling of the position on the basis of the following criteria:

(1) Appropriate certification, licensure or both;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;
(6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Seniority.

(e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

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

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

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

(i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: Provided, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

(j) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee’s
seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(3) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee’s seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(4) If, prior to the first day of August of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(k) For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the
state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(1) After the fifth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students: Provided, That the county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the fifth day prior to the beginning of the instructional term. The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions
through transfers of personnel from one professional position
to another after the fifth day prior to the beginning of the
instructional term should be kept to a minimum.

(m) All professional personnel whose seniority with the
county board is insufficient to allow their retention by the
county board during a reduction in work force shall be placed
upon a preferred recall list. As to any professional position
opening within the area where they had previously been
employed or to any lateral area for which they have certifica-
tion, licensure or both, the employee shall be recalled on the
basis of seniority if no regular, full-time professional personnel,
or those returning from leaves of absence with greater seniority,
are qualified, apply for and accept the position.

(n) Before position openings that are known or expected to
extend for twenty consecutive employment days or longer for
professional personnel may be filled by the board, the board
shall be required to notify all qualified professional personnel
on the preferred list and give them an opportunity to apply. but
failure to apply shall not cause the employee to forfeit any right
to recall. The notice shall be sent by certified mail to the last
known address of the employee, and it shall be the duty of each
professional personnel to notify the board of continued avail-
ability annually, of any change in address or of any change in
certification, licensure or both.

(o) Openings in established, existing or newly created
positions shall be processed as follows:

(1) Boards shall be required to post and date notices which
shall be subject to the following:

(A) The notices shall be posted in conspicuous working
places for all professional personnel to observe for at least five
working days;
(B) The notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period;

(3) If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

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

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment.

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

(s) The county board shall compile, update annually on the first day of July and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.
AN ACT to amend and reenact §18A-4-8e of the code of West Virginia, 1931, as amended, relating to competency testing of service personnel; and clarifying that county board of education and superintendent may designate places for testing.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel.

(a) The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test. The cafeteria manager class title is included in the same classification category as cooks and has the same competency test. The executive secretary class title is included in the same classification category as secretaries and has the same competency test.
The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both: Provided, That applicants have the opportunity to take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally. The performance test for all classifications and categories other than bus operator is administered by an employee of the county board of education at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county. A standard passing score is established by the state department of education for each test and is used by county boards of education. The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as
provided in section eight-b of this article and shall not be
required to take the competency test again.

(d) An applicant who fails to achieve a passing score is
given other opportunities to pass the competency test when
making application for another vacancy within the classification
category.

(e) Competency tests are administered to applicants in a
uniform manner under uniform testing conditions. County
boards of education are responsible for scheduling competency
tests, notifying applicants of the date and time of the one day of
training prior to taking the test and the date and time of the test.
County boards of education may not use a competency test
other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with
the work schedule of a school employee who has applied for a
vacancy, the employee is excused from work to take the
competency test without loss of pay.

(g) A minimum of one day of appropriate in-service
training is provided to employees to assist them in preparing to
take the competency tests.

(h) Competency tests are used to determine the qualifica-
tion of new applicants seeking initial employment in a particu-
lar classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the
contrary, once an employee holds or has held a classification
title in a category of employment, that employee is considered
qualified for the classification title even though that employee
no longer holds that classification.

(j) The requirements of this section do not alter the defini-
tions of class titles as provided in section eight of this article or
the procedure and requirements of section eight-b of this article.
AN ACT to amend and reenact §18A-4-15 of the code of West Virginia, 1931, as amended, relating to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence, workers’ compensation and suspensions for more than thirty working days; and considering certain bus operators to be employed in the same building or working station.

Be it enacted by the Legislature of West Virginia:

That §18A-4-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

1. To fill the temporary absence of another service employee;

2. To fill the position of a regular service employee who requests a leave of absence from the county board in writing;
and who is granted the leave in writing by the county board, and

to fill the position of a regular service employee who is on

workers’ compensation and absent: Provided, That if the

absence is to extend beyond thirty working days, the county

board shall post the position of the absent employee under the

procedures set forth in section eight-b of this article. If a

substitute service employee is employed to fill the position of

the absent employee and is employed in the position for twenty

or more working days, the substitute service personnel shall

have regular employment status and be accorded all rights,

privileges and benefits pertaining to the position until the

regular employee returns to the position or ceases to be em-

ployed by the county board: Provided, however, That if a

regular or substitute employee fills a vacancy that is related to

a leave of absence or the absence of an employee on workers’

compensation in any manner as provided in this section, upon

termination of the absence the employee shall be returned to his

or her original position: Provided further, That no service

person may be required to request or to take a leave of absence:

And provided further, That no service person shall be deprived

of any right or privilege of regular employment status for

refusal to request or failure to take a leave of absence;

(3) To perform the service of a service employee who is

authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position

causd by severance of employment by the resignation, transfer,

retirement, permanent disability, dismissal pursuant to section

eight, article two of this chapter, or death of the regular service

employee who had been assigned to fill the position: Provided,

That within twenty working days from the commencement of

the vacancy, the board shall fill the vacancy under the proce-
dures set out in section eight-b of this article and section five,

article two of this chapter and the person hired to fill the
vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee’s suspension: Provided, That if the suspension is for more than thirty working days, the county board shall post the position of the suspended employee under the procedures set forth in section eight-b of this article. If a substitute service employee is employed to fill the suspended employee’s position, the substitute service personnel shall have regular employment status and be accorded all rights, privileges and benefits pertaining to the position until the termination by the county board becomes final or the suspended employee is returned to employment. If the suspended employee is not returned to his or her job, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter; and

(6) To temporarily fill a vacancy in a newly created position prior to employment of a service personnel on a regular basis under the procedure set forth in section eight-b of this article.

(b) Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he or she began his or her assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee’s absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification
category of employment, the regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout the absence. For the purpose of this section only, all regularly employed school bus operators are considered to be employed within the same building or working station.

(c) Regular school service personnel shall be returned by the county board of education to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service personnel shall retain all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence and shall have all rights, privileges and benefits generally accorded school service employees at the time of return to work.

(d) The salary of a substitute service employee shall be based upon his or her years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

(e) Before any substitute service employee enters upon his or her duties, he or she shall execute with the county board a written contract as provided in section five, article two of this chapter.

(f) To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be
determined by a random selection system established by the affected substitute employees and approved by the county board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.

(g) Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

CHAPTER 109

(S. B. 524 — By Senators Tomblin, Mr. President, and Dempsey)

[Passed February 24, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §18B-2B-4 of the code of West Virginia, 1931, as amended; and to amend and reenact §18C-7-4 of said code, all relating to changing the appointment process for certain members of the council for community and technical college education and the PROMISE scholarship board of control.

Be it enacted by the Legislature of West Virginia:

That §18B-2B-4 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18C-7-4 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 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-4. Appointment, composition and terms of council.

(a) There is hereby continued the West Virginia council for community and technical college education. Any member appointed by the governor prior to the effective date of this section may continue to serve the term for which the member has been appointed.

(b) The council is comprised of eight members selected as follows:

(1) Seven members appointed by the governor, with the advice and consent of the Senate; and

(2) The assistant superintendent for technical and adult education of the state department of education who serves as an ex officio, nonvoting member of the council.

(c) The governor may, but is not required to, reappoint any person who was a member of the joint commission immediately prior to the effective date of this section: Provided, That the individual selected is otherwise eligible to serve.

(d) All appointed members shall be citizens of the state, shall represent the public interest and shall be persons who understand and are committed to achieving the goals and objectives set forth in section one-a, article one of this chapter, the essential conditions for community and technical college education programs and services set forth in article three-c of this chapter and the goals for secondary and post-secondary

*CLERK'S NOTE: This section was also amended by H. B. 4111 (Chapter 95), which passed prior to this act.
vocational-technical-occupational and adult basic education in
the state. The appointed members shall represent the interests
of the business, labor and employer communities and demon-
strate knowledge of the education needs of the various regions,
attainment levels and age groups within the state.

(e) The governor may not appoint any person to be a
member of the council who is an officer, employee or member
of an advisory board of any state college or university, the
holder of any other public office or public employment under
the government of this state or any of its political subdivisions,
an appointee or employee of any governing board or an
immediate family member of any employee under the jurisdic-
tion of the commission or any governing board. No individual
may serve on the council who is engaged in providing, or
employed by a person or company whose primary function is to
provide, workforce development services and activities. Of the
members appointed by the governor, no more than four thereof
may belong to the same political party and no more than three
may be appointed from any congressional district.

(f) Members of the council shall serve for terms of four
years, except that of the original appointments, one member
shall be appointed for one year; two members shall be ap-
pointed for two years; two members shall be appointed for three
years; and two members shall be appointed for four years. No
member may serve more than two consecutive full terms nor
may any member be appointed to a term which results in the
member serving more than eight consecutive years.

CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR
MAXIMIZING IN-STATE STUDENT EXCELLENCE
SCHOLARSHIP PROGRAM.
§18C-7-4. Appointment of the PROMISE scholarship board of control; compensation; proceedings generally.

(a) On the effective date of this section, the board of the PROMISE scholarship program is abolished.

As soon as practical after the effective date of this section, the governor shall appoint the West Virginia PROMISE scholarship board of control comprised of fifteen members as follows:

1. The chairperson of the higher education policy commission or a designee who is a member of the commission;
2. The chancellor of the higher education policy commission or his or her designee;
3. The state superintendent of schools or his or her designee;
4. The secretary of education and the arts;
5. The state treasurer or his or her designee;
6. Ten at-large private sector members representative of the state’s business and economic community who have knowledge, skill and experience in an academic, business or financial field. Any member appointed by the governor prior to the effective date of this section may continue to serve the term for which the member has been appointed.

The ten appointed members shall be residents of the state. The ten appointed members shall be appointed by the governor with the advice and consent of the Senate. No more than six of the ten appointed members may be from the same political party. No more than four of the ten appointed members may be from the same congressional district.
(b) Appointed members shall serve a term of four years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term. A person appointed to fill a vacancy shall be appointed only for the remainder of that term and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or removal pursuant to subsection (e) of this section, an appointed member of the board shall continue to serve until a successor has been appointed and qualified as provided in subsection (a) of this section. Of the initial appointments, the governor shall appoint three members to a one-year term, two members to a two-year term, three members to a three-year term and two members to a four-year term. Thereafter, all terms shall be for four years.

(c) Members of the board shall serve without compensation, but shall be reimbursed by the office of the secretary of education and the arts for expenses, including travel expenses, actually incurred by a member in the official conduct of the business of the board at the same rate as is paid the employees of the state.

(d) The secretary of education and the arts is the chairperson and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of business.

(e) The members appointed by the governor may be removed by the governor for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of the state elective officers in accordance with section five, article six, chapter six of this code.
AN ACT to amend and reenact §18B-9-5 of the code of West Virginia, 1931, as amended, relating to higher education; classified employee salary; and eliminating certain provisions relating to funding the salary increment.

Be it enacted by the Legislature of West Virginia:

That §18B-9-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§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. Merit raises may be granted only pursuant to a rule adopted by the board of governors, and approved by the chancellor. The rule shall provide 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.
Nothing in this article prohibits 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.

CHAPTER 111

(S. B. 512 — By Senators Edgell, Bowman, Caldwell, Dempsey, Harrison, Hunter, Guills and Oliverio)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §18B-17-6 of the code of West Virginia, 1931, as amended, relating to authorizing rules; higher education policy commission; higher education adult part-time student grant program HEAPS; and purchasing efficiencies.

Be it enacted by the Legislature of West Virginia:

That §18B-17-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-6. Authorizing rules of higher education policy commission.

(a) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand three, relating to the higher education policy commission (higher education adult part-time student grant program -- HEAPS -- rule), is authorized.
6 (b) The legislative rule filed in the state register on the
twenty-second day of October, two thousand three, relating to
the higher education policy commission (purchasing efficiencies rule), is authorized.

CHAPTER 112

(S. B. 449 — By Senators Kessler, Caldwell, Fanning, Hunter,
Jenkins, Minard, Oliverio, Ross, Rowe, Snyder, White,
Deem, Harrison, McKenzie, Smith and Weeks)

[Passed February 23, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §3-2-10 of the code of West Virginia, 1931, as amended; to amend and reenact §3-4-3 of said code; to amend and reenact §3-4A-3 of said code; to amend and reenact §3-5-8, §3-5-13 and §3-5-13a of said code; and to amend and reenact §3-8-7 of said code, all relating to elections generally; correcting United States code reference; authorizing county commissions to discontinue use of voting machines and replace them with other systems meeting certain federal requirements under certain circumstances; reducing the filing fee for presidential and vice presidential candidates; clarifying that the filing fee for certain county offices is based only on the annual salary of the position; adding family court judge to list of offices on county ballot; and removing the requirement that ballots be printed with space for ballot commissioners’ signatures.

Be it enacted by the Legislature of West Virginia:

That §3-2-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-3 of said code be amended and reenacted; that §3-4A-3 of said code be amended and reenacted; that
§3-5-8, §3-5-13 and §3-5-13a of said code be amended and reenacted; and that §3-8-7 of said code be amended and reenacted, all to read as follows:

Article
2. Registration of Voters.
4. Voting Machines.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
8. Regulation and Control of Elections.

ARTICLE 2. REGISTRATION OF VOTERS

§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. Application 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 commis-

(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 registra-

(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) of this section, may cast a provisional ballot.

(i) Subsection (g) of this section 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) of this subdivision 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 subsection (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.

ARTICLE 4. VOTING MACHINES.

§3-4-3. Procedures for terminating use of voting machines.

The county commission may discontinue the use of voting machines and replace them with a different voting system
meeting the requirements of "The Help America Vote Act of 2002", 42 U. S. C. 15302, et seq., six months prior to a primary or general election by majority vote of the commission.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-3. Procedure for adopting electronic voting systems.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by the following procedure and not otherwise:

By a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose, with notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.
§3-5-13. Form and contents of ballots and ballot labels.
§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

*§3-5-8. Filing fees and their disposition.*

Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States senator, for member of the United States House of Representatives, for

*CLERK'S NOTE: This section was also amended by S. B. 190 (Chapter 113), which passed prior to this act.*
governor and for all other state elective offices shall pay a fee
equivalent to one percent of the annual salary of the office for
which the candidate announces: Provided, That the filing fee
for any candidate for president or vice president of the United
States shall not exceed two thousand five hundred dollars
commencing with the two thousand four filing period;

(b) A candidate for the office of judge of a circuit court and
judge of a family court shall pay a fee equivalent to one percent
of the total annual salary of the office for which the candidate
announces;

(c) A candidate for member of the House of Delegates shall
pay a fee of one-half percent of the total annual salary of the
office and a candidate for state senator shall pay a fee of one
percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit
clerk, county clerk, assessor, member of the county commission
and magistrate shall pay a fee equivalent to one percent of the
annual salary, excluding any additional compensation or
commission of the office for which the candidate announces.
A candidate for county board of education shall pay a fee of
twenty-five dollars. A candidate for any other county office
shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political
party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty
dollars; and a candidate for delegate from a congressional
district shall pay a fee of ten dollars;

(f) Candidates for members of political executive commit-
tees and other political committees shall pay the following
filing fees:
A candidate for member of a state executive committee of any political party shall pay a fee of twenty dollars; a candidate for member of a county executive committee of any political party shall pay a fee of ten dollars; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

§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 commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial 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, indicating that there are no candidates listed for the vacant positions.

(f) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the 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) 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
§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and vice president in the general election), United States senator, member of the United States house of representatives

STATE TICKET: Governor, secretary of state, auditor, treasurer, commissioner of agriculture, attorney general, justice of the supreme court of appeals, state senator, member of the House of Delegates, circuit judge in multicounty districts, family court judge in multicounty districts, any other multicounty office, state executive committee

COUNTY TICKET: Circuit judge in single-county districts, family court judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts

NATIONAL CONVENTION: Delegate to the national convention -- at-large, delegate to the national convention -- congressional district
DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the circuit court in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the circuit court shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the secretary of state.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.
ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the county jail for not more than one year, or both, in the discretion of the court. Forty days after any such primary or other election, the secretary of state, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where such candidate, agent or treasurer resides.

(b) (1) Any candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as provided in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the secretary of state of twenty-five dollars a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Forty days after any such primary or other election the county clerk shall give notice to the secretary of state of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of
such delinquent, incomplete or inaccurate statements to the secretary of state.

(2) A civil penalty assessed pursuant to the provisions of this section shall be payable to the state of West Virginia and is collectable in any manner authorized by law for the collection of debts.

(3) The secretary of state may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The secretary of state and county clerk may review and audit any sworn statement required to be filed pursuant to the provisions of this article. The state election commission shall propose legislative rule for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by the provisions of this article, shall have his name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by the provisions of this article and no such person may enter upon the duties of his office until he has filed such statement, nor may he receive any salary or emolument for any period prior to the filing of such statement.
CHAPTER 113

(S. B. 190 — By Senators Kessler, Helmick, Unger, Edgell, Prezioso, Oliverio, Snyder, Bailey, Sharpe, Plymale, McCabe, Ross, Bowman, Chafin, Caldwell, Dempsey, Hunter, Minard, Rowe and Fanning)

[Passed January 23, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §3-5-8 of the code of West Virginia, 1931, as amended, relating to altering the amount of presidential and vice presidential certificate of announcement filing fees.

Be it enacted by the Legislature of West Virginia:

That §3-5-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

*§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination for 2 or election to office in any primary election shall, at the time of 3 filing the certificate of announcement as required in this article, 4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice 6 president of the United States, for United States senator, for 7 member of the United States House of Representatives, for 8 governor and for all other state elective offices shall pay a fee 9 equivalent to one percent of the annual salary of the office for

*CLERK'S NOTE: This section was also amended by S. B. 449 (Chapter 112), which passed prior to this act.
which the candidate announces: Provided, That the filing fee
for any candidate for president or vice president of the United
States shall not exceed two thousand five hundred dollars
commencing with the two thousand four filing period;

(b) A candidate for the office of judge of a circuit court and
judge of a family court shall pay a fee equivalent to one percent
of the total annual salary of the office for which the candidate
announces;

(c) A candidate for member of the House of Delegates shall
pay a fee of one-half percent of the total annual salary of the
office and a candidate for state senator shall pay a fee of one
percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit
clerk, county clerk, assessor, member of the county commission
and magistrate shall pay a fee equivalent to one percent of the
annual salary of the office for which the candidate announces.
A candidate for county board of education shall pay a fee of
twenty-five dollars. A candidate for any other county office
shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political
party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty
dollars; and a candidate for delegate from a congressional
district shall pay a fee of ten dollars;

(f) Candidates for members of political executive commit-
tees and other political committees shall pay the following
filing fees:

A candidate for member of a state executive committee of
any political party shall pay a fee of twenty dollars; a candidate
for member of a county executive committee of any political
party shall pay a fee of ten dollars; and a candidate for member
of a congressional, senatorial or delegate district committee of
any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of
one county shall pay the filing fee to the clerk of the circuit
court and candidates filing for an office to be filled by the
voters of more than one county shall pay the filing fee to the
secretary of state at the time of filing their certificates of
announcement and no certificate of announcement shall be
received until the filing fee is paid.

All moneys received by such clerk from such fees shall be
credited to the general county fund. Moneys received by the
secretary of state from fees paid by candidates for offices to be
filled by all the voters of the state shall be deposited in a special
fund for that purpose and shall be apportioned and paid by him
to the several counties on the basis of population and that
received from candidates from a district or judicial circuit of
more than one county shall be apportioned to the counties
comprising the district or judicial circuit in like manner. When
such moneys are received by sheriffs, it shall be credited to the
general county fund.

CHAPTER 114

(Com. Sub. for S. B. 125 — By Senators Kessler,
Plymale, Edgell and Bowman)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §3-8-12 of the code of West Virginia, 1931, as amended, relating to permitting solicitation of certain state employees for contributions to campaigns for or against ballot issues in county or local elections.

Be it enacted by the Legislature of West Virginia:

That §3-8-12 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§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.

1. (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.

2. (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.

3. (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 subdivi-
sions, 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 contri-
bution in excess of the value of one thousand dollars in connec-
tion with any campaign for nomination or election to or on
behalf of any statewide 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 contribu-
tions 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 aggre-
gate 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.
82 (i) No person may solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: Provided, That in no event shall any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. No person may 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.

96 (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.

104 (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
(l) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in 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.

(m) The provisions of subsection (i) of this section, permitting contributions to a campaign for or against a county or local government ballot issue, shall become operable on and after the first day of January, two thousand five.

CHAPTER 115

(H. B. 4582 — By Mr. Speaker, Mr. Kiss, and Delegate Kuhn)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-3C-1, §21-3C-2, §21-3C-3, §21-3C-4, §21-3C-5 and §21-3C-6 of the code of West Virginia, 1931, as amended, all relating to elevator safety; adding and modifying definitions; adding grounds for revocation or suspension of certificate of competency; limiting division inspectors to inspections of state owned elevators; and making technical and stylistic changes.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-2, §21-3C-3, §21-3C-4, §21-3C-5 and §21-3C-6 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.
§21-3C-2. Inspectors; application; examination; certificates of competency; reexamination.
§21-3C-3. Suspension or revocation of certificates.
§21-3C-4. Registration of elevators; notification to counties and municipalities.
§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.
§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

§21-3C-1. Definitions.

1 (1) "Certificate of acceptance" means a certificate issued by the division of labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chair-lifts".

2 (2) "Certificate of competency" means a certificate issued by the division of labor certifying that an individual is qualified to inspect elevators.

3 (3) "Certificate of operation" means a certificate issued by the division of labor certifying that an elevator has been inspected and is safe for operation.

4 (4) "Division" means the division of labor.

5 (5) "Division inspector" means an employee or contractor of the division who has been examined and issued a certificate of competency and who only inspects elevators in state owned buildings.
(6) "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(7) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(8) "Inspector" means both a division inspector and a private inspector.

(9) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

(10) "Private inspector" means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

§21-3C-2. Inspectors; application; examination; certificates of competency; reexamination.

(a) No person may serve as an inspector unless he or she successfully completes the examination required by this section and holds a certificate of competency for elevator inspections issued by the division.

(b) The application for examination for elevator inspector shall be in writing, accompanied by a fee of ten dollars, upon a form furnished by the division. The applicant shall state his or
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8 her social security number, level of education, previous
9 employers, the period of employment, the position held with
10 each employer, and other information required by the division.
11 The applicant shall also submit a letter from one of his or her
12 previous employers concerning his or her character and
13 experience.

14 (c) Applications which contain any willfully submitted false
15 or untrue information shall be rejected.

16 (d) The division shall administer an examination to a
17 qualified applicant testing the applicant’s knowledge of the
18 construction, installation, operation, maintenance and repair of
19 elevators and accessories.

20 (e) The division shall issue a certificate of competency for
21 elevator inspections to an applicant who successfully completes
22 the examination and who complies with the requirements of this
23 article and legislative rules promulgated by the division.

24 (f) An applicant who fails to successfully complete an
25 initial examination may submit an application for a second
26 examination ninety days or more after the initial examination.
27 The second application must be accompanied by the ten dollar
28 examination fee. Should an applicant fail to successfully
29 complete the prescribed examination on the second trial, he or
30 she is not permitted to submit an application for another
31 examination for a period of one year after the second failure.

32 (g) Any person hired as a private inspector by a county or
33 municipality shall possess a certificate of competency issued by
34 the division.

35 (h) The division may hire division inspectors or enter into
36 a contract for the services of a division inspector so long as the
37 inspector has been certified competent by the division. The
§21-3C-3. Suspension or revocation of certificates.

A certificate of competency for elevator inspectors may be suspended or revoked by the division if the inspector is found to be incompetent or untrustworthy or for the falsification of any matter or statement contained on the application or in a report of any inspection. Any willfully submitted false statement contained in an inspection report shall constitute grounds for suspension of the certificate of competency.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

The owner or operator of an elevator shall register each elevator with the division, giving the type, capacity and description, name of manufacturer, and purpose for which each is used. The registration shall be made on a form designed and furnished by the division. The division shall forward a list of registered elevators to the county or municipality wherein the elevators are located.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

(a) A county or municipality may hire a private inspector or contract with any person who possesses a West Virginia elevator inspector’s certificate of competency issued by the division.

(b) The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually. A private inspector shall inspect all
(c)(1) The county or municipality shall ensure that each newly installed elevator within its jurisdiction is inspected and issued a certificate of acceptance by the division prior to being placed in service.


(3) The acceptance inspection shall be subject to the same procedures and requirements as any other elevator inspection.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

(a) The division shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, prescribing inspection procedures and reporting requirements.

(b) Each inspector shall submit a complete report of each inspection made of an elevator to the division and to the county or municipality in which the elevator is located.

(c)(1) The inspection report shall list all changes or repairs required to be made for the safe operation of the elevator. A copy of the report as approved by the division shall be submitted to the owner or operator of the elevator. Unless the findings in the report are appealed, the owner or operator of the elevator
shall make the required changes or repairs before a certificate of operation is issued.

(2) The owner or operator, within twenty days from receipt of the copy of an inspection report, may make written application to the division, upon forms to be furnished by the division, for a hearing on the inspection report including the issue of whether the elevator in question is reasonably safe. The division shall promptly consider the submitted application.

(3) If it appears from the evidence that the elevator will be reasonably safe to operate without the recommended changes or repairs set forth in the report or by making only a part of the recommended changes or repairs, the division shall make its finding and order accordingly. If the finding and order require changes or repairs to be made to the elevator, the division may not issue a certificate of operation until the elevator owner has complied with the order or the division issues its approval of the change or repair plans or specifications. If the finding and order of the division has been affirmed or modified by appeal, on the grounds of reasonable safety considered by the division, the division shall, upon the owner or operator’s compliance with the order, issue the certificate of operation, but if the finding and order of the division has been vacated, the certificate of operation shall be issued immediately.

(4) An elevator owner adversely affected by a finding and order of the division, is entitled to judicial review of the finding and order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(d) No elevator may be operated after being inspected without having the certificate of operation conspicuously posted except during the period a hearing on the issuance of the certificate of operation is pending.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-25-1, §22-25-2, §22-25-3, §22-25-4, §22-25-5, §22-25-6, §22-25-7, §22-25-8, §22-25-9, §22-25-10, §22-25-11, §22-25-12 and §22-25-13, all relating to establishing a voluntary environmental excellence program; creating certain incentives for businesses that exceed the requirements of certain state and federal environmental laws and regulations and increase the quantity and quality of public participation; establishing legislative findings and purpose; defining certain terms; directing the secretary of the department of environmental protection to develop and implement the environmental excellence program; authorizing the secretary of the department of environmental protection to propose certain legislative rules regarding the environmental excellence program; establishing eligibility and application requirements for participation; authorizing the department of environmental protection to enter into environmental performance agreements with qualified entities and timely review applications; providing for certain program elements; providing for appeal of certain adverse application decisions; providing for the withdrawal, enforcement and termination of participation under certain circumstances; providing for certain incentives to be established for participating in the program; providing certain guidelines for the content of environmental performance agreements; establishing the environ-

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]
mental excellence administrative fund; allowing for gifts and donations to be received by the fund; providing for public participation in the environmental excellence program; providing for a performance review of the program; and providing for expiration of the program in two thousand nine.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §§22-25-1, §§22-25-2, §§22-25-3, §§22-25-4, §§22-25-5, §§22-25-6, §§22-25-7, §§22-25-8, §§22-25-9, §§22-25-10, §§22-25-11, §§22-25-12 and §§22-25-13, all to read as follows:

ARTICLE 25. ENVIRONMENTAL EXCELLENCE PROGRAM.

§22-25-1. Legislative findings.

§22-25-2. Purpose.


§22-25-4. Powers and duties of the department.

§22-25-5. Eligibility and application requirements.

§22-25-6. Application review and authority to enter into environmental performance agreement.

§22-25-7. Judicial review of department decision on acceptance of application to participate in the environmental excellence program.

§22-25-8. Withdrawal, enforcement and termination from the program.


§22-25-11. Recovery of costs to department in developing, negotiating and publicizing environmental performance agreement; deposition of moneys collected; creation of environmental excellence program administrative fund.


§22-25-13. Review and repeal of the environmental excellence program.

§22-25-1. Legislative findings.

The Legislature finds that:

1 (1) Regulated and nonregulated entities that demonstrate a commitment to the environment by going beyond compliance with environmental laws and rules positively impact the quality
of life for all citizens of the state by improving the economy and the environment by increasing consumer and public confidence, boosting management and employee morale, and operating in a safe and sensible manner that lessens impacts on the environment.

(2) While West Virginia’s existing environmental laws play an important role in protecting the environment, environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods and approaches.

(3) Enhanced public involvement allows the public and community to meaningfully participate in finding solutions for environmental issues in their community while maintaining the vitality of the local and state economy and strengthening ties between businesses, nonbusiness entities and community.

(4) Increased use of pollution prevention strategies, more cost-effective options for compliance with environmental standards, improvement of environmental performance, and reduction in occurrences of noncompliance with environmental standards can be achieved through the establishment and implementation of a voluntary environmental excellence program pursuant to this article. This voluntary program will provide entities with the opportunity to enter into an agreement with the department of environmental protection through which the department shall grant recognition and other benefits to participating entities that comply with a prescribed number of program elements established by the secretary of the department of environmental protection designed to reduce environmental impacts beyond those achieved by compliance with environmental laws and permits alone.

§22-25-2. Purpose.

The purpose of this article is to authorize the department of environmental protection to establish and administer an
environmental excellence program to promote, reward, and encourage superior environmental performance in this state. The environmental excellence program will establish a system to encourage voluntary environmental performance that will exceed existing regulatory standards for health and the environment and result in continual improvement in the state’s environment, economy, and quality of life. The program should, if practical, be compatible with other federal programs which create incentives for achieving environmental performance beyond the regulatory requirements, such as the United States environmental protection agency’s national performance track program. The environmental excellence program will be established and implemented to accomplish the following:

1. Encourage facility owners and operators to assess the environmental impact of their operations;

2. Encourage innovation by and measure success through facility owners and operators setting measurable and verifiable goals;

3. Increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory approaches and methods and in monitoring the environmental performance of projects under this article;

4. Focus resources toward achieving positive environmental goals that are important to the community and the state;

5. Report environmental performance information and ambient environmental data to the public in a manner that is accurate, timely, credible, relevant and usable to interested parties;

6. Provide for the measurement of environmental performance in terms of accomplishing goals and objectives, and require the reporting of those results;
(7) Provide facility owners and operators with flexibility to implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;

(8) Encourage superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges, emissions and releases;

(9) Promote the transfer of technological and practical environmental innovations that improve environmental performance in a more efficient, effective, and safe manner; and

(10) Strive to lower transaction costs associated with environmental performance.


As used in this article, unless the context otherwise requires:

(a) “Cross-media transfer” means a pollutant transfer from one environmental media to another, such as air to water.

(b) “Department” means the department of environmental protection.

(c) “Environmental goals” means the environmental performance objectives proposed by a qualified applicant that demonstrates superior environmental performance and which may support variances from environmental laws.

(d) “Environmental laws” means the following articles of chapter twenty-two of the code of West Virginia, two thousand two, as amended: Four, five, eleven, twelve, fifteen, sixteen, seventeen, and eighteen and legislative rules adopted under one
of those articles, or a policy, rule, permit, license, other approval or order issued by the department under one of those articles. “Environmental laws” do not include any provision of the code of West Virginia or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.

(e) “Environmental management system” means a formal set of voluntary procedures and policies used to evaluate environmental performance and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in operations, based on a commitment to superior environmental performance. An environmental management system is the part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy. An environmental management system includes the following elements:

(1) Adoption of an environmental policy that includes a commitment to maintain or exceed compliance with environmental and other requirements, pollution prevention, and continual improvement;

(2) An analysis of the environmental aspects and impacts of the organization’s activities;

(3) Significance ranking of environmental aspects and procedures;

(4) Plans and procedures to achieve, maintain and exceed requirements set forth by environmental laws;

(5) Identification of all legal requirements applicable to the organization’s environmental performance;
(6) Setting environmental objectives and developing appropriate environmental management programs to meet the objectives;

(7) Establishment of a structure for operational control and responsibility for environmental performance;

(8) An employee training program to develop awareness of and competence to manage environmental issues;

(9) A plan for taking preventive, corrective and emergency action to address environmental problems;

(10) A communication plan to collaborate with employees, the public and department on the design of the projects and activities to achieve superior environmental performance;

(11) Document control and record keeping of environmental performance;

(12) Third party audits of the environmental management system;

(13) Third party audits of environmental compliance;

(14) Senior management review;

(15) Monitoring and measurement of environmental performance; and

(16) Other criteria as established by the secretary.

(f) “Environmental management system audit” means a systematic and documented third party verification process of evaluating whether an organization’s environmental management system conforms to the criteria set forth by the department.
(g) "Environmental performance agreement" means an agreement entered into between the department and a participant of the program that specifies the participant's commitment to superior environmental performance, enhanced public involvement, and the incentives to be provided to the participant.

(h) "Environmental performance baseline" means the actual emissions, discharges, and impact to the environment by a facility at the time the application to participate in the environmental excellence program is filed with the department.

(i) "Hazardous substance" or "toxic substance" means those chemicals defined as hazardous substances under section 313 of the federal Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), including any subsequent amendments, and sections 101(14) and 102 of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended.

(j) "Participant" means a qualified applicant that has been admitted into the environmental excellence program through the execution of an environmental performance agreement with the department. Participant is limited to the site or facility where the environmental goals will be achieved and does not include the entire company where the company operates multiple sites or facilities.

(k) "Pollution prevention" means any practice that reduces the use of any hazardous substance or amount of a pollutant or contaminant prior to reuse, recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the use and release of hazardous substances, pollutants or contaminants. Pollution prevention does not include cross-media pollution transfers that do not result in a net decrease of discharge, emission or impact to the environment.
(l) "Program" means the environmental excellence program created pursuant to this article.

(m) "Qualified applicant" means any regulated or nonregulated facility of a government entity, corporation, partnership, sole proprietorship, municipality, county, city and county, or special district located and doing business in this state that meets the requirements for participation in the program set forth by this article.

(n) "Regulated entity" means an entity that requires a permit issued under one of the environmental laws to legally operate in this state or is otherwise subject to enforcement of environmental laws.

(o) "Nonregulated entity" means an entity that does not require a permit issued pursuant to environmental laws to legally operate in this state.

(p) "Secretary" means the secretary of the department of environmental protection.

(q) "Significant impact to the environment" means a release of a substance into the environment which has caused or may cause an adverse affect to natural resources, organisms, flora, fauna or the ecosystem.

(r) "Significant impact to human health" means a release of a substance into the environment which has caused or may cause an acute or chronic affect to human health.

(s) "Source reduction" means any practice which reduces the amount of any pollutant, contaminant, or hazardous substance entering any waste stream or otherwise being released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal and reduces the hazards to public health and the environment associated with
the release of these pollutants, contaminants, or hazardous substances. "Source reduction" includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. "Source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(t) "Superior environmental performance" means environmental performance that results in measurable or discernable improvement in the quality of the air, water, land or natural resources or in the protection of the ecosystem beyond that which is actually being achieved by the qualified applicant under compliance with current environmental laws. "Superior environmental performance" does not include pollutant reductions resulting from cross-media pollutant transfers unless it can be demonstrated that such transfer results in an overall improvement to the quality of the air, water, land and natural resources. "Superior environmental performance" may include, but is not limited to, any of the following:

(1) An entity limits the discharges or emissions of pollutants from, or in some other way minimizes the negative effects on air, water, land, natural resources, or human health of, a facility that is owned or operated by the entity or an activity that is performed by the entity to an extent that is greater than is required by applicable environmental laws.

(2) An entity minimizes the negative impact on air, water, land, natural resources, or human health of the raw materials used by the entity or the products or services produced or
provided by the entity to an extent that is greater than is required by applicable environmental laws.

(3) An entity voluntary engages in restoring, reclaiming, enhancing, or preserving natural resources.

(4) An entity organizes segmented or uncoordinated entities that are producing environmental harm into a program that achieves positive environmental results.

(5) An entity reduces waste, hazardous substances, or toxic substances in the design, production, delivery, use or reuse of goods and services.

(6) An entity reduces or conserves energy, nonrenewable or renewable natural resources through more efficient and sustainable methods.

"Toxic use reduction" means changes in production processes, products, or raw materials that reduce, avoid or eliminate the use of toxic or hazardous substances and the generation of hazardous byproducts per unit of production, so as to reduce the overall risks to the health of workers, consumers or the environment without creating new risks of concern.

§22-25-4. Powers and duties of the department.

(a) Within one year after the effective date of this section, the secretary, after consultation with representatives from the regulated community, local governments, environmental advocacy groups and other interested citizens, shall develop and implement a voluntary environmental excellence program in accordance with this article. The secretary shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code necessary to establish and implement all necessary program elements for the environmental excellence program as established in this article. Such
program elements shall include, but are not limited to, the following criteria:

1. Participation and entry into the program;
2. Public involvement;
3. Environmental management system;
4. Commitment to superior environmental performance;
5. Communication of program results to the public; and
6. Incentives.

(b) In establishing the environmental excellence business program, the secretary may establish classes, categories, or tiers of environmental performance agreements as the secretary considers appropriate, taking into consideration the diversity of businesses and industries in the state, the impact these entities may have on the environment, and the incentives sought by the qualified applicant.

(c) The secretary may negotiate with federal regulatory agencies to obtain authority to grant incentives under federal regulatory programs.

(d) Participation in the program by any participant is voluntary and is subject to review every three years.

§22-25-5. Eligibility and application requirements.

(a) The secretary shall establish by rule the minimum criteria for participation in the environmental excellence program. The minimum criteria shall include, but not be limited to, the following:
(1) An identified number of years with no serious civil noncompliance;

(2) An identified number of years without any criminal noncompliance;

(3) An identified number of years with no activities that resulted in a significant negative impact to human health or the environment;

(4) The existence and maintenance of an environmental management system;

(5) The existence and maintenance of an environmental management system audit program;

(6) The establishment of quantifiable environmental goals which are designed to achieve superior environmental performance;

(7) The existence and maintenance of verifiable, quantitative and qualitative measures or methods to document attainment of environmental goals; and

(8) The existence or establishment of a public participation plan as approved by the secretary that demonstrates that the proposal has broad support, its environmental implications are fully understood by all interested parties, and assures ongoing engagement of the public.

(b) The secretary shall establish alternative elective program elements in addition to the mandatory program elements set forth in subsection (a) of this section. Qualified applicants shall select from among the alternative elective program elements and complete those selected within a specified time period. The number of elective program elements shall be determined by the secretary and based on the activity
of the participant and the nature of the proposal. All elective program elements shall be designed to result in measurable improvement and enhancement of the environmental quality of the state or shall be activities that are beneficial to the environment. Elective program elements may include, but are not limited to:

- (1) Development and maintenance of programs that provide technical assistance or mentoring to one or more specified organizations to encourage technology transfers;

- (2) Active participation in industry or business environmental improvement programs;

- (3) Publication and public distribution of annual environmental performance summary reports;

- (4) Promotion, sponsorship and participation in community environmental and advisory programs;

- (5) Development and maintenance of management programs that encourage and reward employees for meeting or exceeding requirements of environmental laws or permits and for participation in voluntary environmental activities; and

- (6) Development and implementation of programs that reduce adverse environmental impact of development, manufacturing, distribution and marketing of the participant’s products or services.

The secretary may establish additional alternative elective program elements so long as the elements are designed to result in the measurable improvement and enhancement of the environmental quality of this state. Any additional alternative elective program elements established by the secretary shall have a reasonable nexus to the industry or business to which it applies.
(c) The secretary shall establish application requirements and application forms for entities to submit proposals to participate in the program. The department shall review all applications submitted for the program and shall notify the eligible applicant that the application is complete or that the application is incomplete. If the application is incomplete, the department shall describe what additional information is required to complete the application. The applicant may correct the application and resubmit it at any time.

(d) Applicants accepted into an equivalent federal program at the time of submitting an application to the department may satisfy some or all of the eligibility and application requirements pursuant to this article at the secretary's discretion.

§22-25-6. Application review and authority to enter into environmental performance agreement.

(a) The secretary shall review all completed applications within a reasonable period of time. If the secretary determines that the application meets the requirements for the program, the secretary shall notify the applicant in writing, and the application shall be incorporated into a written agreement. If the secretary determines the application does not meet the requirements of the program, the secretary shall notify the applicant in writing and shall provide an adequate opportunity for the applicant to address the outstanding items.

(b) The secretary may enter into one or more agreements with a participant as necessary to implement the provisions of this article. The agreement shall describe the requirements for continued participation and incentives to be provided to the participant.

(c) The secretary shall not enter into any environmental performance agreement that would:
(1) Violate or waive any specific statutory provision;

(2) Waive any federal regulation, unless specifically authorized by the federal government;

(3) Result in an increase in emissions, discharges, or other releases above those allowable under the otherwise applicable regulatory requirements; or

(4) Address past or ongoing violations or noncompliance by a qualified applicant.

(d) The following documents shall be made available for public review:

(1) The application, including documentation of compliance with environmental laws and permits applicable to the facility over the last three years, information regarding an appropriate environmental management system, a description of the current status of proposed performance indicators, and an outline of the measures by which the program will be evaluated;

(2) The executive's determination regarding their application; and

(3) The agreement described in subsections (a) and (b) of this section.

§22-25-7. Judicial review of department decision on acceptance of application to participate in the environmental excellence program.

The decision of the department to refuse to accept an application for participation in the environmental excellence program is not subject to judicial review. The decision of the department to enter into an environmental performance agreement may be appealed to the environmental quality board by any person aggrieved or adversely affected by the action
being appealed, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-25-8. Withdrawal, enforcement and termination from the program.

(a) Any participant may elect to withdraw from participation in the program at any time upon written notice to the secretary.

(b) The secretary shall terminate the participation of any participant in the program if a serious violation is discovered or occurs and the violation is not properly disclosed in accordance with the law or is not corrected or remedied in a timely manner to the satisfaction of the secretary.

(c) The secretary may continue the participation of a participant in the program if a serious violation is discovered or occurs and the violation is properly disclosed in accordance with law and is corrected or remedied in a timely manner to the satisfaction of the secretary.

(d) A participant’s participation in the program shall be suspended from the time the serious violation is discovered or occurs until the time it is corrected or remedied to the satisfaction of the secretary.

(e) If the secretary determines at any time a participant is failing to perform in accordance with the environmental performance agreement, and if, after written notice to the participant, the participant does not come into conformance within a reasonable period of time, as established by the secretary, the secretary may terminate the participant’s participation in the program.

(f) All incentives provided by the state pursuant to section nine of this article shall be withdrawn, effective upon termina-
tion or withdrawal of the participant’s participation in the program. If a participant withdraws or is terminated from the program, any unused incentives will be forfeited.

(g) The secretary shall establish, by rule, procedures and criteria that set forth circumstances under which a participant’s participation shall be suspended or terminated and criteria for a transition plan for returning to otherwise applicable environmental laws if the environmental performance agreement is terminated by the participant for any reason or by the secretary for failure to meet the agreement’s stated environmental goals, despite good faith efforts.


The secretary shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, establishing incentives to be granted to any participant that complies with all of the mandatory program elements and the prescribed number of elective program elements, as determined by the secretary. Participants may seek some or all of the incentives established pursuant to this subsection.


(a) The environmental performance agreement shall clearly establish the environmental goals of the participant; public involvement requirements; incentives; reporting requirements; and all other terms to ensure that the proposal is properly implemented and enforceable.

(b) In entering into environmental performance agreements, the secretary shall require stricter monitoring, or take other appropriate steps to ensure accountability, for proposals with greater uncertainty of meeting their stated environmental goals.
(c) A final environmental performance agreement shall specify:

(1) Any otherwise applicable rules, requirements, policies, or practices, modified, waived or replaced;

(2) The specific environmental goals of the agreement and the criteria for determining whether the agreement is meeting those goals;

(3) A description of how compliance with the agreement will be monitored and enforced, including any penalties that may be imposed for failure to carry out the terms of the agreement;

(4) The duration of the agreement and terms for renewal or extension;

(5) A transition plan for returning to otherwise applicable environmental laws in the event the agreement is terminated by either the participant or the department;

(6) A plan for integrating into the agreement any relevant regulations that are promulgated during the duration of the agreement; and

(7) Criteria for determining whether agreement may be transferred in the event of a transfer of ownership of the facility subject to the terms and conditions of the agreement and when applicable, the procedures for transferring the agreement.

§22-25-11. Recovery of costs to department in developing, negotiating and publicizing environmental performance agreement; deposition of moneys collected; creation of environmental excellence program administrative fund.

To recover the costs to the department in developing, negotiating and publicizing an environmental performance
agreement, the secretary may establish by legislative rule
reasonable application, renewal, and administration fees. An
"Environmental Excellence Program Administrative Fund" is
hereby created in the state treasury. The funds shall be dedi-
cated and appropriated to the department to administer the
program. Expenditures are not authorized from collections but
are to be made only in accordance with appropriation by the
Legislature and in accordance with the provisions of article
three, chapter twelve of this code and upon the fulfillment of
the provisions of article two, chapter five-a of this code:
Provided, That for the fiscal year ending the thirtieth day of
June, two thousand five, expenditures are authorized from
collections rather than pursuant to appropriation by the Legisla-
ture. Any moneys not utilized by the department for the
purposes set forth herein by the thirtieth day of June, two
thousand nine, shall revert to the state general revenue fund and
the environmental excellence program administration fund shall
be dissolved.


To promote a participatory process that will conform to the
legislative rules adopted pursuant to section four of this article,
to the extent that resources are available in the environmental
excellence program administration fund and appropriated by the
Legislature, the secretary is authorized to provide logistical and
technical support to assure balanced and timely participation in
any public process associated with this program.

§22-25-13. Review and repeal of the environmental excellence
program.

(a) The joint committee on government operations shall,
pursuant to authority granted in article ten, chapter four of this
code, conduct a preliminary performance review of the depart-
ment of environmental protection's compliance with the
provisions of this article, and whether it is appropriate to
continue this program. In conducting a preliminary performance
review, the committee shall follow the guidelines established in
section ten, article ten, chapter four of this code. The committee
may direct that the focus of the preliminary performance review
be on a specific area of operation and may direct further
inquiry, when necessary and desirable.

(b) This article and any rules promulgated thereunder shall
remain in effect until the thirtieth day of June, two thousand
nine, at which time this article and any rules promulgated
thereunder shall be repealed.

CHAPTER 117
(H. B. 2991 — By Delegates Cann, Kominar, Amores,
Stemple, Palumbo and Hrutkay)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §44-2-1 of the code of West Virginia,
1931, as amended, relating to the fee charged by fiduciary
commissioners in settling an estate.

Be it enacted by the Legislature of West Virginia:

That §44-2-1 of the code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES
OF DECEDETS.

§44-2-1. Reference of decedents' estates; proceedings thereon.
(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary for the settlement of the estate: Provided, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in accordance with the provisions of section nine, article one, chapter fifty-nine of this code.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be one hundred thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisement. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representa-
The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of ten dollars for recording and mailing the waiver of final settlement or report.

If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

(c) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.
CHAPTER 118
(S. B. 569 — By Senator McCabe)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §44-5-15 of the code of West Virginia, 1931, as amended, relating to clarifying and preserving the irrevocability of trusts that have been drafted to be irrevocable.

Be it enacted by the Legislature of West Virginia:

That §44-5-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.


(a) No trust is invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

(b) No trust, which is otherwise irrevocable because the grantor or settlor of the trust has not expressly reserved the right to alter, amend, modify or revoke the trust or because the creating instrument expressly provides or states that the trust is irrevocable, is or becomes revocable by the grantor or settlor because the grantor or settlor is the sole beneficiary of the trust.

(c) This section applies to all trusts whenever executed or created.
AN ACT to amend and reenact §6B-2-3 and §6B-2-5 of the code of West Virginia, 1931, as amended, clarifying the law relating to the solicitation of donations by a member of the Legislature, and requiring the ethics commission to furnish copies of advisory opinions to the Legislature and the Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That §6B-2-3 and §6B-2-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

(a) A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and
would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the secretary of state: Provided, That before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion shall, to the fullest extent possible, be deleted and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

(b) By the first day of the third month of the calendar year, the ethics commission shall annually furnish copies of all advisory opinions issued during the preceding calendar year to the archives and history section of the division of culture and history, the office of the Clerk of the West Virginia House of Delegates, the office of the Clerk of the West Virginia Senate and the West Virginia Supreme Court of Appeals Law Library. Accompanying the initial delivery of the previous calendar year’s advisory opinions after the enactment of this subsection, the commission shall supply each of these offices with copies of all advisory opinions issued subsequent to the creation of the commission.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.
(a) Persons subject to section.—The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain.—(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise
inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person’s employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts.—(1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;
(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when: (1) That official is a part-time elected public official; (2) the fee is not related to the official’s public position or duties; (3) the fee is for services provided by the public official that are related to the public official’s regular, nonpublic trade, profession, occupation, hobby or avocation; and (4) the honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(6) Upon prior approval of the joint committee on government and finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the joint committee on government and finance authorizes payment
of dues or other membership fees for the Legislature's participation, and which assist this and other state legislatures and their staff through any of the following:

(i) Advancing the effectiveness, independence, and integrity of legislatures in the states of the United States;

(ii) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(iii) Representing the states and their legislatures in the American federal system of government;

(iv) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(v) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the joint committee on government and finance and with the secretary of state for publication in the state register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:
"This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State, and are available for public review."

(d) Interests in public contracts.—(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:
(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information.—No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation.—No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making
proceeding, license or permit application, regulation filing or
other particular matter involving a specific party or parties
which arose during his or her period of public service or
employment and in which he or she personally and substantially
participated in a decision-making, advisory or staff support
capacity, unless the appropriate government agency, after
consultation, consents to such representation. A staff attorney,
accountant or other professional employee who has represented
a government agency in a particular matter shall not thereafter
represent another client in the same or substantially related
matter in which that client’s interests are materially adverse to
the interests of the government agency, without the consent of
the government agency: Provided, That this prohibition on
representation shall not apply when the client was not directly
involved in the particular matter in which such professional
employee represented the government agency, but was involved
only as a member of a class. The provisions of this subsection
shall not apply to legislators who were in office and legislative
staff who were employed at the time it originally became
effective on the first day of July, one thousand nine hundred
eighty-nine, and those who have since become legislators or
legislative staff and those who shall serve hereafter as legisla-
tors or legislative staff.

(g) Limitation on practice before a board, agency, commis-
sion or department.—(1) No elected or appointed public official
and no full-time staff attorney or accountant shall, during his or
her public service or public employment or for a period of six
months after the termination of his or her public service or
public employment with a governmental entity authorized to
hear contested cases or promulgate regulations, appear in a
representative capacity before the governmental entity in which
he or she serves or served or is or was employed in the follow-
ing matters:
254 (A) A contested case involving an administrative sanction, action or refusal to act;
255
256 (B) To support or oppose a proposed regulation;
257
258 (C) To support or contest the issuance or denial of a license or permit;
259
260 (D) A rate-making proceeding; and
261 (E) To influence the expenditure of public funds.
262
263 (2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.
265
266 (3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.
269
270 (4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency
of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons.—(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and
“subordinate” includes only those agency personnel over whom the public servant has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition contained in subsection (1). The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote.—Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-making proceedings.—No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates
of any person, partnership, trust, business trust, corporation or
association in which the public official or employee or his or
her immediate family owns or controls more than ten percent.
No public official or public employee may participate within
the scope of his or her duties as a public official or public
employee, except through ministerial functions as defined in
section three, article one of this chapter, in any license or
rate-making proceeding that directly affects the license or rates
of any person to whom the public official or public employee
or his or her immediate family, or a partnership, trust, business
trust, corporation or association of which the public official or
employee, or his or her immediate family, owns or controls
more than ten percent, has sold goods or services totaling more
than one thousand dollars during the preceding year, unless the
public official or public employee has filed a written statement
acknowledging such sale with the public agency and the
statement is entered in any public record of the agency’s
proceedings. This subsection shall not be construed to require
the disclosure of clients of attorneys or of patients or clients of
persons licensed pursuant to articles three, eight, fourteen,
fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,
chapter thirty of this code.

(k) Certain expenses prohibited.—No public official or
public employee shall knowingly request or accept from any
governmental entity compensation or reimbursement for any
expenses actually paid by a lobbyist and required by the
provisions of this chapter to be reported, or actually paid by any
other person.

(l) Any person who is employed as a member of the faculty
or staff of a public institution of higher education and who is
engaged in teaching, research, consulting or publication
activities in his or her field of expertise with public or private
entities and thereby derives private benefits from such activities
shall be exempt from the prohibitions contained in subsections
(b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employees’ department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(n) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.
CHAPTER 120

(H. B. 4140 — By Delegates Amores, Kominar, Palumbo, Webster and Armstead)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §6B-2-5a, relating to requiring the ethics commission to establish a code of conduct for state administrative law judges, including civil penalties and sanctions for violations.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6B-2-5a, to read as follows:

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-5a. Code of conduct for state administrative law judges.

1 (a) As used in this section, "state administrative law judge" means any public employee, public officer or contractor functioning as a hearing officer, referee, trial examiner or other position in state government to whom the authority to conduct an administrative adjudication has been delegated by an agency or by statute and who exercises independent and impartial
judgment in conducting hearings and in issuing recommended
decisions or reports containing findings of fact and conclusions
of law in accordance with applicable statutes or rules, but does
not include any person whose conduct is subject to the code of
judicial conduct promulgated by the West Virginia Supreme
Court of Appeals.

(b) In accordance with the provisions of chapter
twenty-nine-a of this code, the commission, in consultation with
the West Virginia state bar, shall propose rules for legislative
approval establishing a code of conduct for state administrative
law judges, which shall incorporate the following major
provisions:

(1) A state administrative law judge shall uphold the
integrity and independence of the administrative judiciary;

(2) A state administrative law judge shall avoid impropriety
and the appearance of impropriety in all activities;

(3) A state administrative law judge shall perform the
duties of the office impartially and diligently;

(4) A state administrative law judge shall regulate the
judge’s extra-judicial activities to minimize the risk of conflict
with judicial duties;

(5) A state administrative law judge shall refrain from
political activity inappropriate to the office; and

(6) Appropriate civil penalties and sanctions for violations.

In proposing the rules, the commission shall consider the
model codes of judicial conduct for state administrative law
judges as drafted by the National Association of Administrative
(c) The legislative rules shall provide that an individual agency may develop a code of conduct for its own administra-
tive law judges, which shall supersede the general code of conduct established under this section, if the commission
determines that it is in substantial compliance with the objec-
tives of the code proposed by the commission. Upon granting
a waiver to an agency, the commission shall retain a copy of the agency’s code to be made available to the public.

(d) The commission shall propose the legislative rules by the first day of October, two thousand four, so that it may be considered by the Legislature at the regular session in the year two thousand five, and the commission may not promulgate an emergency rule on this matter in the interim.

CHAPTER 121

(H. B. 3150 — By Delegates Calvert and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5-22-1 of the code of West Virginia, 1931, as amended; to amend and reenact §5-22A-10 of said code; to amend and reenact §7-11B-14 of said code; and to amend and reenact §38-2-39 of said code, all relating to establishing the West Virginia fairness in competitive bidding act; definitions; establishing procedures and requirements for awarding contracts for government construction projects; requirements for performance, payment, bid and surety bonds; and criminal penalties.

Be it enacted by the Legislature of West Virginia:
That §5-22-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §5-22A-10 of said code be amended and reenacted; that §7-11B-14 of said code be amended and reenacted; and that §38-2-39 of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements set forth in this section may be referred to as the “West Virginia Fairness In Competitive Bidding Act”.

(b) As used in this section:

(1) “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, as a minimum, all the
following requirements in connection with the bidder’s response to the bid solicitation. The bidder must certify that it:

(A) Is ready, able and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the state of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "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.

(c) 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, inclusive, 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.

(d) Following the solicitation of 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 the project.

(e) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set
out in this section. As to any prospective low bidder which the contracting public entity determines not to have met any one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(f) Any public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the code of West Virginia.

(g) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(h) All bids shall be open in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.

(i) 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 the use is a part of the student's training program;

(3) Emergency repairs to building components and systems. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components and systems or cause danger to those persons using the building components and systems; and

(4) Any situation where the state or a subdivision thereof reaches 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.

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-10. Solicitation of proposals.

Proposals must be solicited from not less than three design-builders. A request for proposal must be prepared for each design-build contract and shall consist of, but not be limited to:

(1) The identity of the agency which will award the design-build contract;

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of this article, the rules promulgated herein and any regulations pertaining to the agency;
(3) The proposed terms and conditions for the design-build contract;

(4) The performance criteria;

(5) The description of the drawings, specifications or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(6) A schedule for planned commencement and completion of the design-build contract;

(7) Budget limits for the design-build contract, if any;

(8) Design-builder qualifications; and

(9) Requirements for performance bonds, payment bonds and insurance: Provided, That no officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

The request for proposals may include any other information that the agency, at its discretion, chooses to supply, including, but not limited to, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs or references to public records.

Notice of requests for proposals must be advertised as prescribed by the procedures utilized by the purchasing division pursuant to article three, chapter five-a of this code.
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

1. (a) Any project acquired, constructed, or financed, in whole or in part, by a county commission or municipality under this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

2. (b) The county commission or municipality shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code and compliance with article one-c of said chapter for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

3. (c) Following the solicitation of the 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 county commission, municipality or other person soliciting the bids may reject all bids and solicit new bids on the project.

4. (d) No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or
permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the county commission or the municipality: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students’ training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term “emergency repairs” means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission or municipality comes to an agreement with volunteers, or a volunteer group, by which 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: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(f) The provisions of subsection (b) of this section apply to privately owned projects or infrastructure projects constructed on lands not owned by the county commission, a municipality or a government agency or instrumentality when the owner or
the owner’s agent or person financing the owner’s project receives money from the tax increment financing fund for the owner’s project.

CHAPTER 38. LIENS.

ARTICLE 2. MECHANICS’ LIENS.

§38-2-39. Public building; bond of contractor; recordation of bond; no lien in such case.

It shall be the duty of the state commissioner of public institutions, and of all county courts, boards of education, boards of trustees, and other legal bodies having authority to contract for the erection, construction, improvement, alteration or repair of any public building or other structure, or any building or other structure used or to be used for public purposes, to require of every person to whom it shall award, and with whom it shall enter into, any contract for the erection, construction, improvement, alteration or repair of any such public building or other structure used or to be used for public purposes, that such contractor shall cause to be executed and delivered to the secretary of such commissioner or other legal body, or other proper and designated custodian of the papers and records thereof, a good, valid, solvent and sufficient bond, in a penal sum equal at the least to the reasonable cost of the materials, machinery, equipment and labor required for the completion of such contract, and conditioned that in the event such contractor shall fail to pay in full for all such materials, machinery, equipment and labor delivered to him for use in the erection, construction, improvement, alteration or repair of such public building or other structure, or building or other structure used or to be used for public purposes, then such bond and the sureties thereon shall be responsible to such materialman, furnisher of machinery or equipment, and furnisher or per-
25 former of such labor, or their assigns, for the full payment of
26 the full value thereof.

27 No officer or employee of this state or of any public
28 agency, public authority, public corporation, or other public
29 entity, and no person acting or purporting to act on behalf of
30 such officer or employee or public entity shall require that any
31 surety bond required or permitted by this section be obtained
32 from any particular surety company, agent, broker or producer.

33 All such bonds shall have as surety thereon either some
34 incorporated bonding and/or surety company authorized to
35 carry on business in this state, or in lieu of such corporate
36 surety the contractor may deposit as security for such bond with
37 the said state commissioner of public institutions, county court,
38 board of education, board of trustees or other legal body having
39 authority so to contract, a sum in cash or bonds and securities
40 of the United States of America or of the state of West Virginia
41 of sufficient amount and value equal at least to the reasonable
42 cost of materials, machinery, equipment and labor required for
43 the completion of such contract. Immediately upon the accep-
44 tance of either of said bonds by the state commissioner of
45 public institutions, county court, board of education and board
46 of trustees, or other legal body, the bond shall be recorded by
47 the secretary of such commissioner or other legal body, or by
48 the proper designated custodian of the papers or records thereof,
49 in the office of the clerk of the county court of the county or
50 counties wherein such work is to be done and where such
51 materials, machinery or equipment are to be delivered, and no
52 such contract shall be binding and effective upon either party or
53 parties thereto until such bond has been executed, delivered and
54 recorded as aforesaid.

55 Nothing in this article shall be construed to give a lien upon
56 such a public building or improvement as is mentioned in this
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5A-8-21 and §5A-8-22, all relating to limiting disclosure of personal information maintained by the legislative, judicial or executive agencies of the state of West Virginia relating to state employees due to their state employment and creating lesser restrictions on information maintained by executive branch agencies on citizens generally.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §5A-8-21 and §5A-8-22, all to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.

§5A-8-22. Personal information maintained by state entities.
(a) The following personal information maintained by executive, legislative or judicial branch agencies of the state of West Virginia regarding persons in their capacity as state officers, employees, retirees or the legal dependents thereof is hereby deemed to be confidential and exempt from disclosure to non-governmental entities in documents otherwise subject to disclosure under the provisions of chapter twenty-nine-b of this code:

(1) An individual’s home address;
(2) An individual’s social security number;
(3) An individual’s credit or debit card numbers;
(4) An individual’s driver’s license identification number;
and
(5) An individual’s marital status or maiden name.

(b) It is the policy of the state of West Virginia that the information enumerated in subsection (a) of this section is personal and confidential and should only be released to non-governmental entities for such purposes as are authorized by federal law or regulation, a provision of this code or a legislative rule promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

§5A-8-22. Personal information maintained by state entities.

(a) The following information maintained by state executive branch agencies with respect to individuals and their dependents, is personal information, exempted from disclosure under the provisions of article one, chapter twenty nine-b of this code, and may not be released to non-governmental entities:

(1) An individual’s social security number; or
(2) An individual’s credit or debit card number.

(b) Notwithstanding the provisions of subsection (a) of this section, the information enumerated in said subsection may be released for such purposes as are authorized by federal law or regulation, a provision of this code or a legislative rule promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

CHAPTER 123

(Com. Sub. for S. B. 197 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
promotion fund in which the member has a direct financial interest; and reallocation certain percentages of net terminal income.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §5A-4-5a and §5A-4-6; that said code be amended by adding thereto a new section, designated §5B-2-3b; that §5B-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-12; and that §29-22A-10 and §29-22A-10b of said code be amended and reenacted, all to read as follows:

Chapter
5A. Department of Administration.
18B. Higher Education.
29. Miscellaneous Boards and Officers.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-5a. Construction of parking garage for general public; creation of fund.
§5A-4-6. Renovation and improvement of capitol building and capitol complex.

§5A-4-5a. Construction of parking garage for general public; creation of fund.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the secretary of the department of administration to plan and construct a parking garage at the state capitol complex that will provide sufficient and additional parking exclusively for the general public.

(b) There is created in the state treasury to be administered by the department of administration a special fund to be named the “2004 capitol complex parking garage fund” into which
shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on or adjacent to the state capitol complex.

§5A-4-6. Renovation and improvement of capitol building and capitol complex.

(a) It is the intent of the Legislature to provide renovation and improvement of the existing state capitol building and the capitol complex and to direct the secretary of the department of administration to plan and make renovations and improvements of the existing state capitol building and the capitol complex for the purpose of reversing deterioration to existing facilities, securing the safety of the general public and state employees, promoting efficiency of governmental operations and enhancing tourism in the state.

(b) There is created in the state treasury to be administered by the department of administration a special fund to be named the “capitol renovation and improvement fund” into which shall be deposited funds that are appropriated and funds from other sources to be used for renovations and improvements of the existing state capitol building and the capitol complex.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-3b. Development office promotion fund.

§5B-2-12. Tourism promotion fund continued; use of funds.

§5B-2-3b. Development office promotion fund.

There is hereby established in the state treasury a special revenue fund known as the “development office promotion fund”. Moneys deposited in this fund shall be administered by the development office and used solely to promote business formation, expansion, recruitment and retention through
aggressive marketing and international development and export assistance, which together lead to more and better jobs with higher wages for all geographic regions and communities of the state, including rural areas and urban core areas, and for all residents, including minorities.

§SB-2-12. Tourism promotion fund continued; use of funds.

There is hereby continued in the state treasury the special revenue fund known as the "tourism promotion fund" created under prior enactment of section nine, article one of this chapter.

(a) A minimum of five percent of the moneys deposited in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended with the approval of the director of the division of natural resources to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination thereof.

(b) The balance of the moneys deposited in the fund shall be used for direct advertising within the state's travel regions as defined by the commission. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-five, according to legislative rules authorized for promulgation by the tourism commission.

(c) All advertising expenditures over twenty-five thousand dollars from the tourism promotion fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may
participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-12. Research challenge.

(a) There is established in the state treasury a special revenue fund known as the "research challenge fund". Moneys deposited in this fund shall be administered by the higher education policy commission.

The moneys deposited in this fund shall be used to fund coal research and development projects at institutions of higher education located in this state. Research includes, but is not limited to, carbon sequestration and carbon technology research and development projects. The moneys deposited in this fund shall also be used to fund other research and development projects at institutions of higher education in this state.

(b) The policy commission shall use the recommendations of the EPSCoR state advisory council in its allocation of appropriations made to the research challenge fund and in its development of procedures for competitive application and review of proposals for funding. The research challenge is a critical component in the state's strategic plan for economic development and the contribution of higher education in the economic health of the state and the EPSCoR state advisory council is well qualified, by virtue of its research-oriented mission and membership, to advise the policy commission in the allocation of research challenge funding.

The objectives of the research challenge are to:
(1) Increase the research capacity of institutions of higher education and the competitiveness of these institutions to apply for external funding;

(2) Stimulate the development of research and research products that are directly applicable in improving the economic competitiveness of existing West Virginia industries and the development of new business and jobs in the state;

(3) Leverage limited state resources with private and federal funds to support projects and activities directly related to economic development by requiring matching funds and cooperative agreements with external partners;

(4) Increase the production of undergraduate and graduate students of programs in the sciences, technology, engineering and mathematics, with special attention to emerging disciplines such as biometrics; and

(5) Hold institutions more accountable for the success of research projects funded under this program with the expectation that state support will be phased out and the project or activity will be terminated if it is unable to generate ongoing external support.

(c) The priorities for the research challenge shall be:

(1) Research on energy generation, distribution and utilization that builds on the state’s existing energy research strengths, related research products and technology transfer programs;

(2) Research, education and outreach conducted by the EPSCOR program. This federal program is recognized by the national science foundation as the state’s primary entity for developing the research capacity that is so important to the state’s economic and educational development;
(3) Research projects that are related to the economic development of the state and that have significant potential to attract participation and funding from industrial, federal or foundation partners;

(4) Collaborative projects between higher education and public education to improve science and mathematics education;

(5) Graduate education in science (including medical education), technology, engineering and mathematics. The allocation shall be used for the increase in doctoral students and programs at West Virginia university and Marshall university in these fields; and

(6) Recruitment of eminent scholars to strengthen research capacity and competitiveness for external funding.

(d) The policy commission shall report to the legislative oversight committee on educational accountability annually on the results of the projects and activities funded by the research challenge appropriation.

(e) The priorities established in subsection (c) of this section shall be reviewed biannually by the policy commission and the EPSCoR state advisory council beginning in two thousand six. The policy commission shall include any recommended adjustments in its budget request for the two thousand seven budget.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts.
and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

§29-22A-10b. Distribution of excess net terminal income.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal
income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income. Provided, That any amounts deducted by the commission for its actual costs and expenses that exceed its actual costs and expenses shall be deposited into the state lottery fund. For all fiscal years beginning on or after the first day of July, two thousand one, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the state lottery fund as provided in section ten-a of this article;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition
to other amounts provided in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and
(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this subdivision;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder’s program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8)(A) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, That for the
fiscal year beginning the first day of July, two thousand three, the tourism commission shall transfer from the tourism promotion fund five million dollars of the three percent of the net terminal income described in this section and section ten-b of this article into the fund administered by the West Virginia economic development authority pursuant to section seven, article fifteen, chapter thirty-one of this code five million dollars into the capitol renovation and improvement fund administered by the department of administration pursuant to section six, article four, chapter five-a of this code and five million dollars into the tax reduction and federal funding increased compliance fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income and the three percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section ten-b of this article shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the tourism promotion fund created under section twelve, article two, chapter five-b of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the development office promotion fund created under section three-b, article two, chapter five-b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the research challenge fund created under section ten, article one-b, chapter eighteen-b of this code;
(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the capitol renovation and improvement fund administered by the department of administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 capitol complex parking garage fund administered by the department of administration pursuant to section five-a, article four, chapter five-a of this code; and

(9) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning the first day of July, two thousand three, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the “John F. ‘Jack’ Bennett Fund”. The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to
the provisions of article three, chapter twenty-nine-a of this
code specifying the manner in which the funds are spent,
determine the ability of the surviving spouse to pay for the
placement of the marker and setting forth the standards to be
used to determine the priority in which the veterans grave
markers will be placed in the event that there are not sufficient
funds to complete the placement of veterans grave markers in
any one year, or at all. Upon payment in full of the bonded
indebtedness on the veterans memorial, one hundred thousand
dollars of the one percent of net terminal income provided for
in this subdivision shall be deposited in the special fund in the
division of culture and history created under section three,
article one-i, chapter twenty-nine of this code and be expended
by the division of culture and history to establish a West
Virginia veterans memorial archives within the cultural center
to serve as a repository for the documents and records pertain-
ing to the veterans memorial, to restore and maintain the
monuments and memorial on the capitol grounds: Provided,
however. That five hundred thousand dollars of the one percent
of net terminal income shall be deposited in the state treasury
in a special fund of the department of administration, created
under section five, article four, chapter five-a of this code, to be
used for construction and maintenance of a parking garage on
the state capitol complex; and the remainder of the one percent
of net terminal income shall be deposited in equal amounts in
the capitol dome and improvements fund created under section
two, article four, chapter five-a of this code and cultural
facilities and capitol resources matching grant program fund
created under section three, article one of this chapter.

(B) For each fiscal year beginning after the thirtieth day of
June, two thousand four:

(i) Five hundred thousand dollars of the one percent of net
terminal income shall be deposited in the state treasury in a
special fund of the department of administration, created under
section five, article four, chapter five-a of this code, to be used
for construction and maintenance of a parking garage on the
state capitol complex; and

(ii) The remainder of the one percent of net terminal
income and all of the one percent of net terminal income
described in paragraph (B), subdivision (9), subsection (a),
section ten-b of this article shall be distributed as follows: The
net terminal income shall be deposited in equal amounts into
the capitol dome and capitol improvements fund created under
section two, article four, chapter five-a of this code and the
cultural facilities and capitol resources matching grant program
fund created under section three, article one, chapter twenty-
nine of this code until a total of one million five hundred
thousand dollars is deposited into the cultural facilities and
capitol resources matching grant program fund; thereafter, the
remainder shall be deposited into the capitol dome and capitol
improvements fund.

(d) Each licensed racetrack shall maintain in its account an
amount equal to or greater than the gross terminal income from
its operation of video lottery machines, to be electronically
transferred by the commission on dates established by the
commission. Upon a licensed racetrack’s failure to maintain
this balance, the commission may disable all of a licensed
racetrack’s video lottery terminals until full payment of all
amounts due is made. Interest shall accrue on any unpaid
balance at a rate consistent with the amount charged for state
income tax delinquency under chapter eleven of this code. The
interest shall begin to accrue on the date payment is due to the
commission.

(e) The commission’s central control computer shall keep
accurate records of all income generated by each video lottery
terminal. The commission shall prepare and mail to the
licensed racetrack a statement reflecting the gross terminal
income generated by the licensee’s video lottery terminals.

Each licensed racetrack shall report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal’s software. If the meter readings and the commission’s records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.
(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

§29-22A-10b. Distribution of excess net terminal income.

(a) Any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as follows:

(1) The commission shall receive forty-one percent of net terminal income, which the commission shall deposit in the state excess lottery revenue fund created in section eighteen-a, article twenty-two of this chapter;

(2) Eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:
(A) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;
(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder’s program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-two percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, That for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income shall be
distributing pursuant to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this article; and

(9)(A) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this one percent of net terminal income shall be distributed pursuant to the provisions of subparagraph (ii), paragraph (B), subdivision (9), subsection (c), section ten of this article.

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and section ten of this article.

CHAPTER 124

(H. B. 4107 — By Delegates Long, Perry, Caruth, R. M. Thompson and Frederick)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
ees to operate bingo and raffle games; allowing game proceeds to be transferred, by check, between raffle and bingo accounts to offset losses; and allowing certain residents of other states to be employed by charitable bingo and charitable raffle operations.

Be it enacted by the Legislature of West Virginia:

That §47-20-11, §47-20-12a and §47-20-16 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-21-12 and §47-21-16 of said code be amended and reenacted, all to read as follows:

Article

ARTICLE 20. CHARITABLE BINGO.

§47-20-12a. Compensation of bingo operator; number of employees.
§47-20-16. Records; commissioner audit.


(a) Except as provided in sections thirteen and twenty-two of this article, the only persons, as defined in section two of this article, that may participate in any manner in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion are either:

(1) Residents of this state and who are active members of the licensee organization or its authorized auxiliary organization and who have been active members in good standing of the licensee organization or its authorized auxiliary for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license; or
Employees of the licensee organization or its authorized auxiliary organization who are:

(A) Residents of this state;

(B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the bingo operation is conducted; or

(C) Residents of a bordering state who reside within thirty-five miles of the county in which the bingo operation is conducted.

(b) Notwithstanding anything contained in this article to the contrary, no individual under the age of eighteen years may directly or indirectly participate in the conduct of a bingo game, except for junior firefighters, in accordance with the provisions of this article.

§47-20-12a. Compensation of bingo operator; number of employees.

(a) Within the guidelines set forth in subsections (b), (c) and (d) of this section, a licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is six dollars and fifty cents per hour, to operators of bingo games who are either:

(1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license; or

(2) Employees of the licensee organization or its authorized auxiliary organization who are:

(A) Residents of this state;
(B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the bingo operation is conducted; or

(C) Residents of a bordering state who reside within thirty-five miles of the county in which the bingo operation is conducted.

(b) If the licensee’s gross receipts from bingo occasions equal or exceed one hundred thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee’s gross receipts from bingo occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee’s gross receipts from bingo occasions are less than fifty thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to not more than three operators.

(e) If the licensee also possesses a super bingo license, it may pay a salary to not more than fifteen operators during the super bingo occasion.

(f) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable bingo operator employees allowed under this limitation for bingo licensees is in addition to the number of charitable raffle operator employees allowed under section fifteen, article twenty-one of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations and the
charitable bingo fund and the charitable raffle fund and payments from the funds may not be commingled.

For purposes of the limitations set forth in this section, the term “operator” or “bingo operator” or “raffle operator” does not include concession stand workers. Wages paid to concession workers may not exceed six dollars and fifty cents per hour.

§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate checking account and separate book-keeping procedure for its bingo operations: Provided, That nothing in this article restricts a licensee from transferring moneys in the account from a bingo occasion to an account created under section sixteen, article twenty-one of this chapter in an amount not to exceed the actual loss of the raffle occasion receiving the transfer: Provided, however, That money transferred shall be withdrawn only by checks having preprinted consecutive numbers and made payable to the account created under section sixteen, article twenty-one of this code. Money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person, firm or corporation and at no time shall a check be made payable to cash. A licensee shall maintain all records required by this article for at least three years and the records shall be open to the commissioner for reasonable inspection. Whenever the tax commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee’s books and records: Provided further, That the tax commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of one hundred seventy-five thousand dollars. The tax commissioner shall file a copy of the completed audit
with the county commission of the county wherein the licensee holds bingo occasions.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-16. Records; commissioner audit.


(a) A licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is six dollars and fifty cents per hour, to operators of charitable raffle games who are either:

1. (1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable raffle license or the most recent filing of an application for renewal of the license; or

2. (2) Employees of the licensee organization or its authorized auxiliary organization who are:

A. Residents of this state;

B. Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the raffle operation is conducted; or

C. Residents of a bordering state who reside within thirty-five miles of the county in which the raffle operation is conducted.

(b) If the licensee’s gross receipts from raffle occasions equal or exceed one hundred thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to not more than eight operators.
(c) If the licensee’s gross receipts from charitable raffle occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee’s gross receipts from charitable raffle occasions are less than fifty thousand dollars for the licensee’s most recently filed annual financial report, a salary may be paid to no more than three operators.

(e) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operator employees allowed under this limitation for charitable raffle licensees is in addition to the number of charitable bingo operator employees allowed under section twelve-a, article twenty of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations and the charitable bingo fund and the charitable raffle fund and payments from the funds may not be commingled.

(f) For purposes of the limitations set forth in this section, the term “operator” or “bingo operator” or “raffle operator” do not include concession stand workers. Wages paid to concession workers may not exceed six dollars and fifty cents per hour.

§47-21-16. Records; commissioner audit.

Any licensee which holds a raffle occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its raffle operations: Provided, That nothing in this article restricts a licensee from transferring moneys in the account from a raffle occasion to an account created under section sixteen, article twenty of this chapter in
an amount not to exceed the actual loss of the bingo occasion receiving the transfer. Provided, however, that money transferred shall be withdrawn only by checks having preprinted consecutive numbers and made payable to the account created under section sixteen, article twenty of this code. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he may perform or cause to be performed an audit of the licensee’s books and records.

CHAPTER 125

(Com. Sub. for H. B. 4257 — By Delegates Warner and Mezzatesta)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §47-21-3 of the code of West Virginia, 1931, as amended, relating to increasing the amount of prizes that may be given and the total annual gross proceeds that may be generated in the conduct of raffles by charitable and public service organizations without a license.

Be it enacted by the Legislature of West Virginia:

That §47-21-3 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-3. Authorizing the conduct of certain raffles without a license.
Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization which has been in existence in this state for at least one year is hereby authorized to conduct raffles without compliance with the licensing provisions of this article: Provided, That any prize awarded in any single raffle at a raffle occasion may not exceed in value the sum of four thousand dollars: Provided, however, That the cumulative gross proceeds derived from the conduct of raffle occasions by any such charitable or public service organization shall not exceed fifteen thousand dollars during any calendar year: Provided further, That any such organization shall not be subject to the record keeping provisions of section sixteen of this article but shall maintain a separate accounting for the operation of raffles. All records required by this section shall be maintained for at least three calendar years and shall be available for reasonable inspection by the commissioner.

CHAPTER 126

(Com. Sub. for H. B. 4259 — By Delegates Ennis, Hatfield, Laquinta, Perdue, Talbott, Yost and Leggett)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
requiring state plan; requiring annual reports; and providing for continuation of cabinet and council.

Be it enacted by the Legislature of West Virginia:

That §5-26-7 and §5-26-9 of the code of West Virginia, 1931, as amended, be repealed; that §5-26-1, §5-26-2, §5-26-3, §5-26-4 and §5-26-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §5-26-2a and §5-26-2b, all to read as follows:

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

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

(a) The Legislature finds that in order to avoid the human and financial costs to the state of individual and family instability, and to benefit the state and society as a whole, it is in the best interests of the state to provide programs and services to support children and families. The Legislature further finds that children and families are best supported by programs and services in or as close to the local community as possible.

The Legislature intends to accomplish its goals relating to children and families through a family-centered, comprehensive, community-based system for the provision of social services, programs and facilities for children and families overseen by the highest levels of state government.

(b) The Legislature hereby declares that one purpose of this article and the policy of the state is to achieve the coordination
of programs and services to children and families through a
cabinet in the governor's office which is independent from any
state agency and which shall act as an interagency cabinet
created to nurture a flexible system for the comprehensive,
unified, effective and efficient administration of programs and
services to children and families which avoids fragmentation
and duplication of programs and services. For maximum
effectiveness, the Legislature intends to provide services in a
long-term manner with such intensity as the needs of the
particular situation require.

(c) The service delivery system shall be driven by the needs
and preferences of the child and family, shall reflect local
community characteristics and resources, shall allow for local
input, and shall focus on prevention, education and early
intervention.

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

§5-26-2. Cabinet established.

(a) There is hereby created the governor's cabinet on
children and families, hereinafter referred to as the "cabinet".
The cabinet shall include the secretary of health and human
resources or a designee; the secretary of military affairs and
public safety or a designee; the secretary of administration or a
designee; the state superintendent of schools or a designee; and
the attorney general or a designee; one member of the Senate,
to be appointed by the governor, and one member of the House
of Delegates, to be appointed by the governor, both of whom
shall serve in an advisory capacity only; and three members
selected by the governor from the citizens' advisory council as
set forth in section two-a of this article. The governor may
appoint other administrative heads of government who shall
serve in an advisory capacity only.

(b) In order to promote consistency and continuity in the
work of the cabinet, each cabinet member appointed by virtue
of his or her governmental office is encouraged to select a
primary designee and an alternate designee to serve in his or her
place when necessary.

(c) The cabinet shall be chaired by the governor and shall
convene at least monthly during the first year and thereafter
shall meet at least six times annually. The cabinet shall estab-
lish bylaws which govern its decision making.

(d) The governor shall appoint an executive director to
carry out its work and to oversee staff adequate to fulfill its
functions.

§5-26-2a. Citizen's advisory council.

(a) The governor shall appoint a citizens' advisory council
to assist the cabinet with the implementation of its mission and
policy objectives.

(b) The council shall be comprised of not fewer than twelve
nor more than thirty citizens who will serve terms of one, two
or three years as assigned at the time of appointment. The
council members will have knowledge and experience in
serving children and families in such areas as housing; Health
promotion and disease prevention; education; transportation;
reading and literacy; food and nutrition; clothing; utilities; job
training and employment; child care; child protection; early
intervention and crisis intervention; assessment and diagnosis;
home-based family development; preservation and reunification; financial planning; mental health and counseling; substance abuse prevention counseling and treatment; addiction awareness training; pregnancy prevention; and information, referral and placement.

(c) The purpose of the council is to:

(1) Provide a forum for discussion of issues that affect the state’s children and families;

(2) Identify and promote best practices in the provision of services to children and families;

(3) Review information and research that can inform state policy;

(4) Make recommendations to the cabinet in areas of policy and allocation of resources;

(5) Focus attention on accountability and results;

(6) Assist the cabinet in developing a cross-agency multi-year state plan for improving the well being of children and families;

(7) Connect government officials who make decisions with the families affected by their decisions;

(8) Engage local communities through family resource networks to work on local issues and statewide priorities;

(9) Assure that community and family voices are heard by the cabinet; and

(10) Promote family support practices by all publicly funded agencies.
(d) The governor shall select three members of the council to serve on the cabinet, two of whom are family representatives from families who have received or are receiving services funded, in whole or in part, by federal, state or local governments, and one of whom is a community representative who is not employed in a managerial or decision-making position of a provider of services funded in whole or in part by federal, state or local governments.

(e) The community representative initially appointed shall serve for a term of one year and the family representatives initially appointed shall serve for terms of two years and three years respectively. If a member’s term on the cabinet exceeds his or her term on the council, his or her term on the council will be extended automatically to coincide with his or her term on the cabinet. Members appointed subsequent to the initial appointments shall serve for terms of three years, and may serve up to three consecutive full terms: Provided, That members appointed under this section shall continue to serve until their successors are appointed. An appointment to fill a vacancy will be for the unexpired term.

(f) Citizen members may be reimbursed for actual and necessary expenses incurred in the discharge of their official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(g) The governor may remove any citizen member from the council or the cabinet for neglect of duty, incompetency or official misconduct.


(a) “Family resource network” means a local community organization charged with service coordination, needs and resource assessment, planning, community mobilization and
evaluation, and which has been recognized by the cabinet as having met the following criteria:

(1) Agreeing to a single governing entity;

(2) Agreeing to engage in activities to improve service systems for children and families within the community;

(3) Addressing a geographic area of a county or two or more contiguous counties;

(4) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members of the governing body, and having family representatives as the majority of the nonproviders;

(5) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency and the county school district, on the governing body;

(6) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

(b) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

§5-26-3. Duties of cabinet generally.

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

(1) Establish, oversee, evaluate and provide technical assistance, and such moneys as may be made available by
legislative appropriation to family resource networks, starting
points centers, early parent education programs and other
community based initiatives;

(2) Develop a cross-agency multi-year state plan consistent
with priorities established by local plans developed by family
resource networks, which includes provisions for regular
updates of the plan and which requires the cabinet to:

(A) Articulate core results desired by the state for its
children and families;

(B) Choose indicators to measure progress in reaching core
results:

(C) Establish baseline data for measuring progress by
examining current conditions and trends;

(D) Set targets and explore strategies for improving the
lives of children and families;

(E) Put selected strategies into action to achieve core
results;

(F) Monitor progress and make course corrections as
necessary; and

(G) Identify tools to achieve articulated goals, including:

(i) Shifting focus from process to core results;

(ii) Increasing flexibility to remove barriers, encourage
innovation and provide incentives for achieving results;

(iii) Providing flexible financing to reinvest savings and
decategorize, pool, redeploy or reinstate funding;

(iv) Employing results-based budgeting; and
(v) Improving accountability through results-based decision making.

(3) Prepare a proposed budget for the operation of the cabinet and recommend it to the governor for inclusion in the executive budget to be submitted to the Legislature;

(4) Promote the work of the governor's cabinet on children and families in order to engender strong support from the community, the Legislature and business leaders;

(5) Report annually to the joint committee on government and finance on its progress in implementing the comprehensive multi-year state plan required under subdivision (2) of this section; and

(6) Submit an annual electronic report before the first day of January to the Legislature and a written copy of the report to the legislative librarian on its financial transactions for the preceding year, minutes of its meetings, narrative descriptions of any training sessions, conferences or other events, and a progress report on its implementation of the comprehensive multi-year state plan required under subdivision (2) of this section.

§5-26-4. Powers of cabinet generally.

In addition to all other powers granted to the cabinet in this article and elsewhere by law, the cabinet may:

(1) Negotiate written agreements and procedures between and among departments of state government which assure that children and families are provided with health care, social services, appropriate education and vocational training, and any other services to which they may be entitled under state and federal law;
(2) Provide or contract with any agencies or persons in this state and other states for any facilities, equipment or service necessary to achieve the purposes of this article, and hire staff sufficient to carry out the duties and responsibilities of the cabinet;

(3) In addition to the citizens' advisory council established pursuant to section two-a of this article, form subcommittees, convene task teams or consult experts to advise the cabinet generally or on selected topics as necessary to accomplish its goals or to otherwise carry out its duties under this article;

(4) Develop and implement rules, standards and policies governing the internal operation and administration of the cabinet;

(5) Delegate any of the cabinet's powers, duties or functions as the cabinet may deem appropriate, expedient and effective;

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

(7) Waive rules that impede coordinated service delivery;

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

(9) Exercise any and all other powers, including the adoption of an official seal and the chartering of public or quasi-public corporations, necessary for the discharge of the
§5-26-8. Continuation of cabinet and council.

1. The cabinet and the council shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 127

(H. B. 4132 — By Delegates Mezzatesta, Cann, Frederick, Stalnaker, Sumner and Walters)

[Passed February 26, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §5B-2D-2, §5B-2D-3, §5B-2D-4, §5B-2D-5, §5B-2D-6 and §5B-2D-7 of the code of West Virginia, 1931, as amended, all relating to the West Virginia Guaranteed Work Force Program; updating terms; establishing that funds may be provided by the Legislature; requiring certain reporting and increasing the maximum amount that may be spent on certain training.

Be it enacted by the Legislature of West Virginia:

That §5B-2D-2, §5B-2D-3, §5B-2D-4, §5B-2D-5, §5B-2D-6 and §5B-2D-7 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-2. Definitions.

As used in this article, the following words and terms have the following meanings unless the context indicates another or different meaning or intent:

1. "WVDO" means the West Virginia development office;
2. "Employer" means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers;
3. "Retraining and job upgrade" means the specialized training that is given to an identified level of employees to enable them to advance to a higher level of employment;
4. "Program" means the West Virginia Guaranteed Work Force Program established pursuant to section three of this article;
5. "Training" means custom-designed training given to employees or prospective employees of new or expanding businesses and industries within the state;
6. "Training provider" means any persons, public or private educational institutions, agencies, companies or other entities that may be utilized for training or consultative services for an employer.
§SB-2D-3. Training program.

The West Virginia development office shall develop a business and industrial training program, the purpose of which is to provide assistance for new or expanding businesses for the training, retraining or upgrading of the skills of potential employees. The program shall emphasize employee training specifically designed to accommodate the needs of individual employers. The program shall encourage the expansion of existing businesses and industries within the state, promote retention of businesses and industries within the state, promote retention of existing jobs within the state, prevent economic and industrial out-migration, and assist in the relocation of out-of-state businesses and industries in the state. Under this program, the West Virginia development office may pay up to one hundred percent or two thousand dollars per employee, whichever is less, of training costs of new employees in firms creating at least ten jobs in a one-year period. Training assistance may also be provided to existing businesses in cases in which training, retraining or upgrading services will result in the retention of existing jobs or the creation of additional jobs, or both: Provided, That the West Virginia development office may pay up to one hundred percent or two thousand dollars per employee, whichever is less, for the training, retraining or upgrading. Training costs associated with this program will be paid directly by the training provider.

Provision of training services will depend upon the employer meeting program requirements as set forth by the West Virginia development office and this article. The state of West Virginia guarantees if employer satisfaction is not achieved, the West Virginia development office will carefully review the effectiveness of the recently completed training plan and program with the employer and the training provider. After such review, if the West Virginia development office determines that the training program was inadequate to meet the
employer’s specifications and satisfaction as originally agreed to, then those employees so trained shall be eligible for retraining under the guarantee provision except when the training program curriculum or provider were selected solely at the discretion of the employer, then no such additional training shall be considered or approved: *Provided,* That in no instance may the cost of training and retraining an employee exceed four thousand dollars.

§5B-2D-4. Funds.

The funds made available by this section shall supplement but not displace funds available through existing programs conducted by employers themselves and public programs such as the Workforce Investment Act (WIA), the Carl D. Perkins Vocational Education Act, the Stewart B. McKinney Homeless Assistance Act, and the JOBS Act, or apportionment fund allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that the program established pursuant to this section shall not replace, parallel, supplant, compete with, or duplicate in any way existing, approved apprenticeship programs.

The fund shall consist of all moneys provided by the Legislature and also any contributions, grants or bequests received from federal, private or other sources. Appropriations made from the funds shall be for the purpose of providing contractual services through the West Virginia development office for vocational related training or retraining provided by public or private training institutions within West Virginia and for contracted services through the West Virginia development office for vocational related training, retraining or upgrading provided by public or private training institutions located outside of West Virginia and for vocational related training or
retraining provided on site, within West Virginia by any training provider as defined in this article.

§5B-2D-5. Program activities.

The primary concern in the provision of training services shall be the needs and types of services identified by the employer. A college or university, community college or area vocational education center shall be given initial consideration to provide any training, retraining, or job upgrade training. The employer will have the opportunity to participate in the selection of a training provider and training program curriculum. Training services may begin upon execution of a written agreement between the West Virginia development office and the employer.

Program activities may include, but not be limited to, the following:

(a) The performance of a job skills analysis and the designing of a training curriculum for an employer.

(b) The recruitment and referral of trainee applicants to an employer.

(c) The provision of off site pre-employment training to prospective employees of a new or expanding business or industry or to existing employees for purposes of retraining or upgrading: Provided, That on site pre-employment training may be provided if off site pre-employment training is not practical.

(d) Retraining of employees in response to a technological change.

(e) The provision of job upgrade training, if the training will retain or increase the employer's total work force.
(f) Contracting with persons, public or private educational institutions, agencies or other bodies for training or consultative services for an employer.

(g) The provision of materials and supplies used in the training process, instructors with specialized skills, instructional training aids and equipment, consultative services relative to highly specific or technical data and other services.

(h) Assisting a foreign employer locating or expanding in this state by familiarizing the employer’s foreign personnel with the work attitudes, work methods, expectations, customs and life style of employees who work within this state.

(i) Taking any other action that is considered to be necessary or desirable for the furtherance of the provisions of this article.

Funds may not be awarded or reimbursed to any business or industry for the training, retraining or upgrading of skills of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage.

§5B-2D-6. Reporting.

(a) The office shall file a report with the Legislature, the legislative oversight commission on workforce investment for economic development and the governor at the end of each fiscal year, commencing June thirtieth, one thousand nine hundred ninety. This report shall include the following:

(1) The number of persons trained and their demographics;

(2) The number of persons placed in employment;

(3) The number of employers for which persons have been trained and placed;
(4) The number of persons trained and placed for each employer;

(5) The types of work for which persons have been trained;

(6) The source of training fund; and

(7) The overall effectiveness of this article in contributing to economic stabilization and business and industrial growth within this state.

(b) In addition, the West Virginia development office shall report on a quarterly basis to the West Virginia workforce investment council and the legislative oversight commission on workforce investment for economic development the following as they relate to the training program established by this article:

(1) The names of all companies approved for training during the reporting quarter;

(2) The names of all companies receiving funding for training during the reporting quarter;

(3) The amount and source of funds utilized for each training program;

(4) The type of training being delivered;

(5) The number of employees trained; and

(6) Those agencies providing the training.

§5B-2D-7. Marketing.

The West Virginia development office shall market and promote the program.
AN ACT to amend and reenact §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended; to amend and reenact §51-2A-2 of said code, all relating to the modification of procedures for the appointment of guardians for minor children.

Be it enacted by the Legislature of West Virginia:

That §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §51-2A-2 of said code be amended and reenacted, all to read as follows:

Chapter 44. Administration of Estates and Trusts.
51. Courts and Their Officers.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.
§44-10-4. Right of minor to nominate guardian.
§44-10-5. Bond of guardian.
§44-10-6. Curator; bond; powers and duties.
§44-10-3. Appointment and revocation of guardian by county commission.

1. (a) The circuit court or family court of the county in which the minor resides, or if the minor is a nonresident of the state, the county in which the minor has an estate, may appoint as the minor’s guardian a suitable person. The father or mother shall receive priority. However, in every case, the competency and fitness of the proposed guardian and the welfare and best interests of the minor shall be given precedence by the court when appointing the guardian.

2. (b) Within five days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hear the petition for the appointment of a guardian within ten days after the petition is filed.

3. (c) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

   (1) The minor reaches the age of eighteen and executes a release stating that the guardian estate was properly administered and that the minor has received the assets of the estate from the guardian;

   (2) The guardian or the minor dies;

   (3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

   (4) A petition is filed by the guardian, the minor, an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian.

4. (d) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor.
Provided, That another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

§44-10-4. Right of minor to nominate guardian.

(a) If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly.

(b) If the guardian nominated by the minor is not appointed by the court, or if the minor resides outside the state, or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

§44-10-5. Bond of guardian.

(a) Every guardian, except in the case of a testamentary guardian where the will otherwise directs and the court in which the will is recorded deems it unnecessary for the safety of the ward, shall give bond with security to be approved by the court by whom he or she is appointed, or before whom he or she accepts the trust, in such penalty as shall be prescribed by the court.

(b) The bond shall be given before the clerk of the court in which the petition is filed.

§44-10-6. Curator; bond; powers and duties.

Until a guardian gives bond, or while there is no guardian, the circuit or family court, may, from time to time, appoint a curator, who shall give bond, and during the continuance of his
4 or her trust, have all the powers and perform all the duties of a
5 guardian, and be responsible in the same way.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate mainte-
4 nance brought under the provisions of article three, four or five,
5 chapter forty-eight of this code except as provided in subsec-
6 tions (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of articles eleven, twelve and fourteen,
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of this
12 code and any dependent claims related to such actions regard-
13 ing child support, parenting plans or other allocation of custo-
14 dial responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under the
16 provisions of article ten, chapter forty-eight of this code;

17 (5) All actions for the interstate enforcement of family
18 support brought under article sixteen, chapter forty-eight of this
19 code and for the interstate enforcement of child custody brought
20 under the provisions of article twenty, chapter forty-eight of
21 this code;

22 (6) All actions for the establishment of a parenting plan or
23 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 proceed-
ings, 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;

(16) All proceedings to obtain spousal support brought under article eight, chapter forty-eight of this code; and

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to sections three, four and six, article ten, chapter forty-four of this code, exercising concurrent jurisdiction with the circuit court.

(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 supercede 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 responsibility 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 129

(Com. Sub. for S. B. 554 — By Senator Fanning)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §44A-4-5 of the code of West Virginia, 1931, as amended, relating to continuing the guardianship or conservatorship of protected persons; and continuing the authority of a guardian or conservator for limited decisionmaking regarding the body of a deceased protected person.

Be it enacted by the Legislature of West Virginia:

That §44A-4-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. TERMINATION, REVOCATION AND MODIFICATION OF APPOINTMENTS.
§44A-4-5. Termination of guardianship or conservatorship of protected person - When authorized.

1 A guardianship or conservatorship of a protected person shall terminate upon the death of the protected person: Provided, That in the absence of an advanced directive or preneed burial or cremation contract, after the death of the protected person, a guardian or a conservator, if there is no guardian, shall continue to have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian's or conservator's authority shall continue until an executor or executrix or an administrator or administratrix has been appointed. A guardianship or conservatorship shall terminate whenever jurisdiction is transferred to another state or if ordered by the court following a hearing on the petition of any interested person. In the case of a missing person, a conservatorship shall terminate when the person's death is established by the production of a certified death certificate, the person is presumed dead pursuant to the provisions of article nine, chapter forty-four of this code or the missing person is located.

CHAPTER 130

(Com. Sub. for H. B. 2755 — By Delegates Stemple, Kominar, Pethtel, Crosier, Williams and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §16-1-4 of the code of West Virginia, 1931, as amended, relating to authorizing the secretary of the department of health and human resources to promulgate emer-
gency rules to regulate opioid treatment centers; establishing a
moratorium on licensure of new opioid treatment facilities without
certificates of need until emergency rule filed; and establishing
time period for compliance.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

The secretary may propose rules, in accordance with the
provisions of article three, chapter twenty-nine-a of the code,
that are necessary and proper to effectuate the purposes of this
chapter. The secretary may appoint or designate advisory
councils of professionals in the areas of hospitals, nursing
homes, barbers and beauticians, postmortem examinations,
mental health and mental retardation centers and any other
areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation
of:

(a) Land usage endangering the public health: Provided.
That no rules may be promulgated or enforced restricting the
subdivision or development of any parcel of land within which
the individual tracts, lots or parcels exceed two acres each in
total surface area and which individual tracts, lots or parcels
have an average frontage of not less than one hundred fifty feet
even though the total surface area of the tract, lot or parcel
equals or exceeds two acres in total surface area, and which
tracts are sold, leased or utilized only as single family dwelling
units. Notwithstanding the provisions of this subsection,
nothing in this section may be construed to abate the authority
of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single family dwelling unit; (2) propose or enforce rules applicable to single family dwelling units for single family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals, and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public
water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, pro-
scription of additives, proscription of sale and other require-
ments in accordance with article seven of this chapter, as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emer-
gency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications, and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: Provided, That any regulation of emergency medical service attendants and emergency medical care technician-paramedics shall not exceed the provisions of article four-c of this chapter;
(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: Provided, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the bureau for public health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;

(i) The collection of data on health status, the health system and the costs of health care:

(j) Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code. The secretary shall promulgate emergency rules to govern such programs: Provided, That there shall be a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of this subsection until such time as the secretary files emergency rules with the secretary of state to regulate such programs. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of this rule; and
(k) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

CHAPTER 131

(H. B. 4371 — By Delegates Michael, Craig, Leach, Morgan and Perdue)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §16-29F-1 of the code of West Virginia, 1931, as amended, relating to extending the pilot program for the uninsured and underinsured from two thousand four to two thousand six.

Be it enacted by the Legislature of West Virginia:

That §16-29F-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.

§16-29F-1. Uninsured and underinsured health coverage assistance; pilot program.

(a) The United States department of health and human services has established a federal grant program to encourage innovative integrated health care delivery systems to serve uninsured and underinsured persons with greater efficiency and improved quality of care and to further maximize reimbursements to health care providers which provide these services. The “Community Access Program” grants as authorized in the
8 federal register: February 4, 2000 (volume 65, number 24),
9 allow for the establishment of local programs to reorganize and
10 reintegrate local health care delivery systems. This section
11 authorizes, on a trial basis, the establishment of pilot programs
12 in the state which receive a grant under the community access
13 program to coordinate health care provider reimbursements, to
14 allow an opportunity for innovations in payment for health care
15 services to be tested and, if successful, to be permanently
16 implemented.

(b) An entity receiving a community access program grant
17 may initiate a program that comports to the federal grant
18 requirements and meets the requirements of this section. The
19 pilot program may enroll persons to participate in this pilot
20 program who currently do not have insurance and whose
21 income does not exceed two hundred fifty percent of the federal
22 poverty level. The pilot program may coordinate payments
23 from enrollees and businesses employing enrollees to be
24 utilized to capture available federal moneys to assist in providing
25 reimbursements to enrollee’s health care providers. The
26 pilot program shall coordinate reimbursements limited to areas
27 not covered by other federal reimbursement programs such as
28 the children’s health insurance agency within the department of
29 administration and the federal medicaid program. In no instance
30 may the pilot program allow health care reimbursements to
31 enrollees and to health care providers that limit or otherwise
32 impede the eligibility of the enrollee or the health care provider
33 to be eligible for these or other federal health care cost reim-
34 bursement programs.

(c) Notwithstanding the provisions of chapter thirty-three
36 of this code to the contrary, any grant program created and
37 authorized pursuant to this section is not to be considered as
38 providing insurance or as offering insurance services. Commu-
39 nity access pilot programs are specifically excluded from the
40 definitions of “insurance” and “insurer” as defined in article
one, chapter thirty-three of this code, and these programs are not subject to regulation by the insurance commissioner, nor are they unauthorized insurers pursuant to section four, article forty-four of chapter thirty-three of this code.

(d) The community access pilot program is authorized to enter into agreements with health care providers to coordinate and otherwise provide services to enrollees. These agreements must be contingent on the health care provider agreeing to accept payment from the community access pilot program based on available funding to the program for the health care services being provided. If the health care provider decides to no longer accept the community access pilot program's enrollee's reimbursement, the health care provider must provide, at a minimum, thirty days' notice of discontinuance of providing services and further acceptance of enrollee's payments.

(e) The community access pilot program must provide enrollees and the participating employer with a minimum of thirty days' notice of discontinuance or reduction of enrollee benefits.

(f) The community access pilot program must submit quarterly reports to the legislative oversight commission of health and human resources accountability as established in article twenty-nine-e of this chapter. The report shall include at a minimum, analysis of the financial status, the number of health care provider reimbursements, enrollee services utilized and other information as requested by the commission.

(g) The authorization for the creation and existence of a pilot program as established pursuant to this section expires on the thirtieth day of June, two thousand six.
AN ACT to amend and reenact §11-27-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-27-37, relating to increasing the health care provider tax imposed on gross receipts of providers of nursing facility services and establishing a contingent provider tax increase if certain conditions occur; specifying condition precedent to tax increase; study panel; and setting forth effective date.

Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the code of West Virginia, 1931, as amended, be amended and reenacted; and to further amend said code by adding thereto a new section, designated §11-27-37, all to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

§11-27-37. Contingent increase in rates of certain health care provider taxes.
facilities, other than those services of intermediate care
facilities for the mentally retarded, there is hereby levied and
shall be collected from every person rendering such service an
annual broad-based health care-related tax: Provided, That
hospitals which provide nursing facility services may adjust
nursing facility rates to the extent necessary to compensate for
the tax without first obtaining approval from the health care
authority: Provided, however, That the rate adjustment is
limited to a single adjustment during the initial year of the
imposition of the tax which adjustment shall be exempt from
prospective review by the health care authority and further
which is limited to an amount not to exceed the amount of the
tax which is levied against the hospital for the provision of
nursing facility services pursuant to this section. The health
care authority shall retroactively review the rate increases
implemented by the hospitals under this section during the
regular rate review process. A hospital which fails to meet the
criteria established by this section for a rate increase exempt
from prospective review shall be subject to the penalties
imposed under article twenty-nine-b, chapter sixteen of the
code.

(b) Rate and measure of tax. -- The tax imposed in subsec-
tion (a) of this section shall be five and one-half percent of the
gross receipts derived by the taxpayer from furnishing nursing
facility services in this state, other than services of intermediate
care facilities for the mentally retarded. This rate shall be
increased to five and ninety-five one hundredths percent of the
gross receipts received or receivable by providers of nursing
facility services after the thirtieth day of June, two thousand
four.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receiv-
able, whether in cash or in kind, from patients, third-party
payors and others for nursing facility services furnished by the
37 provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

38

(2) "Nursing facility services" means those services that are nursing facility services for purposes of Section 1903(w) of the Social Security Act.

39

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

40

§11-27-37. Contingent increase in rates of certain health care provider taxes.

1

(a) Increase in rates of certain provider taxes. -- Notwithstanding any provision of this code to the contrary:

2

(1) The rate of the tax imposed by section four of this article on providers of ambulatory surgical centers shall be two and thirty-six hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section;

3

(2) The rate of the tax imposed by section nine of this article on providers of inpatient hospital services shall be three and thirty-eight hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section;

4

(3) The rate of tax imposed by section ten of this article on providers of intermediate care facility services shall be five and ninety-five hundredths percent of the gross receipts received or
receivable by providers on and after the first day of the calendar
month as provided in subsection (b) of this section; and

(4) The rate of the tax imposed by section fifteen of this
article on providers of outpatient hospital services shall be three
and thirty-eight hundredths percent of the gross receipts
received or receivable by providers on and after the first day of
the calendar month as provided in subsection (b) of this section.

(b) Effective date. -- This section shall take effect as
provided in article six, section thirty of the constitution of this
state: Provided, That this section does not apply to any
taxpayer unless and until all of the following have occurred:
(1) The governor makes a determination that both estimated
general revenue fund collections and the funds available to fund
this state's medicaid program as set forth in the annual budget
bill enacted by the Legislature will both be less in the next
fiscal year than those funds are estimated to be in the current
fiscal year, with this decrease being a result of changes, or
anticipated changes, in the medicaid program at the federal
level or a result of federal administrative actions with respect to
this state's medicaid program; (2) the governor notifies the
president of the Senate and the speaker of the House of Dele-
gates of this determination; (3) the governor issues an executive
order convening a panel to study and examine possible alterna-
tive means of addressing and resolving the anticipated medicaid
program budget shortfall, which panel shall include, but may
not be limited to, one or more representatives of each group of
providers upon which the provider tax increases contemplated
by this section may be imposed; (4) this panel is afforded not
less than seventy-five days in which to conduct its study and
provide a report and recommendations to the governor, the
president of the Senate and the speaker of the House of Dele-
gates; and (5) the Legislature adopts a resolution authorizing
imposition of the rate increases described in this section. If,
and only if, no other solution than the tax increase set forth
herein is implemented by either administrative or legislative action in response to the report and recommendations of the study panel to the anticipated medicaid budget shortfall, and upon adoption of a resolution of the Legislature, the provisions of this section shall become effective on the date specified by the Legislature in the resolution.

CHAPTER 133

(H. B. 4523 — By Delegates Michael, Doyle, G. White and Foster)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, all relating to horse and dog racing generally; defining certain terms; allowing a yearling horse to be shipped from the state to obtain veterinary services without losing its status as an accredited thoroughbred horse; authorizing thoroughbred racetrack licensees to enter into agreements with local Horsemen's Benevolent and Protective Association for payment of up to two percent of purses actually paid for medical trusts for backstretch personnel and administrative fees; allowing certain racing associations or licensees qualifying for an alternate tax, when conducting more than one racing performance a day, to increase the number of races each performance may have to thirteen, before it must pay both the daily license tax and the alternative tax; requiring owners of accredited West Virginia whelped greyhounds to be both bona fide residents of West Virginia and registered for purposes of receiving funds from the greyhound breeding development fund; establishing qualifications
to be considered a bona fide resident; establishing qualifications for considerations as an accredited West Virginia whelped greyhound; providing breeding requirements for mares participating in the West Virginia futurity; and increasing the amount of restricted thoroughbred horse races in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.


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

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

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

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

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.


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

3 (1) “Horse racing” means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;
(2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

(3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle and shall not include any form of horse racing in which the horses are mounted by jockeys;

(4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

(5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;

(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;
(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article:

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and the reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total
to be divided among the first three contestants on the basis of the number of wagers on these;

(19) “Pari-mutuel clerk” means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) “Pool” means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) “Legitimate breakage” is the percentage left over in the division of a pool;

(22) “To the dime” means that wagers shall be figured and paid to the dime;

(23) “Code” means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

(24) “Accredited thoroughbred horse” means a thoroughbred horse that is: (a) Foaled in West Virginia; (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace: (A) for the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company, or (B) for obtaining veterinary services, documented by veterinary reports;

(25) “Accredited West Virginia sire” is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia thoroughbred breeders association;
(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided for in section thirteen-b of this article; and

(30) "Registered Greyhound Owner" means an owner of a greyhound that is registered with the National Greyhound Association.

(31) "Fund" means the West Virginia thoroughbred development fund established in section thirteen-b of this article.

(32) "Regular Purse" means both regular purses and stakes purses.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.
(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by the licensee within the confines of the licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee’s racetrack at which any horse or dog race meeting is conducted or held.

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

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

Each licensee that permits or conducts pari-mutuel wagering at the licensee’s thoroughbred horse racetrack shall annually pay five hundred thousand dollars from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the racing commission for transfer to a pension plan established by the racing commission for all back-stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable forepersons licensed by the racing commission to participate in horse racing in this state and their dependents.

Each thoroughbred racetrack licensee is authorized to enter into an agreement with its local Horsemen’s Benevolent and
Protective Association under which an agreed upon percentage of up to two percent of purses actually paid during the preceding month may be paid to the local Horsemen’s Benevolent and Protective Association from the special fund required by this section for their respective medical trusts for backstretch personnel and administrative fees.

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

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

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

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

For the purposes of this section, “municipality” means and includes any Class I, Class II and Class III city and any Class IV town or village incorporated as a municipal corporation under the laws of this state prior to the first day of January, one thousand nine hundred eighty-seven.

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

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

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

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven of the total pari-mutuel pools for the day.

The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the division of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may consider appropriate for review.

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

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

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

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal
(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the commission a surety bond in an amount to be determined by the commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

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

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in
subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at two percent of the pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at one and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at one percent of the pool; for fiscal year one thousand nine hundred ninety, be calculated at seven tenths of one percent, and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter be calculated at four tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at three percent of the pool; for fiscal year one thousand nine hundred eighty-seven, be calculated at two and one-half percent; for fiscal year one thousand nine hundred eighty-eight, be calculated at two percent of the pool; for fiscal year one thousand nine hundred ninety, be calculated at one and seven-tenths percent of the pool; and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter, be calculated at one and four-tenths percent of the pool: Provided, That out of the amount realized from the three tenths of one percent
decrease in the tax effective for fiscal year one thousand nine
hundred ninety-one and thereafter, which decrease correspond-
ingly increases the amount of commission retained by the
licensee, the licensee shall annually expend or dedicate: (i) One
half of the realized amount for capital improvements in its barn
area at the track, subject to the racing commission’s prior
approval of the plans for the improvements; and (ii) the
remaining one half of the realized amount for capital improve-
ments as the licensee may determine appropriate at the track.
The term “capital improvement” shall be as defined by the
 Internal Revenue Code: Provided, however, That any racing
association operating a horse racetrack in this state having an
average daily pari-mutuel pool on horse racing of two hundred
eighty thousand dollars or less per day for the race meetings of
the preceding calendar year shall, in lieu of payment of the pari-
mutuel pool tax, calculated as in this subsection, be permitted
to conduct pari-mutuel wagering at the horse racetrack on the
basis of a daily pari-mutuel pool tax fixed as follows: On the
daily pari-mutuel pool not exceeding three hundred thousand
dollars the daily pari-mutuel pool tax shall be one thousand
dollars plus the otherwise applicable percentage rate imposed
by this subsection of the daily pari-mutuel pool, if any, in
excess of three hundred thousand dollars: Provided further.
That upon the effective date of the reduction of the daily pari-
mutuel pool tax to one thousand dollars from the former two
thousand dollars, the association or licensee shall daily deposit
five hundred dollars into the special fund for regular purses
established by subdivision (1), subsection (b), section nine of
this article: And provided further, That if an association or
licensee qualifying for the foregoing alternate tax conducts
more than one racing performance, each consisting of up to
thirteen races in a calendar day, the association or licensee shall
pay both the daily license tax imposed in subsection (a) of this
section and the alternate tax in this subsection for each perfor-
ance: And provided further, That a licensee qualifying for the
foregoing alternate tax is excluded from participation in the
fund established by section thirteen-b of this article: And
provided further, That this exclusion shall not apply to any
thoroughbred racetrack at which the licensee has participated in
the West Virginia thoroughbred development fund for more
than four consecutive years prior to the thirty-first day of
December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commis-
sion to conduct harness racing and permitting and conducting
pari-mutuel wagering under the provisions of this article shall,
in addition to the daily license tax required under subsection (a)
of this section, pay to the racing commission, from the commis-
sion deducted each day by the licensee from the pari-mutuel
pools on harness racing, as a tax, three percent of the first one
hundred thousand dollars wagered, or any part thereof; four
percent of the next one hundred fifty thousand dollars; and five
and three-fourths percent of all over that amount wagered each
day in all pari-mutuel pools conducted or made at any and
every harness race meeting of the licensee licensed under the
provisions of this article.

(d) Any racing association licensed by the racing commis-
sion to conduct dog racing and permitting and conducting pari-
mutuel wagering under the provisions of this article shall, in
addition to the daily license tax required under subsection (a) of
this section, pay to the racing commission, from the commis-
sion deducted each day by the licensee from the pari-mutuel
pools on dog racing, as a tax, four percent of the first fifty
thousand dollars or any part thereof of the pari-mutuel pools,
five percent of the next fifty thousand dollars of the pari-mutuel
pools, six percent of the next one hundred thousand dollars of
the pari-mutuel pools, seven percent of the next one hundred
fifty thousand dollars of the pari-mutuel pools, and eight
percent of all over three hundred fifty thousand dollars wagered
each day: Provided, That the licensee shall deduct daily from
the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund”. The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the registered greyhound owner of the accredited West Virginia whelped greyhound must be a bonafide resident of this state. To qualify as a bonafide resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the state of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The racing commission and the West Virginia registered greyhound owners and breeders association shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped
dogs, owned by residents of this state under rules promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners’ awards shall be distributed according to the ratio of purses earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners’ purse supplements.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog’s earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the
fifteenth day of each month for the preceding month's achievements.

In no event shall purses earned at a meet held at a track which did not make contributions to the West Virginia greyhound breeder's development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of fifty thousand dollars per annum, to be paid in equal quarterly installments of twelve thousand five hundred dollars per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on the first day of July, one thousand nine hundred ninety-three, and ending the thirtieth day of June, one thousand nine hundred ninety-six. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. The racing commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the racing commission and placed in a special revenue account hereby created in the state treasury
225 called the “administration, promotion and educational account”. The racing commission is authorized to expend the moneys deposited in the administration, promotion and educational account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year’s expenditures and projected expenditures for the next year.

244 The racing commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

250 (e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

256 (f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine
and ten of this article, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

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

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

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within ninety days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in this subsection. The racing commission shall maintain separate accounts for each licensee and shall record in each separate account the moneys turned over by the licensee and the amount expended at the licensee’s track for the purposes set forth in this subsection. The moneys in the West Virginia racing commission special account - unredeemed pari-mutuel tickets shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the owner of the horse is at the time of the horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by the horse at that race: Provided, however, That in the event there are more than ten races in any performance, the award to the resident owner of the winning horse will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he or she filed a personal income tax return in this state for the previous two years and that he or she owned real or personal property in this state and paid taxes in this state on real or personal property for the previous two years, he or she shall be presumed to be a bona fide resident of this state; and
(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten percent of the purse won by the horse: Provided, however, That in the event there are more than ten races in any performance, the award to the breeder will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare which foaled the winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by the horse: Provided, however, That in the event there are more than ten races in any performance, the award to the owner of the stallion will be percentage of the purse based upon the fractional share represented by the number of races on the day of the performance; and

(4) To those horse racing licensees not participating in the thoroughbred development fund authorized in section thirteen-b of this article, the unexpended balance of the licensee’s account not expended as provided in subdivisions (1), (2) and (3) of this subsection: Provided, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee’s track: Provided, however, That the capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) When the moneys in the special account, known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets will more than satisfy the requirements of subdivisions (1), (2), (3) and (4) of this subsection, the West
Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: Provided, That subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied:

(A) Transfer annually two hundred thousand dollars to the West Virginia racing commission special account - West Virginia greyhound breeding development fund;

(B) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks; and

(C) Transfer annually two hundred thousand dollars to a trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to a legislative rule proposed for promulgation by the commission and authorized by the Legislature, as the representative of the majority of the active jockeys in West Virginia, for the purpose of providing health and disability benefits to eligible active or disabled West Virginia jockeys and their dependents in accordance with eligibility criteria established by said organization. For purposes of this section in determining health benefits, an eligible active jockey is one who rides at least one hundred mounts per calendar year of which fifty-one must be in the state of West Virginia: Provided, That a jockey is not eligible for health benefits if he or she receives health benefits from any other state; and
(D) After all payments to satisfy the requirements of (A), (B) and (C) of this proviso have been satisfied, the commission shall have authority to transfer one hundred fifty thousand dollars left from all uncashed pari-mutuel tickets to the trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to legislative rule proposed for promulgation by the commission and authorized by the Legislature as the representative of the majority of the active jockeys in West Virginia.

(c) The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.

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

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

(f) The racing commission is authorized to promulgate emergency rules, prior to the first day of July, two thousand four, to incorporate the revisions to this article enacted during the two thousand four regular legislative session.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.
(a) The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia racing commission special account — West Virginia thoroughbred development fund.” Notice of the amount, date and place of the deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state treasury called the “administration and promotion account.”

(b) The racing commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.
(c) The fund and the account established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the thoroughbred development fund shall be expended for awards and purses except as otherwise provided in this section. Annually, the first three hundred thousand dollars of the fund shall be available for distribution for stakes races. One of the stakes races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. For the purpose of participating in the West Virginia futurity only, all mares, starting with the breeding season beginning the first day of February through the thirty-first day of July, two thousand four, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia thoroughbred breeders association. The remaining races may be chosen by the committee set forth in subsection (g) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision (1) may only be paid
(2) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision (2) shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.

(3) The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.
(4) In no event may purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be used to fund the races established in subsection (g) of this section. Any amount not so used shall revert back into the general account of the thoroughbred development fund for distribution in the next year.

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

(f) The remainder, if any, of the thoroughbred development fund that is not available for distribution in the program provided for in subsection (e) of this section in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided in this subsection (f).

(1) Fifty percent of the remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article.

(2) Up to five hundred thousand dollars per year shall be available for:

(A) Capital improvements at the eligible licensed horse racing tracks in the state; and

(B) Marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertis-
ing purposes as described in this subsection only in accordance
with a plan filed with and receiving the prior approval of the
racing commission, and on a basis of fifty percent participation
by the licensee and fifty percent participation by moneys from
the fund, in the total cost of approved projects: Provided,
however, That funds approved for one track may not be used at
another track unless the first track ceases to operate or is
viewed by the commission as unworthy of additional invest-
ment due to financial or ethical reasons.

(g)(1) Each pari-mutuel thoroughbred horse track shall
provide at least one restricted race per racing day: Provided,
That sufficient horses and funds are available.

(2) The restricted races established in this subsection shall
be administered by a three-member committee consisting of:

(A) The racing secretary;

(B) A member appointed by the authorized representative
of a majority of the owners and trainers at the thoroughbred
track; and

(C) A member appointed by a majority of the thoroughbred
breeders.

(3) The purses for the restricted races established in this
subsection shall be twenty percent larger than the purses for
similar type races at each track.

(4) Restricted races shall be funded by each racing associa-
tion from:

(A) Moneys placed in the general purse fund up to a
maximum of three hundred fifty thousand dollars per year.
(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the “West Virginia accredited race fund.”

(5) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(h) As used in this section, “West Virginia bred-foal” means a horse that was born in the state of West Virginia.

(i) To qualify for the West Virginia accredited race fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered by a West Virginia stallion following the birth of that West Virginia bred-foal.

(j) No association or licensee qualifying for the alternate tax provision of subsection (b), section ten of this article is eligible for participation in any of the provisions of this section: Provided, That the provisions of this subsection do not apply to a thoroughbred race track at which the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two.
190 (k) From the first day of July, two thousand one, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

CHAPTER 134

(H. B. 4468 — By Delegates Manuel, Doyle and Tabb)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §16-15-7 and §16-15-18 of the code of West Virginia, 1931, as amended, all relating to allowing housing development authorities to pay for persons of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument and the amount of impact fees imposed.

Be it enacted by the Legislature of West Virginia:

That §16-15-7 and §16-15-18 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. STATE HOUSING LAW.

§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.

§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.

(a) An authority is a body both corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others granted:

1. To investigate living and housing conditions in the authority's area of operation and the means and methods of improving the conditions;

2. To determine whether unsanitary or substandard housing conditions exist;

3. To study and make recommendations concerning the city or county plan in relation to the problems of clearing, replanning, redevelopment and reconstruction of areas in which unsanitary or substandard conditions exist, and the providing of housing accommodations for persons of low and moderate income, and to cooperate with any city, county or regional planning agency, to prepare, carry out and operate developments;

4. To provide for the construction, reconstruction, redevelopment, improvement, alteration or repair of any development or any part of a development;

5. To take over by purchase, lease or otherwise any development undertaken by any government;

6. To act as agent for the federal government in connection with the acquisition, construction, operation or management of a development or any part of a development;
(7) To arrange with the city or with a government for the furnishing, planning, replanning, opening or closing of streets, roads, roadways, alleys or other places or facilities, or for the acquisition by the city, county, state or federal government or any agency, instrumentality or subdivision thereof, of property, options or property rights or for the furnishing of property or services in connection with a development;

(8) To sell, lease or rent any of the housing or other accommodations of any of the lands, buildings, structures or facilities embraced in any development, and to establish and revise the rents or charges therefor;

(9) To enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by eminent domain or otherwise, sell, exchange, transfer, assign or mortgage any property real or personal or any interest therein;

(10) To acquire any property real or personal or any interest therein from any person, firm, corporation, or the city, county, state or federal government or any agency, instrumentality or subdivision thereof, by gift, grant, bequest or devise; to own, hold, clear and improve property; in its discretion, to insure or provide for the insurance of the property or operations of the authority against risks as the authority considers advisable;

(11) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness, and to secure them by mortgages upon property held or to be held by it or by pledge of its revenues, or in any other manner;

(12) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;
(13) To sue and be sued;

(14) To have a seal, and to alter it;

(15) To have perpetual succession;

(16) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(17) To form and operate nonprofit corporations and other affiliates of every kind and description, which may be wholly or partially owned or controlled, for carrying out the purposes of this article and in connection with the exercise of any of the powers of a housing authority;

(18) To participate in cooperative arrangements with persons and for-profit entities whose purpose is solely that of pecuniary gain, as well as with nonprofit entities and persons who seek no pecuniary gain. The participation of a housing authority in any arrangement with other persons or entities, including for-profit persons and entities, may not cause any activity engaged in by the authority to be characterized as proprietary nor deprive the authority of any privilege or immunity otherwise existing under law;

(19) To participate as a general or limited partner, coventurer, shareholder, or otherwise as a principal, an investor, a lender, a guarantor, a contracting party, or in any other manner, all upon terms and conditions, and with rights and obligations, as the governing board of the housing authority shall, from time to time, in its discretion determine to be appropriate;

(20) To make and, from time to time, amend and repeal bylaws and rules not inconsistent with this article to carry into effect the powers and purposes of the authority;
(21) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(22) To issue subpoenas requiring the attendance of witnesses or the production of documents and things, for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance;

(23) To pay, in whole or in part, for any person of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument, and any impact fee levied pursuant to article twenty, chapter seven of this code, with the condition that in the event the person receiving a payment under this subdivision sells the property attributable to the payment within five years from receiving the payment, the person will repay the full amount of the payment to the authority; and

(24) To do all things necessary or convenient to carry out the powers given in this article.

(b) Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more members thereof, or by counsel, or by an officer or employee specifically authorized by the authority to conduct it. Any member of the authority, its counsel, or any person designated by it to conduct an investigation or examination, shall have power to administer oaths, take affidavits and issue subpoenas.


(a) In the operation or management of housing developments an authority shall at all times observe the following
duties with respect to rentals, tenant selection and home
ownership:

(1) It may rent or lease dwellings in the developments only
to persons of eligible income and at rentals within the financial
reach of the persons;

(2) It may rent or lease to a tenant housing consisting of the
number of rooms, but no greater number, which it considers
necessary to provide safe and sanitary accommodations to the
proposed occupants, without overcrowding;

(3) Subject only to the limitations contained in this article
or imposed by the federal government, an authority may lease
or rent any dwellings, facilities or other real or personal
property owned, controlled, or possessed by the authority, or
with respect to which the authority has contractual rights
permitting the lease or rental, for terms, upon conditions and
lease terms and in exchange for rentals as the authority may
from time to time in its discretion determine; further, and
without limiting the foregoing, to establish rents in a manner
and in amounts as the authority considers appropriate, includ-
ing, but not limited to, rents based upon family income,
(determined with adjustments and exclusions as the authority
considers appropriate,) minimum rents, flat rents, graduated
rents, rent ranges, and maximum rents, (any of which may vary
among the authority’s developments,) and to establish any other
standards and conditions relating to rentals that the authority
considers appropriate to carry out the purposes of this article;

(4) At and subsequent to an acquisition of occupied
property, a housing authority may permit existing tenants in the
property to remain in occupancy upon terms and conditions and
for periods as the authority considers appropriate, notwithstanding that the tenants do not qualify as persons of eligible income;
(5) A housing authority may operate programs to increase home ownership by residents of its developments and by other persons of eligible income; and may acquire, rehabilitate, construct, reconstruct, sell, convey, lease, option, and take all other actions considered appropriate to achieve home ownership of dwellings and associated property by persons of eligible income. In connection with any program to encourage ownership, a housing authority may dispose of dwellings and other associated property in exchange or for fair market purchase prices, and upon terms and conditions, as the authority considers appropriate;

(6) To develop, acquire, own, lease and operate properties and facilities that are nonresidential in character, which are used for office, administrative, management, maintenance, commercial, or educational purposes, or providing services, or carrying out any other purpose authorized under this article; to acquire, own, lease, and operate properties and facilities that are both residential and nonresidential in character;

(7) To develop, acquire, own, or lease community facilities, and to provide such facilities to any public agency or to any person, agency, institution, or organization, public or private, for recreational, educational, health or welfare purposes for the benefit and use of the housing authority or occupants of its developments, or persons of eligible income, elderly or handicapped persons, or any combination of the foregoing; to operate or manage community facilities, itself, or as agent or any public agency, or any person, institution, or organization, public or private; and to receive compensation therefor, if any, as the parties may agree; community facilities may be utilized by private persons or organizations with or without charge, upon a determination by the authority that the utilization would be advisable to promote the public purposes of this article;
(8) To carry out plans, programs, contracts and agreements of every kind and description and to provide grants, loans, guarantees and other financial assistance to public or private persons or entities, whether nonprofit or for-profit, in order to rehabilitate, maintain, procure, and preserve existing affordable housing stocks in safe, decent and sanitary condition and to ensure that they remain affordable to persons of eligible income; and

(9) To pay, in whole or in part, for any person of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument, and any impact fee levied pursuant to article twenty, chapter seven of this code, with the condition that in the event the person receiving a payment under this subdivision sells the property attributable to the payment within five years from receiving the payment, the person will repay the full amount of the payment to the housing authority.

(b) A housing authority shall conduct its affairs in accordance with sound financial and business practices, taking into account the nature of its activities and intended purpose. Therefore, a housing authority shall establish and charge rents no higher than it determines to be necessary to produce revenue which, together with all other available money, revenue, income and receipts of the authority from whatever source derived, will be sufficient:

(1) To pay when due all indebtedness of the authority;

(2) To pay all administrative and other costs of operating the authority's developments and programs of assistance;

(3) To pay the administrative and other costs of the maintenance, rehabilitation, renovation, repair, and replacement of the authority's developments and other property;
(4) To otherwise carry out its purposes under this article, including acquiring or creating additional housing developments and acquiring or improving property for other purposes authorized under this article, including community facilities, commercial facilities, and all other facilities and developments authorized under this article;

(5) To pay the costs of insurance, including the costs of claims, liabilities, losses and other expenses incurred in connection with any self-insurance program;

(6) To provide funds for all required payments in lieu of taxes;

(7) To make all payments required under and otherwise fully perform the authority’s obligations under any contract, agreement, or arrangement entered into by the authority, including without limitation, those required in connection with any partnership or joint venture entered into by the authority;

(8) To perform the terms of any commitment or guarantee issued or given by the authority;

(9) To provide a reasonable return on the value of the property so as to enable the housing authority to continue to fulfill its duties, including, but not limited to, the acquisition of additional housing developments, land acquisition, acquisition or construction of buildings, equipment, facilities or other real or personal property for public purposes, including parks or other recreational, educational, welfare or community facilities within its area of operation;

(10) To accommodate economic factors which affect the financial stability and solvency of the authority’s developments and programs;
(11) To pay the cost of actions occasioned by natural disasters and other emergencies; and

(12) To create and maintain operating and capital reserves that are reasonable and adequate to ensure the authority’s ability to make all payments referred to herein and any other matter with respect to which the authority, in its discretion reasonably exercised, determines that the creation and maintenance of a reserve is appropriate.

Nothing in this section limits the amount which a housing authority may charge for nondwelling facilities or for dwelling facilities that are not rented to persons of eligible income: Provided, That the authority’s actions do not conflict with the purposes of this article: Provided, however, That a housing authority may allow police officers and maintenance and management employees, not otherwise eligible for residence, to reside in its developments.

CHAPTER 135

(H. B.4068 — By Delegates Stemple, Beach, Coleman, Swartzmiller, Williams, Yeager and Anderson)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §20-2-5 of the code of West Virginia, 1931, as amended, relating to allowing hunting of coyotes by use of amber colored artificial light with certain restrictions.

Be it enacted by the Legislature of West Virginia:
That §20-2-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the director or by law;

4 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it is lawful to hunt or take raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision: Provided, however, That it is lawful to hunt or take coyotes by the use of amber colored artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a
firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county or regional jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless
he or she has in his or her possession a permit in writing issued
to him or her by the director: Provided, That this section shall
not prohibit hunting or taking of unprotected species of wild
animals and wild birds and migratory wild birds, during the
open season, in the open fields, open water and open marshes
of the state;

(9) Have in his or her possession a loaded firearm or a
firearm from the magazine of which all shells and cartridges
have not been removed, in or on any vehicle or conveyance, or
its attachments, within the state, except as may otherwise be
provided by law or regulation. Except as hereinafter provided,
between five o'clock postmeridian of one day and seven
o'clock antemeridian, eastern standard time of the day follow-
ing, any unloaded firearm, being lawfully carried in accordance
with the foregoing provisions, shall be so carried only when in
a case or taken apart and securely wrapped. During the period
from the first day of July to the thirtieth day of September,
inclusive, of each year, the foregoing requirements relative to
carrying certain unloaded firearms are permissible only from
eight-thirty o'clock postmeridian to five o'clock antemeridian,
eastern standard time: Provided, That the time periods for
carrying unloaded and uncased firearms are extended for one
hour after the postmeridian times and one hour before the
antemeridian times established above if a hunter is preparing to
or in the process of transporting or transferring the firearms to
or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be taken
after the hour of five o'clock antemeridian on Sunday on
private land without the written consent of the landowner any
wild animals or wild birds except when a big game season
opens on a Monday, the Sunday prior to that opening day will
be closed for any taking of wild animals or birds after five
89 o'clock antemeridian on that Sunday: Provided, That traps
90 previously and legally set may be tended after the hour of five
91 o'clock antemeridian on Sunday and the person so doing may
92 carry only a twenty-two caliber firearm for the purpose of
93 humanely dispatching trapped animals. Any person violating
94 the provisions of this subdivision is guilty of a misdemeanor
95 and, upon conviction thereof, in addition to any fines that may
96 be imposed by this or other sections of this code, shall be
97 subject to a hundred dollar fine;
98
99 (11) Hunt with firearms or long bow while under the
100 influence of intoxicating liquor;
101
102 (12) Hunt, catch, take, kill, injure or pursue a wild animal
103 or bird with the use of a ferret;
104
105 (13) Buy raw furs, pelts or skins of fur-bearing animals
106 unless licensed to do so;
107
108 (14) Catch, take, kill or attempt to catch, take or kill any
109 fish at any time by any means other than by rod, line and hooks
110 with natural or artificial lures unless otherwise authorized by
111 law or rules issued by the director: Provided, That snaring of
112 any species of suckers, carp, fallfish and creek chubs shall at all
113 times be lawful;
114
115 (15) Employ or hire, or induce or persuade, by the use of
116 money or other things of value, or by any means, any person to
117 hunt, take, catch or kill any wild animal or wild bird except
118 those species on which there is no closed season, or to fish for,
119 catch, take or kill any fish, amphibian or aquatic life which is
120 protected by the provisions of this chapter or rules of the
121 director or the sale of which is prohibited;
122
123 (16) Hunt, catch, take, kill, capture, pursue, transport,
124 possess or use any migratory game or nongame birds included
125 in the terms of conventions between the United States and Great
Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living or dead, any wild bird, other than a game bird; or expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird was captured within or without this state, except the English or European sparrow (passer domesticus), starling (sturnus vulgaris), and cowbird (molothrus ater), which may not be protected and the killing thereof at any time is lawful;

(18) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at
(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, that dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, that nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, that the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, that any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided for in section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial and make same readily
available for inspection by any conservation officer upon request;

(26) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the director as authorized by subdivision (6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o’clock antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o’clock antemeridian: Provided, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:
Shall hunting on Sunday be authorized in _______ County?

[ ] Yes  [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection; Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5f, relating to authorizing the director of the division of natural resources to allow a nonresident to seasonally train dogs for coon hunting, if the nonresident’s state reciprocates for West Virginia residents; and establishing the dog training season.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-2-5f, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5f. Nonresident dog training for coon hunting; training season.

1 Notwithstanding subdivision (24), section five of this article or any other provision to the contrary, the director is authorized to allow a nonresident to train dogs for coon hunting in West Virginia, if the state in which the nonresident resides allows residents from West Virginia to train dogs for coon hunting. The dog training season for a nonresident to train dogs for coon hunting is from the fifteenth day of August of each year through the legal small game hunting season.
AN ACT to amend and reenact §33-1-10 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-3-14 of said code, all relating to definitions of casualty insurance and federal flood insurance; establishing special funds; and transferring collections on certain insurance premium taxes to benefit office of emergency services for flood plain enhancement activities.

Be it enacted by the Legislature of West Virginia:

That §33-1-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-3-14 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:
(a) Life insurance -- Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

(b) Accident and sickness -- Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness and insurance relating thereto. Group credit accident and health insurance may also include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purposes of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct. Any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder.

(c) Fire -- Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

(d) Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers,
bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, wind-
(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(e) Casualty -- Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provisions for medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal represen-
tatives of persons killed, irrespective of legal liability of the
insured, when issued as an incidental coverage with or supple-
mental to liability insurance;

(3) Burglary and theft insurance, which is insurance against
loss or damage by burglary, theft, larceny, robbery, forgery,
fraud, vandalism, malicious mischief, confiscation, or wrongful
conversion, disposal or concealment, or from any attempt at any
of the foregoing, including supplemental coverages for medical,
hospital, surgical and funeral benefits sustained by the named
insured or other person as a result of bodily injury during the
commission of a burglary, robbery or theft by another; also
insurance against loss of or damage to moneys, coins, bullion,
securities, notes, drafts, acceptances or any other valuable
papers and documents resulting from any cause;

(4) Personal property floater insurance, which is insurance
upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or
damage to glass, including its lettering, ornamentation and
fittings;

(6) Boiler and machinery insurance, which is insurance
against any liability and loss or damage to property or interest
resulting from accidents to or explosion of boilers, pipes,
pressure containers, machinery or apparatus and to make
inspection of and issue certificates of inspection upon boilers,
machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance,
which is insurance against loss or damage to any property or
interest caused by the breakage or leakage of sprinklers, hoses,
pumps and other fire extinguishing equipment or apparatus,
water mains, pipes and containers, or by water entering through
leaks or openings in buildings, and insurance against loss or
damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct; any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

(9) Malpractice insurance, which is insurance against legal liability of the insured and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals;
(11) Mine subsidence insurance as provided for in article thirty of this chapter;

(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy; and

(13) Federal flood insurance, which is insurance provided by the federal insurance administration or by private insurers through the write your own program within the national flood insurance program, instituted by the federal insurance administration pursuant to the provision of 42 U. S. C. §4071, on real or personal property of every kind and interest therein, against loss or damage from flood or mudslide and against loss consequential to such loss or damage, other than noncontractual liability for any loss or damage.

(f) Surety -- Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship: Provided, That surety insurance does not include the guaranteeing and executing of bonds by professional bondsmen in criminal cases or by individuals not in the business of becoming a surety for compensation upon bonds;

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious
metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation, and also insurance against loss or damage to such an insured’s premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt to commit such crimes; and

(4) Title insurance, which is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity or adverse claim to title.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of
section fourteen-c of this article, if any, less any adjustments to
the gross amount of the direct premiums made during the
calendar year, if any, and transmit with the return to the
commissioner a remittance in full for the tax due. The tax is the
sum equal to two percent of the taxable premium and also
includes any additional tax due under section fourteen-a of this
article. All taxes, except those received on write your own
federal flood insurance premium taxes, received by the com-
mmissioner shall be paid into the insurance tax fund created in
subsection (b) of this section: Provided, That no later than the
thirtieth day of June of each year, one million six hundred
sixty-seven thousand dollars of the portion of taxes received by
the commissioner from insurance policies for medical liability
insurance as defined in section three, article twenty-f of this
chapter and from any insurer on its medical malpractice line
shall be temporarily dedicated to replenishing moneys appropri-
ated from the tobacco settlement account pursuant to subsection
(c), section two, article eleven-a, chapter four of this code.
Upon determination by the commissioner that these moneys
have been fully replenished to the tobacco settlement account,
the commissioner shall resume depositing taxes received from
medical malpractice premiums as provided in subsection (b) of
this section.

(b) There is created in the state treasury a special revenue
fund, administered by the treasurer, designated the “insurance
tax fund”. This fund is not part of the general revenue fund of
the state. It consists of all amounts deposited in the fund
pursuant to subsection (a) of this section, sections fifteen and
seventeen of this article. except those received on write your
own federal flood insurance premium taxes, any appropriations
to the fund, all interest earned from investment of the fund and
any gifts, grants or contributions received by the fund.

(c) After the transfers authorized in this section, the
treasurer shall, no later than the last business day of each
month, transfer amounts the treasurer determines are not necessary for making refunds under this article to the credit of the general revenue fund.

(d) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the "flood insurance tax fund". This fund is not part of the general revenue fund of the state. All taxes collected pursuant to subsection (a) of this section from federal flood insurance policy premium taxes shall be deposited into the flood insurance tax fund. The flood insurance tax fund shall contain collections, any appropriations to the fund and any gifts, grants and contributions received.

(e) The treasurer is restricted to, and shall distribute from, the flood insurance tax fund for activities which promote and enhance flood plain management issues and for subgrants to local units of government and other eligible entities after full consideration of the recommendations of the office of emergency services.

CHAPTER 138

(Com. Sub. for H. B. 4004 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
code; to amend said code by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; to amend said code by adding thereto a new section, designated §33-22-2a; to amend said code by adding thereto a new section, designated §33-23-2a; to amend said code by adding thereto a new section, designated §33-24-4b; to amend said code by adding thereto a new section, designated §33-25-6a; to amend said code by adding thereto a new section, designated §33-25A-24b; to amend and reenact §33-41-1, §33-41-2 and §33-41-3 of said code; and to amend said code by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all relating to insurance generally; requiring the insurance commissioner to submit a report to the Legislature on the impact of third party causes of actions on rates and availability and to make recommendations; authorizing the commissioner to request information from insurers; providing that certain information provided by insurers is not subject to disclosure; requiring the insurance commissioner to submit a report to the Legislature on the office of the consumer advocate; requiring the commissioner to make recommendations regarding the office of the consumer advocate; permitting additional reasons for nonrenewal of automobile liability or physical damage policies; requiring the submission of withdrawal plans in certain instances; providing that a certain percentage of existing policies or any policies issued or renewed after the effective date of the bill may be nonrenewed by an insurer for any reason with proper notice to the insured; providing that a certain percentage of policies may be nonrenewed for underwriting reasons; allowing insurers to elect a method of nonrenewal; requiring renewal in certain instances when there are restrictive endorsements; authorizing the commissioner of insurance to act regarding withdrawal of insurers from the state; authorizing the commissioner to allow certain insurers to withdraw from the state; requiring insurers and the insurance commissioner to submit information regarding the impact of legislation on rates
and availability; prevention and investigation of insurance fraud generally; subjecting farmers' mutual insurance companies, fraternal benefit societies, certain hospital, medical, dental and health services corporations, health care corporations, and health maintenance organizations to insurance fraud provisions; creating the West Virginia insurance fraud prevention act; legislative intent; defining terms; requiring fraud warning on forms; use of special assistant prosecutor; establishing an insurance fraud unit within agency of insurance commissioner; authorizing promulgation of rules; establishing powers and duties of the unit; establishing investigative powers and procedures; providing confidentiality of fraud unit records; immunity for providing information provided to law enforcement regarding fraud; exceptions; creating offense of insurance fraud; establishing penalties and fines; authorizing prosecution for insurance fraud; authorizing fraud unit attorneys to act as special prosecutors at request of county prosecutors; specifying duties of insurers; creating misdemeanor and felony offenses for the commission of fraudulent acts; creating civil penalties; granting authority to commissioner to administratively sanction regulated persons and insureds for violations of the article; and exceptions and immunities.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated § 33-2-15b and § 33-2-15c; that said code be amended by adding thereto a new section, designated §33-2-20; that §33-6A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; that said code be amended by adding thereto a new section, designated §33-22-2a; that said code be amended by adding thereto a new section, designated §33-23-2a; that said code be amended by adding thereto a new section, designated §33-24-4b; that said code be amended by adding thereto a new section, designated §33-25-6a; that said code be amended by adding thereto a new section, designated §33-25A-24b;
that §33-41-1, §33-41-2 and §33-41-3 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated§33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all to read as follows:

CHAPTER 33. INSURANCE.

Article
2. Insurance Commissioner.

6A. Cancellation or Nonrenewal of Automobile Liability Policies.

22. Farmers' Mutual Fire Insurance Companies.

23. Fraternal Benefit Societies.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


41. Insurance Fraud Prevention Act.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15b. Reports to the Legislature.

§33-2-15c. Reports to the Legislature.

§33-2-20. Authority of commission to allow withdrawal of insurance carriers from doing business in the state.

§33-2-15b. Reports to the Legislature.

1 (a) By the first of February, two thousand five, the commissioner shall submit to the Legislature a report on third party causes of action;

4 (b) The report shall contain the following information:

5 (1) The legal history of the creation of a third party causes of action brought pursuant to Unfair Trade Practices Act as codified in article eleven of this chapter;

8 (2) An analysis of the impact of third party causes of action upon insurance rates and the availability of insurance in this state;
(3) A summary of the types of data which the commissioner utilized in preparing the analysis: Provided, That the commissioner will not disclose information which is otherwise confidential: Provided, however, That if the commissioner is unable to obtain data which he or she considers necessary to preparing a full analysis, the commissioner shall state in the report:

(A) The reasons that he or she was not able to obtain the data;

(B) Recommendations or proposed legislation for facilitating the collection of necessary data and protecting proprietary information;

(4) Information on what other states have this cause of action;

(5) Based upon the findings of the commissioner, and if the findings so suggest, proposed legislation to address any reforms needed for third party claims under the Unfair Trade Practices Act;

(c) For purpose of preparing the report, the commissioner may request from companies authorized to conduct business in this state any information that he or she believes is necessary to determine the economic effect of third-party lawsuits on insurance premiums. The companies shall not be required to provide the information. Any information which the company agrees to provide, shall be considered confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b of this code, is not open to public inspection, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order. Notwithstanding any other provisions in this section, while the commissioner is to provide his or her general conclusions based upon the review of the data, the commissioner is
§33-2-15c. Reports to the Legislature.

(a) By the first of February, two thousand five, the commissioner shall submit to the Legislature a report relating to the office of the consumer advocate.

(b) The report shall contain the following information:

(1) An overview of the function of the office of the consumer advocacy and how the office addresses consumer complaints;

(2) The number of staff in the office of the consumer advocate and the structure of the existing office;

(3) Statistics reflecting the number of consumer complaints and types handled by the office from the first of January two thousand one until the first of January two thousand four;

(4) The number of states which have consumer advocates and the lines of insurance for which the advocates are authorized to act on behalf of consumers;

(5) The recommendation of the commissioner in regard to whether this state would benefit by having the role of the consumer advocate expanded to other lines of insurance;

(6) Based upon the findings and recommendations, of the commissioner, and if the findings so suggest, proposed legislation for expanding the office of the consumer advocate to other lines of insurance.

§33-2-20. Authority of commission to allow withdrawal of insurance carriers from doing business in the state.
1. (a) Notwithstanding any provision of the code to the contrary, the commissioner may, consistent with the provisions of this section, authorize an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles covered by article six-a of this chapter or from doing business entirely in this state if:

   (1) The insurer has submitted and received approval from the commissioner of a withdrawal plan; and

   (2) The insurer demonstrates to the satisfaction of the commissioner that allowing the insurer to withdraw would be in the best interest of the insurer, its policyholders and the citizens of this state.

(b) Any insurer that elects to nonrenew or cancel the particular type or line of insurance coverage provided for by section five, article seventeen-a of this chapter shall submit to the insurance commissioner a withdrawal plan for informational purposes only prior to cancellation or nonrenewal of all its business in this state.

(c) The commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code setting forth the criteria for withdrawal plans.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical damage insurance.

§33-6A-4b. Manner of making election relating to nonrenewals.

§33-6A-4c. Report to the Legislature.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.
(a) No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless the nonrenewal is preceded by at least forty-five days advance notice to the named insured of the insurer's election not to renew the policy. Provided, That subject to this section, nothing contained in this article shall be construed to prevent an insurer from refusing to issue an automobile liability or physical damage insurance policy upon application to the insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan.

(b) An insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator's license suspended or revoked during the policy period; or

(B) Is or becomes subject to a physical or mental condition that prevents the insured from operating a motor vehicle, and
the individual cannot produce a certificate from a physician
testifying to his or her ability to operate a motor vehicle;

(5) The named insured or any other operator, either residing
in the same household or who customarily operates an automo-
 bile insured under the policy, is convicted of or forfeits bail
during the policy period for any of the following reasons:

(A) Any felony or assault involving the use of a motor
vehicle;

(B) Negligent homicide arising out of the operation of a
motor vehicle;

(C) Operating a motor vehicle while under the influence of
intoxicating liquor or of any narcotic drug;

(D) Leaving the scene of a motor vehicle accident in which
the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a
motor vehicle; or

(F) Making false statements in an application for a motor
vehicle operator's license;

(6) The named insured or any other operator, either residing
in the same household or who customarily operates an automo-
 bile insured under the policy, is convicted of or forfeits bail
during the policy period for two or more moving traffic
violations committed within a period of twelve months, each of
which results in three or more points being assessed on the
driver's record by the division of motor vehicles, whether or not
the insurer renewed the policy without knowledge of all of the
violations: Provided, That an insurer that makes an election
pursuant to section four-b of this article to issue all nonrenewal
notices pursuant to this section, may nonrenew an automobile
liability or physical damage insurance policy if the named insured, or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twenty-four months, each of which occurs on or after the first day of July, two thousand four and after the date that the insurer makes an election pursuant to section four-b of this article, and results in three or more points being assessed on the driver’s record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations. Notice of any nonrenewal made pursuant to this subdivision shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the division of motor vehicles;

(7) The named insured or any other operator either residing in the same household or who customarily operates an automobile insured under the policy has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all of the accidents: Provided, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may non-renew an automobile liability or physical damage insurance policy under this subsection if the named insured or any other operator either residing in the same household or who customarily operates an automobile insured under such policy has had two at-fault motor vehicle accidents within a period of thirty-six months, each of which occurs after the first day of July, two thousand four and after the date that the insurer makes an election pursuant to section four-b of this article, and results in a claim paid by the insurer for each accident, whether or not the insurer renewed the policy without knowledge of all of the accidents.
Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident; or

(8) The insurer ceases writing automobile liability or physical damage insurance policies throughout the state after submission to and approval by the commissioner of a withdrawal plan or discontinues operations within the state pursuant to a withdrawal plan approved by the commissioner.

(c) An insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section shall not fail to renew an automobile liability or physical damage insurance policy when an operator other than the named insured has violated the provisions of subdivision (6) or (7), subsection (b) of this section, if the named insured, by restrictive endorsement, specifically excludes the operator who violated the provision. An insurer issuing a nonrenewal notice informing the named insured that the policy will be nonrenewed for the reason that an operator has violated the provisions of subdivision (6) or (7), subsection (b) of this section, shall at that time inform the named insured of his or her option to specifically exclude the operator by restrictive endorsement and shall further inform the named insured that upon obtaining the restrictive endorsement, the insurer will renew the policy or rescind the nonrenewal absent the existence of any other basis for nonrenewal set forth in this section.

(d) A notice provided under this section shall state the specific reason or reasons for nonrenewal and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars. The
notice must also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(e) Notwithstanding the provisions of subsection (a) of this section, the insurer shall reinstate any automobile liability or physical damage insurance policy that has not been renewed due to the insured’s failure to pay the renewal premium when due if:

(1) None of the other grounds for nonrenewal as set forth in this section exist; and

(2) The insured makes an application for reinstatement within forty-five days of the original expiration date of the policy. If a policy is reinstated as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy: Provided, That such policy shall be effective on the reinstatement date at the current premium levels offered by the company and shall not be afforded the protections of this section relating to renewal of an outstanding automobile liability or physical damage insurance policy that has been in existence for at least two consecutive years.

§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical damage insurance.

(a) On or after the first day of July, two thousand four, an insurer may nonrenew an automobile liability or physical damage insurance policy for any reason which is consistent with its underwriting standards.

(b) Notwithstanding any other provisions in this section, race, religion, nationality, ethnic group, age, sex, marital status, or other reason prohibited by the provisions of this chapter may not be considered as a reason for nonrenewal;
9 (c) Notwithstanding the provisions of section four of this article, a nonrenewal may only be issued pursuant to the provisions of this section upon forty-five days advance notice to the named insured of the insurer's election not to renew the policy.

(d) The total number of nonrenewal notices issued each year, commencing on the first day of July, two thousand four, by the insurer, resulting in nonrenewal, pursuant to this section may not exceed one percent per year of the total number of the policies of the insurer in force at the end of the previous calendar year in this state: Provided, That the total number of nonrenewal notices issued each year to insureds within any given county in this state resulting in nonrenewal may not exceed one percent per year of the total number of the policies of the insurer in force in that county at the end of the previous calendar year: Provided, however, That an insurer may nonrenew one policy per year in any county if the applicable percentage limitation results in less than one policy.

(e) A notice issued pursuant to this section shall state the specific reason or reasons for refusal to renew and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article: Provided, That the hearing shall relate to whether the nonrenewal of the policy was issued for a discriminatory reason, was based upon inadequate notice, an underwriting standard by the commissioner found to be in violation of this chapter or causes the insurer to exceed the percentage limitations, or percentage limitations by county, of nonrenewal notices set forth in this section. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars. The notice shall also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.
(f) Each insurer licensed to write automobile liability and physical damage insurance policies in this state shall file with the commissioner a copy of its underwriting standards, including any amendments or supplements. The commissioner shall review and examine the underwriting standards to ensure that they are consistent with generally accepted underwriting principles. The underwriting standards filed with the commissioner shall be considered confidential by law and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not open to public inspection, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and are not subject to production pursuant to court order. The commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code to implement the provisions of this section.

(g) Each insurer that has elected to issue nonrenewal notices pursuant to the percentage limitations provided in this section shall report to the commissioner, on a form prescribed by the commissioner, on or before the thirtieth day of September of each year the total number of nonrenewal notices issued in this state and in each county of this state for the preceding year. The insurer shall also report to the commissioner the specific reason or reasons for the nonrenewals by county which have been issued pursuant to this section.

§33-6A-4b. Manner of making election relating to nonrenewals.

(a) Each insurer licensed to write automobile liability or physical damage insurance policies in this state, as of the first day of July, two thousand four, may elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer may notify the commissioner of its election any time after the first day of July, two thousand four, and shall remain bound by the election for a period of five
years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(1) If no election is made by the first day of July, two thousand four, then, until the first day of July, two thousand five, the insurer shall continue to issue all nonrenewal notices pursuant to the existing nonrenewal provisions in section four prior to the amendments enacted therein by the acts of the Seventy-Sixth Legislature during the second session, two thousand four.

(2) As of the first day of July, two thousand five, each insurer licensed to write automobile liability or physical damage insurance policies in this state, and that has not previously made an election under this section, shall elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer which has not previously made an election must notify the commissioner of its election no later than the first day of July, two thousand five, and shall remain bound by the election for a period of five years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(b) An insurer that is not licensed to write automobile liability or physical damage insurance policies in this state, as of the first day of July, two thousand four, but becomes licensed to write such policies after that date shall, no later than two years after the date the insurer becomes licensed to write such policies, make an election to issue all nonrenewal notices either pursuant to section four or section four-a of this article, and shall notify the commissioner of its election. If the insurer elects to issue all nonrenewal notices pursuant to section four-a
of this article, the total number of nonrenewals may not exceed
the percentage limitations set forth in section four-a of this
article. An insurer first becoming licensed to issue automobile
liability and physical damage insurance policies in this state
after the first day of July, two thousand four, shall be bound by
its election for a period of five years, and for each subsequent
five-year period shall notify the commissioner of its election to
issue all nonrenewal notices either pursuant to section four or
section four-a of this article.

(c) Notwithstanding any provision of this article to the
contrary, a named insured by restrictive endorsement may
specifically exclude from automobile liability or physical
damage insurance policy an operator who has violated the
provisions of subdivision (6) or (7), subsection (b), section four
of this article.

§33-6A-4c. Report to the Legislature.

By the first day of January, two thousand nine, the commis-
sioner shall submit a report to the Legislature. The report shall
contain the following:

(1) An analysis of the impact of legislation enacted during
the two thousand four legislative session upon rates and
insurance availability in the state;

(2) Statistics reflecting the rate history of insurers conduct-
ing business in West Virginia from the first day of July two
thousand four until the first day of July, two thousand eight.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


Notwithstanding any provision of this code to the contrary,
article forty-one of this chapter is applicable to farmers' mutual
fire insurance companies.
ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to fraternal benefit societies.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4b. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to hospital service corporations, medical service corporations, dental service corporations and health service corporations.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6a. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to health care corporations.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to health maintenance organizations.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-1. Short title; legislative findings and purpose.
§33-41-2. Definitions.
§33-41-3. Fraud warning authorized; statement required of nonadmitted insurers.
§33-41-4. Authority of the commissioner; use of special assistant prosecutors.
§33-41-1. Short title; legislative findings and purpose.

(a) This article may be cited as the “West Virginia Insurance Fraud Prevention Act”.

(b) The Legislature finds that the business of insurance involves many transactions of numerous types that have potential for fraud and other illegal activities. This article is intended to permit use of the expertise of the commissioner to investigate and help prosecute insurance fraud and other crimes related to the business of insurance more effectively, and to assist and receive assistance from state, local and federal law enforcement and regulatory agencies in enforcing laws prohibiting crimes relating to the business of insurance.

§33-41-2. Definitions.

As used in this article:

(1) “Benefits” mean money payments, goods, services or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance;

(2) “Business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents
(3) "Claim" means an application or request for payment or benefits provided under the terms of a policy of insurance:

(4) "Commissioner" means the insurance commissioner of West Virginia or his or her designee;

(5) "Health care provider" means a person, partnership, corporation, facility or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist or psychologist;

(6) "Insurance" means a contract or arrangement in which a person undertakes to:

(A) Pay or indemnify another person as to loss from certain contingencies called "risks," including through reinsurance;

(B) Pay or grant a specified amount or determinable benefit to another person in connection with ascertainable risk contingencies;

(C) Pay an annuity to another person; or

(D) Act as surety.

(7) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers' mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service
association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of coverage written, benefits provided or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;

(8) “Person” means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, trustees, an unincorporated organization, or any similar business entity or any combination of the foregoing. “Person” also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, health care corporations as defined in article twenty-five of this chapter, or a health maintenance organization organized pursuant to article twenty-five-a of this chapter;

(9) “Policy” means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(10) “Reinsurance” means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer;

(11) “Statement” means any written or oral representation made to any person, insurer or authorized agency. A statement includes, but is not limited to, any oral report or representation; any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, or other evidence of loss, injury or expense; any bill for services, diagnosis, prescription,
hospital or doctor record, X ray, test result or other evidence of
72 treatment, services or expense; and any application, report,
73 actuarial study, rate request or other document submitted or
74 required to be submitted to any authorized agency. A statement
75 also includes any written or oral representation recorded by
76 electronic or other media; and

(12) "Unit" means the insurance fraud unit established
78 pursuant to the provisions of this article acting collectively or
79 by its duly authorized representatives.

§33-41-3. Fraud warning authorized; statement required of
80 nonadmitted insurers.

(a) Claims forms and applications for insurance, regardless
81 of the form of transmission, may contain the following warning
82 or a substantially similar caveat:
83
84 "Any person who knowingly presents a false or fraudulent
85 claim for payment of a loss or benefit or knowingly presents
86 false information in an application for insurance is guilty of a
87 crime and may be subject to fines and confinement in prison."

(b) The lack of a warning as authorized by the provisions of
88 subsection (a) of this section does not constitute a defense in
89 any prosecution for a fraudulent or illegal act nor shall it
90 constitute the basis for any type of civil cause of action.

(c) Policies issued by nonadmitted insurers pursuant to
91 article twelve-c of this chapter shall contain a statement
92 disclosing the status of the insurer to do business in the state
93 where the policy is delivered or issued for delivery or the state
94 where coverage is in force. The requirement of this subsection
95 may be satisfied by a disclosure specifically required by section
96 five, article twelve-c of this chapter; section nine, article thirty-
97 two of this chapter; and section eighteen, article thirty-two of
98 this chapter.
§33-41-4. Authority of the commissioner; use of special assistant prosecutors.

(a) The commissioner may investigate suspected criminal acts relating to the business of insurance as authorized by the provisions of this article.

(b) If the prosecuting attorney of the county in which a criminal violation relating to the business of insurance occurs determines that his or her office is unable to take appropriate action, he or she may petition the appropriate circuit court for the appointment of a special prosecutor or special assistant prosecutor from the West Virginia Prosecuting Attorney Institute pursuant to the provisions of section six, article four, chapter seven of this code. Notwithstanding the provisions of that section, attorneys employed by the commissioner and assigned to the insurance fraud unit created by the provisions of section eight of this article may prosecute or assist in the prosecution of violations of the criminal laws of this state related to the business of insurance and may act as special prosecutors or special assistant prosecutors in those cases if assistance is sought by the prosecuting attorney or special prosecutor assigned by the institute to prosecute those matters.

(c) Funds allocated for insurance fraud prevention may be dispersed by the commissioner, at his or her discretion, for the purpose of insurance fraud enforcement as authorized by the provisions of this code.

(d) The Insurance Fraud Unit authorized by the provisions of section eight of this article may assist federal law enforcement agencies, the West Virginia state police, the state fire marshal, municipal police departments and the sheriffs of the counties in West Virginia in investigating crimes related to the business of insurance.
30 (e) The commissioner may conduct public outreach, education, and awareness programs on the costs of insurance fraud to the public.

§33-41-5. Reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

1 (a) A person engaged in the business of insurance having knowledge or a reasonable belief that fraud or another crime related to the business of insurance is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

6 (b) The commissioner may prescribe a reporting form to facilitate reporting of possible fraud or other offenses related to the business of insurance for use by persons other than those persons referred to in subsection (a) of this section.

§33-41-6. Immunity from liability.

1 (a) There shall be no civil liability imposed on and no cause of action shall arise from a person’s furnishing information concerning suspected or anticipated fraud relating to the business of insurance, if the information is provided to or received from:

6 (1) The commissioner or the commissioner’s employees, agents or representatives;

8 (2) Federal, state, or local law-enforcement or regulatory officials or their employees, agents or representatives;

10 (3) A person involved in the prevention and detection of insurance fraud or that person’s agents, employees or representatives; or

13 (4) The national association of insurance commissioners or its employees, agents or representatives.
(b) The provisions of subsection (a) of this section are not applicable to materially incorrect statements made maliciously or fraudulently by a person designated a mandated reporter pursuant to the provisions of subsection (a), section five of this article or made in reckless disregard to the truth or falsity of the statement by those not mandated to report. In an action brought against a person for filing a report or furnishing other information concerning an alleged insurance fraud, the party bringing the action shall plead with specificity any facts supporting the allegation that subsection (a) of this section does not apply because the person filing the report or furnishing the incorrect information did so maliciously in the case of a mandated reporter or in the case of a person not designated a mandated reporter, in reckless disregard for the truth or falsity of the statement.

(c) Nothing in this article shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of insurers regarding bad faith or unfair trade practices.

(d) This section does not abrogate or modify common law or statutory privileges or immunities.

§33-41-7. Confidentiality.

(a) Documents, materials or other information in the possession or control of the office of the insurance commissioner that are provided pursuant to section six of this article or obtained by the commissioner in an investigation of alleged fraudulent acts related to the business of insurance shall be confidential by law and privileged, shall not be subject to the provisions of chapter twenty-nine-b of this code, shall not be open to public inspection, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner may use the
documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner’s official duties. The commissioner may use the documents, materials or other information if they are required for evidence in criminal proceedings or other action by the state or federal government and in such context may be discoverable as ordered by a court of competent jurisdiction exercising its discretion.

(b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

(c) In order to assist in the performance of the commissioner’s duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with local, state, federal and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law-enforcement officers of other foreign or domestic jurisdictions, and shall maintain as confidential or
privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) May enter into agreements governing sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient’s official duties.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(e) Nothing in this section shall prohibit the commissioner from providing information to or receiving information from any local, state, federal or international law-enforcement authorities, including any prosecuting authority; or from complying with subpoenas or other lawful process in criminal actions; or as may otherwise be provided in this article.

(f) Nothing in this article may be construed to abrogate or limit the attorney-client or work product privileges existing at common law or established by statute or court rule.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia insurance fraud unit within the office of the insurance commissioner of West Virginia. The commissioner may employ full-time supervisory, legal and investigative personnel for the unit, who shall be qualified by training and experience in the areas of detection, investigation or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the fraud unit shall be a full-time position and shall
be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, supplies, clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article.

(b) The fraud unit may in its discretion:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of the provisions of this chapter or the provisions of article three, chapter sixty-one of this code relating to the business of insurance have been or are being committed;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation; and

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The insurance fraud unit may:

(1) Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this article;

(2) Inspect, copy or collect records and evidence;

(3) Serve subpoenas issued by grand juries and trial courts in criminal matters;
(4) Share records and evidence with federal, state or local
law-enforcement or regulatory agencies, and enter into inter-
agency agreements;

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the informa-
tion the insurance fraud unit seeks to obtain is located outside
this state, the person from whom the information is sought may
make the information available to the insurance fraud unit to
examine at the place where the information is located. The
insurance fraud unit may designate representatives, including
officials of the state in which the matter is located, to inspect
the information on behalf of the insurance fraud unit, and the
insurance fraud unit may respond to similar requests from
officials of other states;

(7) The fraud unit may initiate investigations and partici-
pate in the development of, and if necessary, the prosecution of
any health care provider, including a provider of rehabilitation
services, suspected of fraudulent activity related to the business
of insurance;

(8) Specific personnel, designated by the commissioner,
shall be permitted to operate vehicles owned or leased for the
state displaying Class A registration plates;

(9) Notwithstanding any provision of this code to the
contrary, specific personnel designated by the commissioner
may carry firearms in the course of their official duties after
meeting specialized qualifications established by the governor’s
committee on crime, delinquency and correction, which shall
include the successful completion of handgun training provided
to law-enforcement officers by the West Virginia state police:
Provided, That nothing in this subsection shall be construed to
include any person designated by the commissioner as a
law-enforcement officer as that term is defined by the provisions of section one, article twenty-nine, chapter thirty of this code; and

(10) The insurance fraud unit shall not be subject to the provisions of article nine-a, chapter six of this code and the investigations conducted by the insurance fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

§33-41-9. Other law-enforcement or regulatory authority.

This article does not:

(1) Preempt the authority or relieve the duty of other law-enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law-enforcement or regulatory agency other than the insurance fraud unit; or

(3) Limit the powers granted elsewhere by the laws of this state to the commissioner or his or her agents to investigate and examine possible violations of law and to take appropriate action against violators of law.

§33-41-10. Rules.

The insurance commissioner shall, pursuant to the provisions of article three, chapter twenty-nine-a of this code, promulgate such legislative rules as are necessary or proper to carry out the purposes of this article.

§33-41-11. Fraudulent claims to insurance companies.
(a) Any person who knowingly and willfully and with intent to defraud submits a materially false statement in support of a claim for insurance benefits or payment pursuant to a policy of insurance or who conspires to do so is guilty of a crime and is subject to the penalties set forth in the provisions of this section.

(b) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought exceeds one thousand dollars in value is guilty of a felony and, upon conviction thereof shall be confined in a correctional facility for not less than one nor more than ten years, fined not more than ten thousand dollars, or both or in the discretion of the circuit court confined in a county or regional jail for not more than one year and so fined.

(c) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is one thousand dollars or less in value, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than one year, fined not more than two thousand five hundred dollars, or both.

(d) Any person convicted of a violation of this section is subject to the restitution provisions of article eleven-a, chapter sixty-one of this code.

(e) The circuit court may award to the unit or other law enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.

§33-41-12. Civil penalties; injunctive relief; employment disqualification.

A person or entity engaged in the business of insurance or a person or entity making a claim against an insurer who
violates any provision of this article may be subject to the following:

(1) Where applicable, suspension or revocation of license or certificate of authority or a civil penalty of up to ten thousand dollars per violation, or where applicable, both. Suspension or revocation of license or certificate of authority or imposition of civil penalties may be pursuant to an order of the commissioner issued pursuant to the provisions of section thirteen, article two of this chapter. The commissioner’s order may require a person found to be in violation of this article to make reasonable restitution to persons aggrieved by violations of this article. The commissioner may assess a person sanctioned pursuant to the provisions of this section the cost of investigation;

(2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the provisions of this section is mandatory and not subject to suspension;

(3) A person convicted of a felony violation law reasonably related to the business of insurance shall be disqualified from engaging in the business of insurance; and

(4) The commissioner may apply for a temporary or permanent injunction in any appropriate circuit court of this state seeking to enjoin and restrain a person from violating or continuing to violate the provisions of this article or rule promulgated under this article, notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding temporary or permanent injunctive relief restraining any person from violating or continuing to violate any provision of this article or rule promulgated under the article as in its judgment is proper.
CHAPTER 139

(Com. Sub. for S. B. 176 — By Senator Minard)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-3-6 of the code of West Virginia, 1931, as amended; to amend and reenact §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code; to amend said code by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; to amend and reenact §33-9-3 of said code; to amend and reenact §33-22-11 of said code; to amend and reenact §33-23-31 of said code; to amend and reenact §33-24-10 of said code; to amend and reenact §33-25A-4 of said code; to amend and reenact §33-25D-5 of said code; and to amend and reenact §33-27-2a of said code, all relating to investments and investment practices of insurance companies; and correcting references to amended sections of article eight, chapter thirty-three of said code.

Be it enacted by the Legislature of West Virginia:

That §33-3-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code be amended and reenacted; that
said code be amended by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; that §33-9-3 of said code be amended and reenacted; that §33-22-11 of said code be amended and reenacted; that §33-23-31 of said code be amended and reenacted; that §33-24-10 of said code be amended and reenacted; that §33-25A-4 of said code be amended and reenacted; that §33-25D-5 of said code be amended and reenacted; and that §33-27-2a of said code be amended and reenacted, all to read as follows:

Article 3. Licensing, Fees and Taxation of Insurers.

§33-3-6. Property and casualty, financial guaranty and mortgage guaranty insurers - Deposit requirements.

1 The commissioner shall not issue a license to any insurer unless it has deposited and maintained in trust with the state treasurer, for the protection of its policyholders or its policyholders and creditors, cash or government securities eligible for the investment of capital funds of domestic insurers (of the type described in paragraph (A) or (B), subdivision (1), subsection (a), section eleven, article eight of this chapter or paragraph (A), (B) or (C), subdivision (3) of said subsection, under this chapter in the amount of one hundred thousand dollars; except:

(a) As to foreign insurers in lieu of the deposit or part of a deposit with the state treasurer, the commissioner may accept
the current certificate of the state insurance supervisory official
of any other state that a like deposit by the insurer is being
maintained in public custody or in a depository approved by the
supervisory official in that state in trust for the purpose of
protection of all policyholders or policyholders and creditors of
the insurer in the United States.

(b) As to alien insurers in lieu of the deposit or part of a
deposit with the state treasurer, the commissioner may accept
evidence satisfactory to him or her that the insurer maintains
within the United States in public depositories, or in trust
institutions within the United States approved by the commis-
sioner, assets available for discharge of its United States
insurance obligations which are in an amount not less than the
outstanding liabilities of the insurer arising out of its insurance
transactions in the United States, together with an amount equal
to the deposit required under this section for other insurers
requesting license to transact like kinds of insurance.

ARTICLE 8. INVESTMENTS.

§33-8-1. Purpose and scope.
§33-8-2. Definitions.
§33-8-3. General investment qualifications.
§33-8-4. Authorization of investments by the board of directors.
§33-8-5. Prohibited investments.
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§33-8-9. Life and health insurers - Applicability.
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investments and Canadian investments.
§33-8-11. Same - Rated credit instruments.
§33-8-12. Same - Insurer investment pools.
§33-8-13. Same - Equity interests.
§33-8-14. Same - Tangible personal property under lease.
§33-8-15. Same - Mortgage loans and real estate.
§33-8-16. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.

§33-8-17. Same - Foreign investments and foreign currency exposure.

§33-8-18. Same - Derivative transactions.

§33-8-19. Same - Policy loans.

§33-8-20. Same - Additional investment authority.

§33-8-21. Property and casualty, financial guaranty and mortgage guaranty insurers - Applicability.

§33-8-22. Same - Reserve requirements.

§33-8-23. Same - General five percent diversification, medium and lower grade investments and Canadian investments.

§33-8-24. Same - Rated credit instruments.

§33-8-25. Same - Insurer investment pools.

§33-8-26. Same - Equity interests.

§33-8-27. Same - Tangible personal property under lease.

§33-8-28. Same - Mortgage loans and real estate.

§33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.

§33-8-30. Same - Foreign investments and foreign currency exposure.

§33-8-31. Same - Derivative transactions.

§33-8-32. Same - Additional investment authority.

§33-8-1. Purpose and scope.

1 (a) The purpose of this article is to protect the interests of insureds by promoting insurer solvency and financial strength.

2 This will be accomplished through the application of investment standards that facilitate a reasonable balance of the following objectives:

3 (1) To preserve principal;

4 (2) To assure reasonable diversification as to type of investment, issuer and credit quality; and

5 (3) To allow insurers to allocate investments in a manner consistent with principles of prudent investment management to achieve an adequate return so that obligations to insureds are
adequately met and financial strength is sufficient to cover reasonably foreseeable contingencies.

(b) This article applies only to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This article does not apply to separate accounts of an insurer except as provided in article thirteen-a of this chapter.

(c) This recodification of former article eight preserves and continues prior limitations contained in section 106(a)(1) or (2) of the Secondary Mortgage Market Enhancement Act of 1984 ("SMMEA"), an act of the Congress of the United States adopted by the acts of the Legislature in 1991 albeit under separate sections of the same article. Pursuant to section 106(b) of SMMEA, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a)(1) or (2) of that act.

§33-8-2. Definitions.

The following terms are defined for purposes of this article:

(1) "Acceptable collateral" means:

(A) As to securities lending transactions and for the purpose of calculating counter party exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation, and as to lending foreign securities, sovereign debt rated 1 by the securities valuation office ("SVO") of the national association of insurance commissioners;
(B) As to repurchase transactions, cash, cash equivalents and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation; and

(C) As to reverse repurchase transactions, cash and cash equivalents.

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent loan-to-value ratio.

(3) "Accident and sickness insurance" means protection which provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance and long-term care insurance.

(4) "Accident and sickness insurer" means a licensed life or sickness insurer or health service corporation whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively.

(5) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner, but excluding assets of separate accounts, the investments of which are not subject to the provisions of this article.
(6) "Affiliate" means, as to any person, another person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person.

(7) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets or specifically divisible cash flows which are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:

(A) The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust or other business entity; and

(B) The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancements, such as letters of credit or guarantees, or support features such as swap agreements, does not cause a security or other instrument to be ineligible as an asset-backed security.

(8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether organized for-profit or not-for-profit.
(9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

(10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(11) "Cash equivalents" means short-term, highly rated and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:

(A) "Short-term" means investments with a remaining term to maturity of ninety days or less; and

(B) "Highly rated" means an investment rated "P-1" by Moody's Investors Service, Inc., or "A-1" by Standard and Poor's division of the McGraw Hill Companies, Inc., or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(12) "Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the purposes and procedures of the securities valuation office of the national association of insurance commissioners, or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the
purposes and procedures of the securities valuation office or any successor publication.

(14) "Collar" means an agreement to receive payments as the buyer of an option, cap or floor and to make payments as the seller of a different option, cap or floor.

(15) "Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.

(16) "Construction loan" means a loan of less than three years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.

(17) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control will be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(18) "Counterparty exposure amount" means:

(A) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or
cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:

(i) The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(ii) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(B) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the purposes and procedures of the securities valuation office as eligible for netting, the net amount of credit risk will be the greater of zero or the net sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(C) For open transactions, market value will be determined at the end of the most recent quarter of the insurer’s fiscal year and will be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

(19) “Covered” means that an insurer owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap
or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.

(20) “Credit tenant loan” means a mortgage loan which is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.

(21) “Derivative instrument” means an agreement, option, instrument or a series or combination of those instruments:

(A) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or that has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.

(B) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures and any other agreements, options or instruments substantially similar to those instruments or any series or combination thereof and any agreements, options or instruments permitted under rules adopted under section eight of this article. Derivative instruments does not include an investment authorized by sections eleven through seventeen, inclusive, nineteen and twenty-four through thirty, inclusive, of this article.

(22) “Derivative transaction” means a transaction involving the use of one or more derivative instruments.
(23) "Direct" or "directly," when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.

(24) "Dollar roll transaction" means two simultaneous transactions with different settlement dates no more than ninety-six days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity substantially similar securities that are asset-backed securities issued, assumed or guaranteed by the government national mortgage association, the federal national mortgage association or the federal home loan mortgage corporation or their respective successors.

(25) "Domestic jurisdiction" means the United States, Canada, any state, any province of Canada or any political subdivision of any of those jurisdictions.

(26) "Equity interest" means any of the following that are not rated credit instruments:

(A) Common stock;

(B) Preferred stock;

(C) Trust certificates;

(D) Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;

(E) Investment in a common trust fund of a bank regulated by a federal or state agency;

(F) An ownership interest in minerals, oil or gas, the rights to which have been separated from the underlying fee interest in the real estate where the minerals, oil or gas are located;
(G) Instruments which are mandatorily, or at the option of the issuer, convertible to equity;

(H) Limited partnership interests and those general partnership interests authorized under subdivision (4), section five of this article;

(I) Member interests in limited liability companies;

(J) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(K) Instruments that would be rated credit instruments except for the provisions of paragraph (B), subdivision (70) of this section.

(27) “Equivalent securities” means:

(A) In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security will be exchanged for a loaned security by recapitalization, merger, consolidation or other corporate action, the different security shall be considered to be the loaned security;

(B) In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or

(C) In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.
(28) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which that a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests.

(29) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(30) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this article, other than under sections seventeen and thirty of this article. An investment will not be considered to be foreign if the issuing person, qualified primary credit source or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

(A) The issuing person is a shell business entity; and

(B) The investment is not assumed, accepted, guaranteed or insured or otherwise backed by a domestic jurisdiction or a person, that is not a shell business entity, domiciled in a domestic jurisdiction.

(C) For purposes of this definition:

(i) "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned or previously owned by a person domiciled in a foreign jurisdiction;

(ii) "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and
(iii) "Qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(31) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(32) "Forward" means an agreement (other than a future) to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests.

(33) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests.

(34) "Government money market mutual fund" means a money market mutual fund that at all times:

(A) Invests only in obligations issued, guaranteed or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(B) Qualifies for investment without a reserve under the purposes and procedures of the securities valuation office or any successor publication.

(35) "Government-sponsored enterprise" means a:

(A) Governmental agency; or
(B) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.

(36) "Guaranteed or insured", when used in connection with an obligation acquired under this article, means that the guarantor or insurer has agreed to:

(A) Perform or insure the obligation of the obligor or purchase the obligation; or

(B) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity or sufficient liquidity to enable the obligor to pay the obligation in full.

(37) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(A) The risk of a change in the value, yield, price, cash flow or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

(38) "High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.

(39) "Income" means, as to a security, interest, accrual of discount, dividends or other distributions, such as rights, tax or assessment credits, warrants and distributions in kind.
(40) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps or covered floors that is intended to generate income or enhance return.

(41) "Initial margin" means the amount of cash, securities or other consideration initially required to be deposited to establish a futures position.

(42) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.

(43) "Insurance futures option" means an option on an insurance future.

(44) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940, as amended, and a person described in Section 3(c) of that act.

(45) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(46) "Investment practices" means transactions of the types described in sections sixteen, eighteen, twenty-nine or thirty-one of this article.

(47) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this article.
applicable to the insurer. As used in this subdivision, the total investment of the insurer shall include:

(A) Direct investment by the insurer in an asset; and

(B) The insurer’s proportionate share of an investment in an asset by an investment subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the insurer’s ownership interest in the subsidiary.

(48) “Investment strategy” means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing and value investing.

(49) “Letter of credit” means a clean, irrevocable and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the purposes and procedures of the securities valuation office or any successor publication. To constitute acceptable collateral for the purposes of sections sixteen and twenty-nine of this article, a letter of credit must have an expiration date beyond the term of the subject transaction.

(50) “Limited liability company” means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.

(51) “Lower grade investment” means a rated credit instrument rated 4, 5 or 6 by the SVO.
(52) “Market value” means:

(A) As to cash and letters of credit, the amounts of the cash and letters of credit; and

(B) As to a security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on the security to the extent not included in the price as of that date.

(53) “Medium grade investment” means a rated credit instrument rated 3 by the SVO.

(54) “Money market mutual fund” means a mutual fund that meets the conditions of 17 code of federal regulations par. 270.2a-7, under the Investment Company Act of 1940, as amended or renumbered.

(55) “Mortgage loan” means an obligation secured by a mortgage, deed of trust, trust deed or other consensual lien on real estate.

(56) “Multilateral development bank” means an international development organization of which the United States is a member.

(57) “Mutual fund” means an investment company or, in the case of an investment company that is organized as a series company, an investment company series that, in either case, is registered with the United States securities and exchange commission under the Investment Company Act of 1940, as amended.
(58) "NAIC" means the national association of insurance commissioners.

(59) "Obligation" means a bond, note, debenture, trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participations, certificates or other evidences of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

(60) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

(61) "Person" means an individual, a business entity, a multilateral development bank or a government or quasi-governmental body, such as a political subdivision or a government-sponsored enterprise.

(62) "Potential exposure" means the amount determined in accordance with the NAIC annual statement instructions.

(63) "Preferred stock" means preferred, preference or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.

(64) "Qualified bank" means:

(A) A national bank, state bank or trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that
is either regulated by state banking laws or is a member of the federal reserve system; or

(B) A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country’s government or an agency of the government and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.

(65) “Qualified business entity” means a business entity that is:

(A) An issuer of obligations or preferred stock that are rated 1 or 2 by the SVO or an issuer of obligations, preferred stock or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(B) A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(66) “Qualified clearinghouse” means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have credit risk as to each other.

(67) “Qualified exchange” means:

(A) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934, as amended;

(B) A board of trade or commodities exchange designated as a contract market by the commodity futures trading commission or any successor thereof;
(C) Private offerings, resales and trading through automated linkages (PORTAL);

(D) A designated offshore securities market as defined in securities exchange commission regulation S, 17 C. F. R. part 230, as amended; or

(E) A qualified foreign exchange.

(68) "Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

(A) That has received regulatory comparability relief under commodity futures trading commission (CFTC) rule 30.10 (as set forth in appendix C to part 30 of the CFTC's regulations, 17 C. F. R. part 30);

(B) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC rule 30.10 (as set forth in appendix C to part 30 of the CFTC's regulations, 17 C. F. R. part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located; or

(C) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's office of general counsel, provided that an exchange, board of trade or contract market that qualifies as a "qualified foreign exchange" only under this subdivision shall only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of no-action relief.

(69) "Rated credit instrument" means:
(A) A contractual right to receive cash or another rated credit instrument from another entity which:

(i) Is rated or required to be rated by the SVO;

(ii) In the case of an instrument with a maturity of three hundred ninety-seven days or less, is issued, guaranteed or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

(iii) In the case of an instrument with a maturity of ninety days or less, is issued by a qualified bank;

(iv) Is a share of a class one bond mutual fund; or

(v) Is a share of a money market mutual fund.

(B) However, "rated credit instrument" does not mean:

(i) An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or

(ii) A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency or an index of equities, commodities, foreign currencies or combinations thereof.

(70) "Real estate" means:

(A) Real property, including: Interests in real property, such as leaseholds, minerals and oil and gas that have not been separated from the underlying fee interest; improvements and fixtures located on or in real property; and the seller's equity in a contract providing for a deed of real estate.
536 (B) As to a mortgage on a leasehold estate, real estate shall
537 include the leasehold estate only if it has an unexpired term
538 (including renewal options exercisable at the option of the
539 lessee) extending beyond the scheduled maturity date of the
540 obligation that is secured by a mortgage on the leasehold estate
541 by a period equal to at least twenty percent of the original term
542 of the obligation or ten years, whichever is greater.

543 (71) "Replication transaction" means a derivative transac-
544 tion that is intended to replicate the performance of one or more
545 assets that an insurer is authorized to acquire under this article.
546 A derivative transaction that is entered into as a hedging
547 transaction will not be considered a replication transaction.

548 (72) "Repurchase transaction" means a transaction in which
549 an insurer purchases securities from a business entity that is
550 obligated to repurchase the purchased securities or equivalent
551 securities from the insurer at a specified price, either within a
552 specified period of time or upon demand.

553 (73) "Required liabilities" means total liabilities required to
554 be reported on the statutory financial statement of the insurer
555 most recently required to be filed with the commissioner.

556 (74) "Residential mortgage loan" means a loan primarily
557 secured by a mortgage on real estate improved with a
558 one-to-four family residence.

559 (75) "Reverse repurchase transaction" means a transaction
560 in which an insurer sells securities to a business entity and is
561 obligated to repurchase the sold securities or equivalent
562 securities from the business entity at a specified price, either
563 within a specified period of time or upon demand.

564 (76) "Secured location" means the contiguous real estate
565 owned by one person.
(77) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(78) "Series company" means an investment company that is organized as a series company, as defined in rule 18f-2(a) adopted under the Investment Company Act of 1940, as amended.

(79) "Sinking fund stock" means preferred stock that:

(A) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption (or open market purchase) of the entire issue over a period not longer than forty years from the date of acquisition; and

(B) Provides for mandatory sinking fund installments (or open market purchases) commencing not more than ten and one-half years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten years from the date of issue, of at least two and one-half percent per year of the original number of shares of that issue of preferred stock.

(80) "Special rated credit instrument" means a rated credit instrument that is:

(A) An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument will not be a special rated credit instrument under this subdivision if it is:
(i) A share in a class one bond mutual fund;

(ii) An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

(iii) An instrument, other than an asset-backed security, that has a par value and is purchased at a price no greater than one hundred ten percent of par;

(iv) An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation or economic obsolescence of collateral or change of law;

(v) An asset-backed security that relies on collateral that meets the requirements of subparagraph (ii) of this paragraph, the par value of which collateral:

(I) Is not permitted to be paid sooner than one half of the remaining term to maturity from the date of acquisition;

(II) Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

(III) Is permitted to be paid prior to maturity at a premium at least equal to the yield of a treasury issue of comparable remaining life; or

(vi) An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not
otherwise governed by subparagraph (v) of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent of such par amount.

(B) An asset-backed security that:

(i) Relies on cash flows from assets that are prepayable at par at any time;

(ii) Does not make payments of par that are fixed as to amount and timing; and

(iii) Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:

(I) Two times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer’s election, the prepayment expectation for pass-through securities of the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

(II) Another prepayment threshold assumption specified by the commissioner by rule promulgated under section eight of this article.
(C) For purposes of paragraph (B) of this subdivision, if the asset-backed security is purchased in combination with one or more other asset-backed securities that are supported by identical underlying collateral, the insurer shall calculate the rate of return for these specific combined asset-backed securities in combination. The insurer must maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.

(81) "State" means a state, territory or possession of the United States of America, the District of Columbia or the Commonwealth of Puerto Rico.

(82) "Substantially similar securities" means securities that meet all criteria for substantially similar specified in the NAIC accounting practices and procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the public securities administration.

(83) "SVO" means the securities valuation office of the NAIC or any successor office established by the NAIC.

(84) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance or value of one or more underlying interests.

(85) "Underlying interest" means the assets, liabilities, other interests or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities or derivative instruments.

(86) "Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent of the insurer's required liabilities.
(87) “Warrant” means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

§33-8-3. General investment qualifications.

(a) Insurers shall acquire, hold or invest in investments or engage in investment practices as set forth in this article. Investments not conforming to this article will not be admitted assets.

(b) Subject to subsection (c) of this section, an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(1) Eligible for the payment or accrual of interest or discount (whether in cash or other securities), eligible to receive dividends or other distributions or is otherwise income producing; or

(2) Acquired under subsection (c), section fifteen of this article; sections sixteen, eighteen or twenty of this article; subsection (c), section twenty-eight of this article; sections twenty-nine, thirty-one or thirty-two of this article; or under the authority of sections of the code other than this article.

(c) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this article if the insurer has not acquired them for the purpose of circumventing any limitations contained in this article, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of sections five and seven of this article as to the investments:
(1) As payment on account of existing indebtedness or in connection with the refinancing, restructuring or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;

(2) As realization on collateral for an obligation;

(3) In connection with an otherwise qualified investment or investment practice, as interest on or a dividend or other distribution related to the investment or investment practice or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(4) Under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(5) Under a bulk reinsurance, merger or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged or consolidated companies.

(d) An investment or portion of an investment acquired by an insurer under subsection (c) of this section shall become a nonadmitted asset three years (or five years in the case of mortgage loans and real estate) from the date of its acquisition, unless within that period the investment has become a qualified investment under a section of this article other than subsection (c) of this section, but an investment acquired under an agreement of bulk reinsurance, merger or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under said subsection would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.
(e) Except as provided in subsections (f) and (h) of this section, an investment shall qualify under this article if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this article. For the purposes of determining limitations contained in this article, an insurer shall give appropriate recognition to any commitments to acquire investments.

(f) Investments held and investment transactions entered into before the effective date of this article are valid as follows:

(1) An investment held as an admitted asset by an insurer on the effective date of this article which qualified under applicable law in effect before the effective date remains qualified as an admitted asset under this article; and

(2) Each specific transaction constituting an investment practice of the type described in this article that was lawfully entered into by an insurer and was in effect on the effective date of this article continues to be permitted under this article until its expiration or termination under its terms;

(g) Unless otherwise specified, an investment limitation computed on the basis of an insurer’s admitted assets or capital and surplus relates to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(1) The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(2) Cash received in a dollar roll transaction; and
(3) The amount reported as borrowed money in the most recently filed financial statement to the extent not included in subdivisions (1) and (2) of this subsection.

(h) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section, if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(i) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this article, and specifying the section of this article under which they were acquired.

(j) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(k) Notwithstanding the provisions of this article, the commissioner, for good cause, may order under the state's administrative procedures or equivalent, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(l) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of this article.

§33-8-4. Authorization of investments by the board of directors.
(a) An insurer’s board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity and diversification of investments and other specifications including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs and its capital and surplus. The board shall review and assess the insurer’s technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment strategy or investment practice.

(b) Investments acquired and held under this article shall be acquired and held under the supervision and direction of the board of directors of the insurer. The board of directors shall evidence by formal resolution, at least annually, that it has determined whether all investments have been made in accordance with delegations, standards, limitations and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(c) On no less than a quarterly basis, and more often if considered appropriate, an insurer’s board of directors or committee of the board of directors shall:

(1) Receive and review a summary report on the insurer’s investment portfolio, its investment activities and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(2) Review and revise, as appropriate, the written plan.

(d) In discharging its duties under this section, the board of directors shall require that records of any authorizations or approvals, other documentation as the board may require and reports of any action taken under authority delegated under the
plan referred to in subsection (a) of this section shall be made available on a regular basis to the board of directors.

(e) In discharging their duties under this section, the directors of an insurer shall perform their duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.

(f) If an insurer does not have a board of directors, all references to the board of directors in this article shall be considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

§33-8-5. Prohibited investments.

An insurer may not, directly or indirectly:

(a) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in section six of this article;

(b) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one or more officers or directors of the insurer, except as authorized in article twenty-seven of this chapter or provided in section six of this article;

(c) Engage on its own behalf or through one or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this article;

(d) Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner:
17 (1) If all other partners in the partnership are subsidiaries of
18 the insurer;

19 (2) For the purpose of meeting cash calls committed to
20 prior to the effective date of this article, completing those
21 specific projects or activities of the partnership in which the
22 insurer was a general partner as of the effective date of this
23 article that had been undertaken as of that date, or making
24 capital improvements to property owned by the partnership on
25 the effective date of this article if the insurer was a general
26 partner as of that date; or

27 (3) In accordance with subsection (c), section three of this
28 article, this paragraph does not prohibit a subsidiary or other
29 affiliate of the insurer from becoming a general partner; or

30 (e) Invest in or lend its funds upon the security of shares of
31 its own stock, except that an insurer may acquire shares of its
32 own stock for the following purposes, but the shares may not be
33 admitted assets of the insurer:

34 (1) Conversion of a stock insurer into a mutual or reciprocal
35 insurer or a mutual or reciprocal insurer into a stock insurer;

36 (2) Issuance to the insurer's officers, employees or agents
37 in connection with a plan approved by the commissioner for
38 converting a publicly held insurer into a privately held insurer
39 or in connection with other stock option and employee benefit
40 plans; or

41 (3) In accordance with any other plan approved by the
42 commissioner.

§33-8-6. Loans to officers and directors.
(a) Except as provided in subsection (b) of this section, an insurer may not, without the prior written approval of the commissioner, directly or indirectly:

(1) Make a loan to or other investment in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;

(2) Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or

(3) Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b) For purposes of this section, an officer or director may not be determined to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual’s position as a director or officer of a person that is a party to the transaction.

(c) This subsection does not permit an investment that is prohibited by section five of this article.

(d) This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with article twenty-seven of this chapter, other than a transaction between an insurer and its officer or director.

(e) An insurer may make, without the prior written approval of the commissioner:
31 (1) Policy loans in accordance with the terms of the policy
or contract and section nineteen of this article;

32 (2) Advances to officers or directors for expenses reason-
ably expected to be incurred in the ordinary course of the
insurer's business or guarantees associated with credit or charge
cards issued or credit extended for the purpose of financing
these expenses;

38 (3) Loans secured by the principal residence of an existing
or new officer of the insurer made in connection with the
officer's relocation at the insurer's request, if the loans comply
with the requirements of section fifteen or twenty-eight of this
article and the terms and conditions otherwise are the same as
those generally available from unaffiliated third parties;

44 (4) Secured loans to an existing or new officer of the
insurer made in connection with the officer's relocation at the
insurer's request, if the loans:

47 (A) Do not have a term exceeding two years;

48 (B) Are required to finance mortgage loans outstanding at
the same time on the prior and new residences of the officer;

50 (C) Do not exceed an amount equal to the equity of the
officer in the prior residence; and

52 (D) Are required to be fully repaid upon the earlier of the
end of the two-year period or the sale of the prior residence; and

54 (5) Loans and advances to officers or directors made in
compliance with state or federal law specifically related to the
loans and advances by a regulated noninsurance subsidiary or
affiliate of the insurer in the ordinary course of business and on
terms no more favorable than available to other customers of
the entity.
§33-8-7. Valuation of investments.

For the purposes of this article, the value or amount of an investment acquired or held, or an investment practice engaged in, under this article, unless otherwise specified in this code, is the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the purposes and procedures of the securities valuation office, the valuation of securities manual, the accounting practices and procedures manual, the annual statement instructions or any successor valuation procedures officially adopted by the NAIC.

§33-8-8. Rules.

The commissioner may, in accordance with article one, chapter twenty-nine-a of this code, promulgate rules implementing the provisions of this article.

§33-8-9. Life and health insurers - Applicability.

Sections ten through twenty, inclusive, of this article apply to the investments and investment practices of life and health insurers, subject to the provisions of subsection (b), section one of this article.

§33-8-10. Same - General three percent diversification, medium and lower grade investments and Canadian investments.

(a) Except as otherwise specified in this article, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this article if, as a result of and after giving effect to the investment, the insurer would hold more than three percent of its admitted assets in investments of all kinds issued, assumed, accepted, insured or guaranteed by a
7 single person, or five percent of its admitted assets in investments in the voting securities of a depository institution or any company that controls the institution.

(b) This three-percent limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (a) of this section, however, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed three percent of its admitted assets.

(d) Medium and lower grade investments. --

An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under sections eleven, fourteen and seventeen of this article or counterparty exposure under subsection (d), section eighteen of this article if, as a result of and after giving effect to the investment:

(1) The aggregate amount of medium and lower grade investments then held by the insurer would exceed twenty percent of its admitted assets;

(2) The aggregate amount of lower grade investments then held by the insurer would exceed ten percent of its admitted assets;

(3) The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed three percent of its admitted assets;
37 (4) The aggregate amount of investments rated 6 by the
38 SVO then held by the insurer would exceed one percent of its
39 admitted assets; or
40
41 (5) The aggregate amount of medium and lower grade
42 investments then held by the insurer that receive as cash income
43 less than the equivalent yield for treasury issues with a compar-
44 ative average life, would exceed one percent of its admitted
45 assets.
46
47 (e) An insurer may not acquire, directly or indirectly
48 through an investment subsidiary, an investment under sections
49 eleven, fourteen and seventeen of this article or counterparty
50 exposure under subsection (d), section eighteen of this article
51 if, as a result of and after giving effect to the investment:
52
53 (1) The aggregate amount of medium and lower grade
54 investments issued, assumed, guaranteed, accepted or insured
55 by any one person or, as to asset-backed securities secured by
56 or evidencing an interest in a single asset or pool of assets, then
57 held by the insurer would exceed one percent of its admitted
58 assets;
59
60 (2) The aggregate amount of lower grade investments
61 issued, assumed, guaranteed, accepted or insured by any one
62 person or, as to asset-backed securities secured by or evidenc-
63 ing an interest in a single asset or pool of assets, then held by
64 the insurer would exceed one half of one percent of its admitted
65 assets; or
66
67 (3) If an insurer attains or exceeds the limit of any one
68 rating category referred to in this subsection, the insurer will
69 not be precluded from acquiring investments in other rating
70 categories subject to the specific and multicategory limits
71 applicable to those investments.
72
73 (f) Canadian investments. --
An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this article if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subdivision (2), section eleven of this article then held by the insurer would exceed twenty-five percent of its admitted assets.

(g) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (f) of this section shall be increased by the greater of:

(1) The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(2) One hundred fifteen percent of the amount of its reserves and other obligations under contracts on lives or risks resident or located in Canada.

§33-8-11. Same - Rated credit instruments.

(a) Subject to the limitations of subsection (b) of this section, an insurer may acquire rated credit instruments:

(1) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a), section ten of this article, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(A) The United States; or
(B) A government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(2) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(A) Canada; or

(B) A government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada. However, an insurer may not acquire an instrument under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subdivision would exceed forty percent of its admitted assets.

(3) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments, excluding asset-backed securities:

(A) Issued by a government money market mutual fund, a class one money market mutual fund or a class one bond mutual fund;

(B) Issued, assumed, guaranteed or insured by a government-sponsored enterprise of the United States other than those eligible under subsection (a) of this section;
(C) Issued, assumed, guaranteed or insured by a state, if the instruments are general obligations of the state; or

(D) Issued by a multilateral development bank. However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity or any one state under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise or entity or state under this subdivision would exceed ten percent of its admitted assets.

(4) Subject to the limitations of section ten of this article, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(A) The aggregate amount of preferred stocks then held by the insurer under this subdivision does not exceed twenty percent of its admitted assets; and

(B) The aggregate amount of preferred stocks then held by the insurer under this subdivision which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent of its admitted assets.

(5) Subject to the limitations of section ten of this article, in addition to those investments eligible under subdivisions (1), (2), (3) and (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(b) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent of its admitted assets.
§33-8-12. Same - Insurer investment pools.

(a) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London interbank offered rate (LIBOR) or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase and reverse repurchase transactions that meet all the requirements of section sixteen of this article, except the quantitative limitations of subdivision (4), section sixteen of this article; or
(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(b) For an investment in an investment pool to be qualified under this article, the investment pool may not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section sixteen of this article except the quantitative limitations of subdivision (4), section sixteen of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten percent of the total assets of the investment pool.

(c) The limitations of subsection (a), section ten of this article do not apply to an insurer's investment in an investment pool, however, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten percent of its admitted assets;

(2) In all investment pools investing in investments permitted under subdivision (2), subsection (a) of this section would exceed twenty-five percent of its admitted assets; or
56. In all investment pools would exceed thirty-five percent of its admitted assets.

58. (d) For an investment in an investment pool to be qualified under this article, the manager of the investment pool shall:

60. (1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

63. (2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940, as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

69. (3) Compile and maintain detailed accounting records setting forth:

72. (A) The cash receipts and disbursements reflecting each participant’s proportionate investment in the investment pool;

74. (B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

77. (C) Other records which, on a daily basis, allow third parties to verify each participant’s investment in the investment pool; and

80. (4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(C) Contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

(e) The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subdivision (1), subsection (a) of this section, the insurer and its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent of the interests in the investment pool;

(2) The underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(3) In proportion to the aggregate amount of each pool participant’s interest in the investment pool:

(A) Each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) The underlying assets of the investment pool are held solely for the benefit of each participant;
(4) A participant, or in the event of the participant’s insolvency, bankruptcy or receivership, its trustee, receiver or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this subdivision shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(A) In cash, the then fair market value of the participant’s pro rata share of each underlying asset of the investment pool;

(B) In kind, a pro rata share of each underlying asset; or

(C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset; and

(6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

§33-8-13. Same - Equity interests.

1 (a) Subject to the limitations of section ten of this article, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

4 (b) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed twenty percent of its admitted assets, or the amount of equity interests then held by
the insurer that are not listed on a qualified exchange would exceed five percent of its admitted assets. An accident and sickness insurer, health maintenance organization, hospital service corporation, medical service corporation, dental service corporation, or health service corporation is not subject to this section but is subject to the same aggregate limitation on equity interests as a property and casualty insurer under section twenty-six of this article and also to the provisions of section twenty-two of this article.

(c) An insurer may not acquire under this section any investments that the insurer may acquire under section fifteen of this article.

(d) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six months of the short sale.

§33-8-14. Same - Tangible personal property under lease.

(a) Subject to the limitations of section ten of this article, an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly, or in part, within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (4), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments.

(b) Investments acquired under subsection (a) of this section are eligible only if:

(1) The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of
Section

(2) The lease or other agreement provides the insurer the right to receive rental, purchase or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(c) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(d) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(1) Two percent of its admitted assets; or

(2) One half of one percent of its admitted assets as to any single item of tangible personal property.

(e) For purposes of determining compliance with the limitations of section ten of this article, investments acquired by an insurer under this section shall be aggregated with those acquired under section eleven of this article, and each lessee of the property under a lease referred to in this section shall be considered the issuer of an obligation in the amount of the
investment of the insurer in the property determined as pro-
vided in subsection (c) of this section.

(f) Nothing in this section is applicable to tangible personal
property lease arrangements between an insurer and its subsid-
iaries and affiliates under a cost sharing arrangement or
agreement permitted under article twenty-seven of this chapter.

§33-8-15. Same - Mortgage loans and real estate.

(a) Subject to the limitations of section ten of this article, an
insurer may acquire, either directly, indirectly through limited
partnership interests and general partnership interests not
otherwise prohibited by subsection (d), section five of this
article, joint ventures, stock of an investment subsidiary or
membership interests in a limited liability company, trust
certificates, or other similar instruments, obligations secured by
mortgages on real estate situated within a domestic jurisdiction,
but a mortgage loan which is secured by other than a first lien
may not be acquired unless the insurer is the holder of the first
lien. The obligations held by the insurer and any obligations
with an equal lien priority may not, at the time of acquisition of
the obligation, exceed:

(1) Ninety percent of the fair market value of the real estate,
if the mortgage loan is secured by a purchase money mortgage
or like security received by the insurer upon disposition of the
real estate;

(2) Eighty percent of the fair market value of the real estate,
if the mortgage loan requires immediate scheduled payment in
periodic installments of principal and interest, has an amortiza-
tion period of thirty years or less and periodic payments made
no less frequently than annually. Each periodic payment shall
be sufficient to assure that at all times the outstanding principal
balance of the mortgage loan is not greater than the outstanding
principal balance that would be outstanding under a mortgage
loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent limitation may be increased to ninety-seven percent if acceptable private mortgage insurance has been obtained; or

(3) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subdivision (1) or (2) of this subsection.

(b) For purposes of subsection (a) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration or guaranteed by the administrator of veterans affairs, or their successors.

(c) A mortgage loan that is held by an insurer under subsection (f), section three of this article or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC accounting practices and procedures manual or successor publication continues to qualify as a mortgage loan under this article.

(d) Subject to the limitations of section ten of this article, credit lease transactions that do not qualify for investment under section eleven of this article with the following characteristics are exempt from the provisions of subsection (a) of this section:
(1) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(2) The lease payments cover or exceed the total debt service over the life of the loan;

(3) A tenant or its affiliated entity whose rated credit instruments have an SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(4) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(5) The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(6) There is a perfected assignment of the rents due pursuant to the lease to, or for the benefit of, the insurer.

(e) An insurer may acquire, manage and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program (in which case the real estate shall be considered to be income producing).
(f) Income producing real estate that is acquired, managed
or disposed of pursuant to subsection (e) of this section may be
subject to mortgages, liens or other encumbrances, the amount
of which may, to the extent that the obligations secured by the
mortgages, liens or encumbrances are without recourse to the
insurer, be deducted from the amount of the investment of the
insurer in the real estate for purposes of determining compli-
ance with subsections (i) and (j) of this section.

(g) An insurer may acquire, manage, and dispose of real
estate for the convenient accommodation of the insurer's
(which may include its affiliates) business operations, including
home office, branch office and field office operations, as
follows:

(1) Real estate acquired under this subsection may include
excess space for rent to others, if the excess space, valued at its
fair market value, would otherwise be a permitted investment
under subsection (e) of this section and is qualified by the
insurer;

(2) The real estate acquired under this subsection may be
subject to one or more mortgages, liens or other encumbrances,
the amount of which may, to the extent that the obligations
secured by the mortgages, liens or encumbrances are without
recourse to the insurer, be deducted from the amount of the
investment of the insurer in the real estate for purposes of
determining compliance with subsection (k) of this section; and

(3) For purposes of this subsection, business operations
may not include that portion of real estate used for the direct
provision of health care services by an accident and sickness
insurer for its insureds. An insurer may acquire real estate used
for these purposes under subsection (e) of this section.

(h) An insurer may not acquire an investment under
subsection (a) of this section if, as a result of and after giving
effect to the investment, the aggregate amount of all invest-
ments then held by the insurer under subsection (a) of this
section would exceed:

(1) One percent of its admitted assets in mortgage loans
covering any one secured location;

(2) One quarter of one percent of its admitted assets in
construction loans covering any one secured location; or

(3) Two percent of its admitted assets in construction loans
in the aggregate.

(i) An insurer may not acquire an investment under
subsections (e) and (f) of this section if, as a result of and after
giving effect to the investment and any outstanding guarantees
made by the insurer in connection with the investment, the
aggregate amount of investments then held by the insurer under
subsections (e) and (f) of this section plus the guarantees then
outstanding would exceed:

(1) One percent of its admitted assets in one parcel or group
of contiguous parcels of real estate, except that this limitation
may not apply to that portion of real estate used for the direct
provision of health care services by an accident and sickness
insurer for its insureds, such as hospitals, medical clinics,
medical professional buildings or other health facilities used for
the purpose of providing health services; or

(2) Fifteen percent of its admitted assets in the aggregate,
but not more than five percent of its admitted assets as to
properties that are to be improved or developed.

(j) An insurer may not acquire an investment under
subsection (a) or (e) of this section if, as a result of and after
giving effect to the investment and any guarantees made by the
insurer in connection with the investment, the aggregate amount
of all investments then held by the insurer under subsections (a) and (e) of this section plus the guarantees then outstanding would exceed forty-five percent of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent of its admitted assets if:

(1) This increased amount is invested only in residential mortgage loans;

(2) The insurer has no more than ten percent of its admitted assets invested in mortgage loans other than residential mortgage loans;

(3) The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent at the time the mortgage loan is qualified under this increased authority and the fair market value is supported by an appraisal no more than two years old, prepared by an independent appraiser;

(4) A single mortgage loan qualified under this increased authority may not exceed one half of one percent of its admitted assets;

(5) The insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

(6) The insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

(k) The limitations of section ten of this article do not apply to an insurer's acquisition of real estate under subsection (g) of this section. An insurer may not acquire real estate under said subsection if, as a result of and after giving effect to the
acquisition, the aggregate amount of real estate then held by the
insurer under said subsection would exceed ten percent of its
admitted assets. With the permission of the commissioner,
additional amounts of real estate may be acquired under said
subsection.

§33-8-16. Same - Securities lending, repurchase, reverse repur-
chase and dollar roll transactions.

(a) An insurer may enter into securities lending, repurchase,
reverse repurchase and dollar roll transactions with business
entities, subject to the following requirements:

(1) The insurer’s board of directors shall adopt a written
plan that is consistent with the requirements of the written plan
in subsection (a), section four of this article that specifies
guidelines and objectives to be followed, such as:

(A) A description of how cash received will be invested or
used for general corporate purposes of the insurer;

(B) Operational procedures to manage interest rate risk,
counterparty default risk, the conditions under which proceeds
from reverse repurchase transactions may be used in the
ordinary course of business and the use of acceptable collateral
in a manner that reflects the liquidity needs of the transaction;
and

(C) The extent to which the insurer may engage in these
transactions.

(2) The insurer shall enter into a written agreement for all
transactions authorized in this section other than dollar roll
transactions. The written agreement shall require that each
transaction terminate no more than one year from its inception
or upon the earlier demand of the insurer. The agreement shall
be with the business entity counterparty, but for securities
lending transactions, the agreement shall be with an agent
acting on behalf of the insurer, if the agent is a qualified
business entity, and if the agreement:

(A) Requires the agent to enter into separate agreements
with each counterparty that are consistent with the requirements
of this section; and

(B) Prohibits securities lending transactions under the
agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be
invested in accordance with this article and in a manner that
recognizes the liquidity needs of the transaction or used by the
insurer for its general corporate purposes. For so long as the
transaction remains outstanding, the insurer, its agent or
custodian shall maintain, as to acceptable collateral received in
a transaction under this section, either physically or through the
book entry systems of the federal reserve, depository trust
company, participants trust company or other securities
depositories approved by the commissioner:

(A) Possession of the acceptable collateral;

(B) A perfected security interest in the acceptable collat-
eral; or

(C) In the case of a jurisdiction outside of the United States,
title to, or rights of a secured creditor to, the acceptable
collateral.

(4) In a securities lending transaction, the insurer shall
receive acceptable collateral having a market value as of the
transaction date at least equal to one hundred two percent of the
market value of the securities loaned by the insurer in the
transaction as of that date. If at any time the market value of
the acceptable collateral is less than the market value of the
loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the market value of the loaned securities.

(5) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities so transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(6) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(7) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two
percent of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction or otherwise pledged.

(b) The limitations of sections ten and seventeen of this article do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer’s future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities then loaned, sold to or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect will be given to netting provisions under a master written agreement; or

(2) The aggregate amount of all securities then loaned, sold to or purchased from all business entities under this section would exceed forty percent of its admitted assets.

§33-8-17. Same - Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section ten of this article, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this article, other than of the type permitted
under section twelve of this article, if, as a result and after
giving effect to the investment:

(1) The aggregate amount of foreign investments then held
by the insurer under this subsection does not exceed twenty
percent of its admitted assets; and

(2) The aggregate amount of foreign investments then held
by the insurer under this subsection in a single foreign jurisdic-
tion does not exceed ten percent of its admitted assets as to a
foreign jurisdiction that has a sovereign debt rating of SVO 1 or
three percent of its admitted assets as to any other foreign
jurisdiction.

(b) Subject to the limitations of section ten of this article,
an insurer may acquire investments, or engage in investment
practices denominated in foreign currencies, whether or not
they are foreign investments acquired under subsection (a) of
this section, or additional foreign currency exposure as a result
of the termination or expiration of a hedging transaction with
respect to investments denominated in a foreign currency, if:

(1) The aggregate amount of investments then held by the
insurer under this subsection denominated in foreign currencies
does not exceed ten percent of its admitted assets; and

(2) The aggregate amount of investments then held by the
insurer under this subsection denominated in the foreign
currency of a single foreign jurisdiction does not exceed ten
percent of its admitted assets as to a foreign jurisdiction that has
a sovereign debt rating of SVO 1 or three percent of its admit-
ted assets as to any other foreign jurisdiction; an investment
will not be considered denominated in a foreign currency if the
acquiring insurer enters into one or more contracts in transac-
tions permitted under section eighteen of this article and the
business entity counterparty agrees under the contract or
contracts to exchange all payments made on the foreign

currency denominated investment for United States currency at
a rate which effectively insulates the investment cash flows
against future changes in currency exchange rates during the
period the contract or contracts are in effect.

(c) In addition to investments permitted under subsections
(a) and (b) of this section, an insurer that is authorized to do
business in a foreign jurisdiction, and that has outstanding
insurance, annuity or reinsurance contracts on lives or risks
resident or located in that foreign jurisdiction and denominated
in foreign currency of that jurisdiction, may acquire foreign
investments respecting that foreign jurisdiction, and may
acquire investments denominated in the currency of that
jurisdiction, subject to the limitations of section ten of this
article. However, investments made under this subsection in
obligations of foreign governments, their political subdivisions
and government-sponsored enterprises will not be subject to the
limitations of section ten of this article if those investments
carry an SVO rating of 1 or 2. The aggregate amount of
investments acquired by the insurer under this subsection may
not exceed the greater of:

(1) The amount the insurer is required by the law of the
foreign jurisdiction to invest in the foreign jurisdiction; or

(2) One hundred fifteen percent of the amount of its
reserves, net of reinsurance, and other obligations under the
contracts on lives or risks resident or located in the foreign
jurisdiction.

(d) In addition to investments permitted under subsections
(a) and (b) of this section, an insurer that is not authorized to do
business in a foreign jurisdiction, but which has outstanding
insurance, annuity or reinsurance contracts on lives or risks
resident or located in that foreign jurisdiction and denominated
in foreign currency of that jurisdiction, may acquire foreign
investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of section ten of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises are not subject to the limitations of section ten of this article if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed one hundred five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions and government-sponsored enterprises of these persons, except for those exempted under subsections (c) and (d) of this section, are subject to the limitations of section ten of this article.

§33-8-18. Same - Derivative transactions.

(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in rules promulgated by the commissioner.

(2) An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing
effectiveness of the derivative transaction or combination of the
transactions through cash flow testing or other appropriate
analyses.

(b) An insurer may enter into hedging transactions under
this section if, as a result of and after giving effect to the
transaction:

(1) The aggregate statement value of options, caps, floors
and warrants not attached to another financial instrument
purchased and used in hedging transactions does not exceed
seven and one-half percent of its admitted assets;

(2) The aggregate statement value of options, caps and
floors written in hedging transactions does not exceed three
percent of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps,
forwards and futures used in hedging transactions does not
exceed six and one-half percent of its admitted assets.

(c) An insurer may only enter into the following types of
income generation transactions if as a result of and after giving
effect to the transactions, the aggregate statement value of the
fixed income assets that are subject to call or that generate the
cash flows for payments under the caps or floors, plus the face
value of fixed income securities underlying a derivative
instrument subject to call, plus the amount of the purchase
obligations under the puts, does not exceed ten percent of its
admitted assets:

(1) Sales of covered call options on noncallable fixed
income securities, callable fixed income securities if the option
expires by its terms prior to the end of the noncallable period or
derivative instruments based on fixed income securities;
(2) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(3) Sales of covered puts on investments that the insurer is permitted to acquire under this article, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(4) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(d) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of section ten of this article.

(e) Pursuant to rules promulgated under section eight of this article, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (b) of this section or for other risk management purposes under rules promulgated by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

§33-8-19. Same - Policy loans.

A life insurer may lend to a policyholder on the security of the cash surrender value of the policyholder’s policy a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.
§33-8-20. Same - Additional investment authority.

(a) Solely for the purpose of acquiring investments that exceed the quantitative limitations of sections ten through seventeen, inclusive, of this article, an insurer may acquire under this subsection an investment, or engage in investment practices described in section sixteen of this article, but an insurer may not acquire an investment, or engage in investment practices described in said section, under this subsection if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of investments then held by an insurer under this subsection would exceed three percent of its admitted assets; or

(2) The aggregate amount of investments as to one limitation in sections ten through seventeen, inclusive, of this article then held by the insurer under this subsection would exceed one percent of its admitted assets.

(b) In addition to the authority provided under subsection (a) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section sixteen of this article, that are not specifically prohibited by this article, without regard to the categories, conditions, standards or other limitations of sections ten through seventeen, inclusive, of this article if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:

(1) Ten percent of its admitted assets; or

(2) Seventy-five percent of its capital and surplus. However, an insurer may not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount
of all investments in any one person then held by the insurer under this subsection would exceed three percent of its admitted assets.

(c) In addition to the investments acquired under subsections (a) and (b) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section sixteen of this article, that are not specifically prohibited by this article without regard to any limitations of sections ten through seventeen, inclusive, of this article if:

(1) The commissioner grants prior approval;

(2) The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(3) As a result of and after giving effect to the transaction the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:

(A) Twenty-five percent of its capital and surplus; or

(B) One hundred percent of capital and surplus less ten percent of its admitted assets.

(d) An investment prohibited under section five of this article, not permitted under section eighteen of this article or additional derivative instruments acquired under said section may not be acquired under this section.

§33-8-21. Property and casualty, financial guaranty and mortgage guaranty insurers - Applicability.

Sections twenty-two through thirty-two, inclusive, of this article apply to the investments and investment practices of
§33-8-22. Same - Reserve requirements.

(a) Subject to all other limitations and requirements of this article, a property and casualty, financial guaranty, mortgage guaranty or accident and sickness insurer shall maintain an amount at least equal to one hundred percent of adjusted loss reserves and loss adjustment expense reserves, one hundred percent of adjusted unearned premium reserves and one hundred percent of statutorily required policy and contract reserves in:

(1) Cash and cash equivalents;

(2) High and medium grade investments that qualify under section twenty-four or twenty-five of this article;

(3) Equity interests that qualify under section twenty-six of this article and that are traded on a qualified exchange;

(4) Investments of the type set forth in section thirty of this article if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(5) Qualifying investments of the type set forth in subdivision (2), (3) or (4) of this subsection that are acquired under section thirty-two of this article;

(6) Interest and dividends receivable on qualifying investments of the type set forth in subdivisions (1) through (5), inclusive, of this subsection; or
(7) Reinsurance recoverable on paid losses.

(b) For purposes of determining the amount of assets to be maintained under subsection (a) of this section, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date.

(1) Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:

(A) The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by

(B) The discount factor that is applicable to the line of business and accident year published by the internal revenue service under Section 846 of the Internal Revenue Code, as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus

(C) Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs (i) and (ii) of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph (i) of this paragraph.

(D) For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.
(2) Adjusted unearned premium reserves shall be equal to the result of the following calculation:

(A) The amount reported by the insurer as unearned premium reserves; minus

(B) The admitted asset amounts reported by the insurer as:

   (i) Premiums in and agents’ balances in the course of collection, accident and sickness premiums due and unpaid and uncollected premiums for accident and sickness premiums;

   (ii) Premiums, agents’ balances and installments booked but deferred and not yet due; and

   (iii) Bills receivable, taken for premium.

(3) Statutorily required policy and contract reserves also include, in the case of a financial guaranty insurer, or a mortgage guaranty insurer the contingency reserves, and with respect to accident and sickness insurers the additional or contingency reserves, prescribed by the NAIC in the accounting practices and procedures manual as amended.

(c) Monitoring and reporting. --

A property and casualty, financial guaranty, mortgage guaranty or accident and health sickness insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (a) of this section. A reconciliation and summary showing that an insurer’s assets as required in said subsection are greater than or equal to its undiscounted reserves referred to in said subsection are sufficient to satisfy this requirement. Upon prior notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.
(d) If a property and casualty, financial guaranty, mortgage guaranty or accident and sickness insurer's assets and reserves do not comply with subsections (a) and (b) of this section, the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists and within thirty days of the date of the notice propose a plan of action to remedy the deficiency.

(e) If the commissioner determines that an insurer is not in compliance with subsection (a) of this section, the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer. If an insurer fails to comply with the commissioner's requirement the insurer is considered to be in hazardous financial condition, and the commissioner may take one or more of the actions authorized by law as to insurers in hazardous financial condition.

§33-8-23. Same - General five percent diversification, medium and lower grade investments and Canadian investments.

(a) Except as otherwise specified in this article, an insurer may not acquire directly or indirectly through an investment subsidiary an investment under this article if, as a result of and after giving effect to the investment, the insurer would hold more than five percent of its admitted assets in investments of all kinds issued, assumed, accepted, insured or guaranteed by a single person.

(b) The five percent limitation set forth in subsection (a) of this section does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic
rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (a) of this section, however an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed five percent of its admitted assets.

(d) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under sections twenty-four, twenty-seven and thirty of this article or counterparty exposure under subsection (d), section thirty-one of this article if, as a result of and after giving effect to the investment:

(1) The aggregate amount of all medium and lower grade investments then held by the insurer would exceed twenty percent of its admitted assets;

(2) The aggregate amount of lower grade investments then held by the insurer would exceed ten percent of its admitted assets;

(3) The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed five percent of its admitted assets;

(4) The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent of its admitted assets; or

(5) The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income
less than the equivalent yield for treasury issues with a com-
parative average life, would exceed one percent of its admitted
assets.

(e) An insurer may not acquire, directly or indirectly
through an investment subsidiary, an investment under section
twenty-four, twenty-seven or thirty of this article or
counterparty exposure under subsection (d), section thirty-one
of this article if, as a result of and after giving effect to the
investment:

(1) The aggregate amount of medium and lower grade
investments issued, assumed, guaranteed, accepted or insured
by any one person or, as to asset-backed securities secured by
or evidencing an interest in a single asset or pool of assets, then
held by the insurer would exceed one percent of its admitted
assets; or

(2) The aggregate amount of lower grade investments
issued, assumed, guaranteed, accepted or insured by any one
person or, as to asset-backed securities secured by or evidenc-
ing an interest in a single asset or pool of assets, then held by
the insurer would exceed one half of one percent of its admitted
assets.

(f) If an insurer attains or exceeds the limit of any one
rating category referred to in subsection (d) or (e) of this
section, the insurer may not be precluded from acquiring
investments in other rating categories subject to the specific and
multicategory limits applicable to those investments.

(g) An insurer may not acquire, directly or indirectly
through an investment subsidiary, any Canadian investments
authorized by this article, if as a result of and after giving effect
to the investment, the aggregate amount of these investments
then held by the insurer would exceed forty percent of its admited assets, or if the aggregate amount of Canadian
investments not acquired under subsection (b), section twenty-four of this article then held by the insurer would exceed twenty-five percent of its admitted assets. However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of this subsection shall be increased by the greater of:

1. The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or
2. One hundred twenty-five percent of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.

§33-8-24. Same - Rated credit instruments.

(a) Subject to the limitations of subsection (b), section twenty-three of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

1. The United States; or
2. A government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(b) Subject to the limitations of subsections (d), (e) and (f), section twenty-three of this article, but not to the limitations of subsections (a), (b) and (c) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:
(2) A government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada; however, an insurer may not acquire an instrument under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent of its admitted assets.

(c) Subject to the limitations of subsections (d), (e) and (f), section twenty-three of this article, but not to the limitations of subsections (a), (b) and (c) of said section, an insurer may acquire rated credit instruments, excluding asset-backed securities:

(1) Issued by a government money market mutual fund, a class one money market mutual fund or a class one bond mutual fund;

(2) Issued, assumed, guaranteed or insured by a government-sponsored enterprise of the United States other than those eligible under subsection (a) of this section;

(3) Issued, assumed, guaranteed or insured by a state, if the instruments are general obligations of the state; or

(4) Issued by a multilateral development bank. However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity, or any one state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise or entity or state under this subsection would exceed ten percent of its admitted assets.
(d) Subject to the limitations of section twenty-three of this article, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(1) The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent of its admitted assets; and

(2) The aggregate amount of preferred stocks then held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent of its admitted assets.

(e) Subject to the limitations of section twenty-three of this article in addition to those investments eligible under subsections (a), (b), (c) and (d) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(f) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent of its admitted assets.

§33-8-25. Same - Insurer investment pools.

(a) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally
recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, LIBOR or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase and reverse repurchase transactions that meet all the requirements of section twenty-nine of this article, except the quantitative limitations of subsection (b), section twenty-nine of this article; or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(b) For an investment in an investment pool to be qualified under this article, the investment pool may not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transac-
(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten percent of the total assets of the investment pool.

(c) The limitations of subsection (a), section twenty-three of this article do not apply to an insurer's investment in an investment pool, however an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten percent of its admitted assets;

(2) In all investment pools investing in investments permitted under subdivision (2), subsection (a) of this section would exceed twenty-five percent of its admitted assets; or

(3) In all investment pools would exceed forty percent of its admitted assets.

(d) For an investment in an investment pool to be qualified under this article, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940, as
amended, or, in the case of a reciprocal insurer or interinsurance
exchange, its attorney-in-fact, or in the case of a United States
branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant’s proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant’s investment in the investment pool; and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(C) Contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.
(e) The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subdivision (1), subsection (a) of this section, the insurer and its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent of the interests in the investment pool;

(2) The underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(3) In proportion to the aggregate amount of each pool participant’s interest in the investment pool:

(A) Each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) The underlying assets of the investment pool are held solely for the benefit of each participant;

(4) A participant, or in the event of the participant’s insolvency, bankruptcy or receivership, its trustee, receiver or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this subdivision shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The
pooling agreement shall provide that the pool manager shall
distribute to a participant, at the discretion of the pool manager:

(A) In cash, the then fair market value of the participant's
pro rata share of each underlying asset of the investment pool;

(B) In kind, a pro rata share of each underlying asset; or

(C) In a combination of cash and in kind distributions, a pro
rata share in each underlying asset; and

(6) The pool manager shall make the records of the invest-
ment pool available for inspection by the commissioner.

§33-8-26. Same - Equity interests.

(a) Subject to the limitations of section twenty-three of this
article, an insurer may acquire equity interests in business
entities organized under the laws of any domestic jurisdiction.

(b) An insurer may not acquire an investment under this
section if, as a result of and after giving effect to the invest-
ment, the aggregate amount of investments then held by the
insurer under this section would exceed the greater of
twenty-five percent of its admitted assets or one hundred
percent of its surplus as regards policyholders: Provided, That
the aggregate investments of a health maintenance organization
may not exceed the greater of thirty percent of its admitted
assets or one hundred percent of its total capital and surplus.

(c) An insurer may not acquire under this section any
investments that the insurer may acquire under section
twenty-eight of this article.

(d) An insurer may not short sell equity investments unless
the insurer covers the short sale by owning the equity invest-
ment or an unrestricted right to the equity instrument exercisable within six months of the short sale.

§33-8-27. Same - Tangible personal property under lease.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire tangible personal property or equity interests therein located or used, wholly or in part, within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments.

(b) Investments acquired under subsection (a) of this section are eligible only if:

(1) The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under section twenty-four of this article; and

(2) The lease or other agreement provides the insurer the right to receive rental, purchase or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, is adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(c) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to
finance the purchase price and expenses, to the extent the
borrowing is without recourse to the insurer.

(d) An insurer may not acquire an investment under this
section if, as a result of and after giving effect to the invest-
ment, the aggregate amount of all investments then held by the
insurer under this section would exceed:

(1) Two percent of its admitted assets; or

(2) One half of one percent of its admitted assets as to any
single item of tangible personal property.

(e) For purposes of determining compliance with the
limitations of section twenty-three of this article, investments
acquired by an insurer under this section shall be aggregated
with those acquired under section twenty-four of this article,
and each lessee of the property under a lease referred to in this
section shall be considered the issuer of an obligation in the
amount of the investment of the insurer in the property deter-
mimed as provided in subsection (c) of this section.

(f) Nothing in this section is applicable to tangible personal
property lease arrangements between an insurer and its subsidi-
aries and affiliates under a cost sharing arrangement or
agreement permitted under this article.

§33-8-28. Same - Mortgage loans and real estate.

(a) Subject to the limitations of section twenty-three of this
article, an insurer may acquire, either directly, indirectly
through limited partnership interests and general partnership
interests not otherwise prohibited by subdivision (4), section
five of this article, joint ventures, stock of an investment
subsidiary or membership interests in a limited liability
company, trust certificates, or other similar instruments,
obligations secured by mortgages on real estate situated within
a domestic jurisdiction, but a mortgage loan which is secured
by other than a first lien may not be acquired unless the insurer
is the holder of the first lien. The obligations held by the
insurer and any obligations with an equal lien priority, may not,
at the time of acquisition of the obligation, exceed:

(1) Ninety percent of the fair market value of the real estate,
if the mortgage loan is secured by a purchase money mortgage
or like security received by the insurer upon disposition of the
real estate;

(2) Eighty percent of the fair market value of the real estate,
if the mortgage loan requires immediate scheduled payment in
periodic installments of principal and interest, has an amortiza-
tion period of thirty years or less and periodic payments made
no less frequently than annually. Each periodic payment shall
be sufficient to assure that at all times the outstanding principal
balance of the mortgage loan is not greater than the outstanding
principal balance which would be outstanding under a mortgage
loan with the same original principal balance, with the same
interest rate and requiring equal payments of principal and
interest with the same frequency over the same amortization
period. Mortgage loans permitted under this subsection are
permitted notwithstanding the fact that they provide for a
payment of the principal balance prior to the end of the period
of amortization of the loan. For residential mortgage loans, the
eighty percent limitation may be increased to ninety-seven
percent if acceptable private mortgage insurance has been
obtained; or

(3) Seventy-five percent of the fair market value of the real
estate for mortgage loans that do not meet the requirements of
subdivision (1) or (2) of this subsection.

(b) For purposes of subsection (a) of this section, the
amount of an obligation required to be included in the calcula-
tion of the loan-to-value ratio may be reduced to the extent the
obligation is insured by the federal housing administration or
guaranteed by the administrator of veterans affairs, or their
successors.

(c) A mortgage loan that is held by an insurer under
subsection (f), section three of this article or acquired under this
section and is restructured in a manner that meets the require-
ments of a restructured mortgage loan in accordance with the
NAIC accounting practices and procedures manual or successor
publication continues to qualify as a mortgage loan under this
article.

(d) Subject to the limitations of section twenty-three of this
article, credit lease transactions that do not qualify for invest-
ment under section twenty-four of this article with the follow-
ing characteristics are exempt from the provisions of subsection
(a) of this section:

(1) The loan amortizes over the initial fixed lease term at
least in an amount sufficient so that the loan balance at the end
of the lease term does not exceed the original appraised value
of the real estate;

(2) The lease payments cover or exceed the total debt
service over the life of the loan;

(3) A tenant or its affiliated entity whose rated credit
instruments have a SVO 1 or 2 designation or a comparable
rating from a nationally recognized statistical rating organiza-
tion recognized by the SVO has a full faith and credit obligation
to make the lease payments;

(4) The insurer holds or is the beneficial holder of a first
lien mortgage on the real estate;
(5) The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(6) There is a perfected assignment of the rents due pursuant to the lease to, or for the benefit of, the insurer.

(e) An insurer may acquire, manage and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program (in which case the real estate shall be considered to be income producing).

(f) The income producing real estate that is acquired, managed or disposed of pursuant to subsection (e) of this section may be subject to mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (i) and (j) of this section.

(g) Real estate for the accommodation of business.

An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer’s (which may include its affiliates) business operations, including home office, branch office and field office operations, as follows:
102 (1) Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (e) of this section and is qualified by the insurer;

107 (2) The real estate acquired under this subsection may be subject to one or more mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (k) of this section; and

114 (3) For purposes of this subsection, business operations may not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsection (e) of this section.

122 (h) An insurer may not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (a) of this section would exceed:

127 (1) One percent of its admitted assets in mortgage loans covering any one secured location;

129 (2) One quarter of one percent of its admitted assets in construction loans covering any one secured location; or

131 (3) One percent of its admitted assets in construction loans in the aggregate.
(i) An insurer may not acquire an investment under subsections (e) and (f) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (e) and (f) of this section plus the guarantees then outstanding would exceed:

- (1) One percent of its admitted assets in any one parcel or group of contiguous parcels of real estate, except that this limitation may not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and sickness constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings or other health facilities used for the purpose of providing health services; or

- (2) The lesser of ten percent of its admitted assets or forty percent of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent of its admitted assets in the aggregate.

(j) An insurer may not acquire an investment under subsection (a) or (b) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (a) and (b) of this section plus the guarantees then outstanding would exceed twenty-five percent of its admitted assets.
(k) The limitations of section twenty-three of this article do not apply to an insurer’s acquisition of real estate under subsection (g) of this section. An insurer may not acquire real estate under said subsection if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under said subsection would exceed ten percent of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under said subsection.

§33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.

(a) An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

(1) The insurer’s board of directors shall adopt a written plan that is consistent with the requirements of the written plan in subsection (a), section four of this article that specifies guidelines and objectives to be followed, such as:

(A) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(B) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(C) The extent to which the insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll
transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement shall be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(A) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(B) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with this article and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company or other securities depositories approved by the commissioner:

(A) Possession of the acceptable collateral;

(B) A perfected security interest in the acceptable collateral; or

(C) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(4) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the
transaction date at least equal to one hundred two percent of the
market value of the securities loaned by the insurer in the
transaction as of that date. If at any time the market value of
the acceptable collateral is less than the market value of the
loaned securities, the business entity counterparty shall be
obligated to deliver additional acceptable collateral, the market
value of which, together with the market value of all acceptable
collateral then held in connection with the transaction, at least
equals one hundred two percent of the market value of the
loaned securities.

(5) In a reverse repurchase transaction, (other than a dollar
roll transaction), the insurer shall receive acceptable collateral
having a market value as of the transaction date at least equal
to ninety-five percent of the market value of the securities
transferred by the insurer in the transaction as of that date. If at
any time the market value of the acceptable collateral is less
than ninety-five percent of the market value of the securities
transferred, the business entity counterparty is obligated to
deliver additional acceptable collateral, the market value of
which, together with the market value of all acceptable collat-
eral then held in connection with the transaction, at least equals
ninety-five percent of the market value of the transferred
securities.

(6) In a dollar roll transaction, the insurer shall receive cash
in an amount at least equal to the market value of the securities
transferred by the insurer in the transaction as of the transaction
date.

(7) In a repurchase transaction, the insurer shall receive as
acceptable collateral transferred securities having a market
value at least equal to one hundred two percent of the purchase
price paid by the insurer for the securities. If at any time the
market value of the acceptable collateral is less than one
hundred percent of the purchase price paid by the insurer, the
A business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction or otherwise pledged.

(b) The limitations of sections twenty-three and thirty of this article do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subdivision, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

1. The aggregate amount of securities then loaned, sold to or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect will be given to netting provisions under a master written agreement; or

2. The aggregate amount of all securities then loaned, sold to or purchased from all business entities under this section would exceed forty percent of its admitted assets but the limitation of this subdivision does not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the commissioner.
§33-8-30. Same - Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this article, other than of the type permitted under section twenty-five of this article, if, as a result and after giving effect to the investment:

1. (1) The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent of its admitted assets; and

2. (2) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent of its admitted assets as to any other foreign jurisdiction.

(b) Subject to the limitations of section twenty-three of this article, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

1. (1) The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed fifteen percent of its admitted assets; and

2. (2) The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign
currency of a single foreign jurisdiction does not exceed ten
percent of its admitted assets as to a foreign jurisdiction that has
a sovereign debt rating of SVO 1 or five percent of its admitted
assets as to any other foreign jurisdiction. However, an
investment will not be considered denominated in a foreign
currency if the acquiring insurer enters into one or more
contracts in transactions permitted under section thirty-one of
this article and the business entity counterparty agrees under the
contract or contracts to exchange all payments made on the
foreign currency denominated investment for United States
currency at a rate which effectively insulates the investment
cash flows against future changes in currency exchange rates
during the period the contract or contracts are in effect.

(c) In addition to investments permitted under subsections
(a) and (b) of this section, an insurer that is authorized to do
business in a foreign jurisdiction, and that has outstanding
insurance, annuity or reinsurance contracts on lives or risks
resident or located in that foreign jurisdiction and denominated
in foreign currency of that jurisdiction, may acquire foreign
investments respecting that foreign jurisdiction, and may
acquire investments denominated in the currency of that
jurisdiction, subject to the limitations of section twenty-three of
this article. However, investments made under this subsection
in obligations of foreign governments, their political subdivi-
sions and government-sponsored enterprises are not subject to
the limitations of section twenty-three of this article if those
investments carry an SVO rating of 1 or 2. The aggregate
amount of investments acquired by the insurer under this
subsection may not exceed the greater of:

(1) The amount the insurer is required by law to invest in
the foreign jurisdiction; or
(2) One hundred twenty-five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts.

(d) In addition to investments permitted under subsections (a) and (b) of this section, an insurer that is not authorized to do business in a foreign jurisdiction but which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in section twenty-three of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises are not subject to the limitations of section twenty-three of this article if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed one hundred five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions and government-sponsored enterprises of these persons, except for those exempted under subsections (c) and (d) of this section, are subject to the limitations of section twenty-three of this article.

§33-8-31. Same - Derivative transactions.
(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in rules promulgated by the commissioner.

(2) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.

(b) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate statement value of options, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(2) The aggregate statement value of options, caps and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets.

(c) An insurer may only enter into the following types of income generation transactions if as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument
subject to call, plus the amount of the purchase obligations
under the puts, does not exceed ten percent of its admitted
assets:

(1) Sales of covered call options on noncallable fixed
income securities, callable fixed income securities if the option
expires by its terms prior to the end of the noncallable period or
derivative instruments based on fixed income securities;

(2) Sales of covered call options on equity securities, if the
insurer holds in its portfolio, or can immediately acquire
through the exercise of options, warrants or conversion rights
already owned, the equity securities subject to call during the
complete term of the call option sold; or

(3) Sales of covered puts on investments that the insurer is
permitted to acquire under this article, if the insurer has
escrowed, or entered into a custodian agreement segregating,
cash or cash equivalents with a market value equal to the
amount of its purchase obligations under the put during the
complete term of the put option sold.

(d) An insurer shall include all counterparty exposure
amounts in determining compliance with the limitations of
section twenty-three of this article.

(e) Pursuant to rules promulgated under section eight of this
article, the commissioner may approve additional transactions
involving the use of derivative instruments in excess of the
limits of subsection (b) of this section or for other risk manage-
ment purposes under rules promulgated by the commissioner,
but replication transactions may not be permitted for other than
risk management purposes.

§33-8-32. Same - Additional investment authority.
(a) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this article, or engage in investment practices, without regard to any limitation in sections twenty-three through thirty of this article, but an insurer may not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:

1. Its unrestricted surplus; or
2. The lesser of:
   (A) Ten percent of its admitted assets; or
   (B) Fifty percent of its surplus as regards policyholders.

(b) An insurer may not acquire any investment or engage in any investment practice under subdivision (2), subsection (a) of this section if, as a result of and after giving effect to the transaction the aggregate amount of all investments in any one person then held by the insurer under that subsection would exceed five percent of its admitted assets.

ARTICLE 9. ADMINISTRATION OF DEPOSITS.

§33-9-3. Assets eligible for deposit.

(a) All deposits required for a license to transact insurance in West Virginia shall consist of cash or any combination of the government obligations described in paragraph (A) or (B), subdivision (1), subsection (a), section eleven, article eight of this chapter or paragraph (A), (B) or (C), subdivision (3) of said subsection.

(b) All deposits required pursuant to the laws of another state, province or country, or pursuant to the retaliatory
provision, section sixteen, article three of this chapter, shall consist of those assets that are required or permitted by the laws, or as required pursuant to the retaliatory provision.

ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.

§33-22-11. Surplus or emergency fund.

(a) Each company may accumulate a surplus or emergency fund in an amount determined advisable by its board of directors.

(b) The first twenty-five thousand dollars of the accumulated surplus shall be in cash or invested in government securities described in subdivision (1) or (2), subsection (a), section twenty-four, article eight of this chapter or subdivision (1), (2) or (3), subsection (c) of said section, and the balance of the surplus may be invested in any of the other classes of investments described in article eight of this chapter subject to the limitations as to each class provided therein.

(c) All assets of the company other than the accumulated surplus shall be in cash or invested in the government securities described in subdivision (1) or (2), subsection (a), section twenty-four, article eight of this chapter or subdivision (1), (2) or (3), subsection (c) of said section: Provided, That any company having received an extension of its license to permit it to issue policies of insurance pursuant to subsection (c), section eight, article twenty-two of this chapter shall with the prior approval of the commissioner be permitted to invest all assets of the company other than the accumulated surplus in the investments that are authorized by sections twenty-three through thirty-two, inclusive, of said article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

(a) A domestic society shall invest its funds only in the investments that are authorized by sections ten through twenty, inclusive, article eight of this chapter for the investment of the assets of domestic insurers.

(b) Foreign and alien societies shall have investments of the same general quality as required of domestic societies, except that other investments authorized by the laws of the foreign or alien society's state or country of domicile may be recognized as assets in the discretion of the commissioner.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-10. Investments; bonds of corporate officers and employees, minimum statutory surplus.

(a) The funds of any corporation shall be invested only as follows:

(1) The first two million dollars of the funds shall be in cash or government securities of the type described in paragraph (A) or (B), subdivision (1), subsection (a), section eleven, article eight of this chapter or paragraph (A), (B) or (C), subdivision (3) of said subsection.

(2) The balance of the funds may be in cash, invested in the classes of investments described in subdivision (1), subsection (a), section eleven, article eight of this chapter or invested in the classes of investments described in the following sections of article eight of this chapter: Subdivision (4), subsection (a) and section eleven (preferred stock), section twelve (investment pools), section thirteen (equity interests), section fourteen (tangible personal property under lease), section fifteen (mortgage loans and real estate), section sixteen (securities lending, repurchase, reverse repurchase and dollar roll transac-
tions), section seventeen (foreign investments) and section eighteen (derivative transactions). All investments are subject to all the restrictions and conditions contained in said article eight as applying to similar investments of insurers generally.

(b) Every officer or employee of any corporation, who is entrusted with the handling of its funds, shall furnish, in an amount fixed by the board of directors of the corporation, with the approval of the commissioner, a bond with corporate surety, conditioned upon the faithful performance of all his or her duties.

(c) A corporation shall have and maintain statutory surplus funds of at least two million dollars: Provided, That any corporation duly licensed under this article in West Virginia prior to the effective date of this section whose surplus requirements are increased by virtue of this section shall maintain statutory surplus funds of at least five hundred thousand dollars after the effective date of this section, and any corporation is then subject to the full two million dollar statutory surplus requirement.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(1) Upon receipt of an application for a certificate of authority, the commissioner shall determine whether the application for a certificate of authority, with respect to health care services to be furnished, has demonstrated:

(a) The willingness and potential ability of the organization to assure that basic health services will be provided in a manner to enhance and assure both the availability and accessibility of adequate personnel and facilities;
(b) Arrangements for an ongoing evaluation of the quality of health care provided by the organization and utilization review which meet those standards required by the commissioner by rule; and

(c) That the organization has a procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services and any other matters reasonably required by rule.

(2) The commissioner shall issue or deny a certificate of authority to any person filing an application within one hundred twenty days after receipt of the application. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed, if the commissioner is satisfied that the following conditions are met:

(a) The health maintenance organization’s proposed plan of operation meets the requirements of subsection (1) of this section;

(b) The health maintenance organization will effectively provide or arrange for the provision of at least basic health care services on a prepaid basis except for copayments: Provided, That nothing in this section shall be construed to relieve a health maintenance organization from the obligations to provide health care services because of the nonpayment of copayments unless the enrollee fails to make payment in at least three instances over any twelve-month period: Provided, however, That nothing in this section shall permit a health maintenance organization to charge copayments to medicare beneficiaries or medicaid recipients in excess of the copayments permitted under those programs, nor shall a health maintenance organization be required to provide services to the medicare beneficiaries or medicaid recipients in excess of the benefits compensated under those programs;
(c) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) The financial soundness of the health maintenance organization's arrangements for health care services and the proposed schedule of charges used in connection with the health care services;

(ii) That the health maintenance organization has and maintains the following:

(A) If a for-profit stock corporation, at least one million dollars of fully paid-in capital stock; or

(B) If a nonprofit corporation, at least one million dollars of statutory surplus funds; and

(C) Both for-profit and nonprofit health maintenance organization, additional surplus funds of at least one million dollars;

(iii) Any arrangements that will guarantee for the continuation of benefits and payments to providers for services rendered both prior to and after insolvency for the duration of the contract period for which payment has been made, except that benefits to members who are confined on the date of insolvency in an inpatient facility shall be continued until their discharge; and

(iv) Any agreement with providers for the provision of health care services;

(d) Reasonable provisions have been made for emergency and out-of-area health care services;
(e) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section six of this article;

(f) The health maintenance organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of health care services, including hospital care: Provided, That the requirement of this subdivision shall not prohibit a health maintenance organization from obtaining reinsurance acceptable to the commissioner from an accredited reinsurer or making other arrangements acceptable to the commissioner:

(i) For the cost of providing to any enrollee health care services, the aggregate value of which exceeds four thousand dollars in any year;

(ii) For the cost of providing health care services to its members on a nonelective emergency basis, or while they are outside the area served by the organization; or

(iii) For not more than ninety-five percent of the amount by which the health maintenance organization's costs for any of its fiscal years exceed one hundred five percent of its income for those fiscal years;

(g) The ownership, control and management of the organization is competent and trustworthy and possesses managerial experience that would make the proposed health maintenance organization operation beneficial to the subscribers. The commissioner may, at his or her discretion, refuse to grant or continue authority to transact the business of a health maintenance organization in this state at any time during which the commissioner has probable cause to believe that the ownership, control or management of the organization includes any person whose business operations are or have been marked by business
practices or conduct that is to the detriment of the public, stockholders, investors or creditors;

(h) The health maintenance organization has deposited and maintained in trust with the state treasurer, for the protection of its subscribers or its subscribers and creditors, cash or government securities eligible for the investment of capital funds of domestic insurers as described in paragraph (A) or (B), subdivision (1), subsection (a), section eleven, article eight of this chapter or paragraph (A), (B) or (C), subdivision (3) of said subsection, in the amount of one hundred thousand dollars; and

(i) The health maintenance organization has a quality assurance program which has been reviewed by the commissioner or by a nationally recognized accreditation and review organization approved by the commissioner; meets at least those standards set forth in section seventeen-a of this article; and is determined satisfactory by the commissioner. If the commissioner determines that the quality assurance program of a health maintenance organization is deficient in any significant area, the commissioner, in addition to other remedies provided in this chapter, may establish a corrective action plan that the health maintenance organization must follow as a condition to the issuance of a certificate of authority: Provided, That in those instances where a health maintenance organization has timely applied for and reasonably pursued a review of its quality assurance program, but the review has not been completed, the health maintenance organization shall submit proof to the commissioner of its application for that review.

(3) A certificate of authority shall be denied only after compliance with the requirements of section twenty-one of this article.

(4) No person who has not been issued a certificate of authority shall use the words "health maintenance organization"
or the initials “HMO” in its name, contracts, logo or literature:

Provided, That persons who are operating under a contract with, operating in association with, enrolling enrollees for, or otherwise authorized by a health maintenance organization licensed under this article to act on its behalf may use the terms “health maintenance organization”, or “HMO” for the limited purpose of denoting or explaining their association or relationship with the authorized health maintenance organization. No health maintenance organization which has a minority of board members who are consumers shall use the words “consumer controlled” in its name or in any way represent to the public that it is controlled by consumers.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION.


(a) Upon receipt of an application for a certificate of authority, the commissioner shall determine whether the application for a certificate of authority, with respect to limited health services to be furnished has demonstrated:

(1) The willingness and potential ability of the organization to assure that limited health services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

(2) Arrangements for an ongoing evaluation of the quality of health care provided by the organization and utilization review which meet the minimum standards set forth in section nineteen of this article;

(3) That the organization has a procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services and other matters as may be reasonably required by rule.
(b) The commissioner shall issue or deny a certificate of authority to any person filing an application within one hundred twenty days after receipt of the application. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed, if the commissioner is satisfied that the following conditions are met:

(1) The prepaid limited health service organization’s proposed plan of operation meets the requirements of subsection (a) of this section;

(2) The prepaid limited health service organization will effectively provide or arrange for the provision of no more than four limited health services on a prepaid basis except for copayments: Provided, That nothing in this section relieves a prepaid limited health service organization from the obligations to provide a limited health service because of the nonpayment of copayments unless the enrollee fails to make payment in at least three instances over any twelve-month period: Provided, however, That nothing in this section permits a prepaid limited health service organization to charge copayments to medicare beneficiaries or medicaid recipients in excess of the copayments permitted under those programs, nor is a prepaid limited health service organization required to provide a limited health service to medicare beneficiaries or medicaid recipients in excess of the benefits compensated under those programs;

(3) The prepaid limited health service organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(A) The financial soundness of the prepaid limited health service organization’s arrangements for no more than four limited health services and the proposed schedule of charges used in connection with each limited health service offered;
(B) Arrangements for maintenance of the minimum capital and surplus required under section six of this article;

(C) Any arrangements which will guarantee the continuation of benefits and payments to providers for services rendered both prior to and after insolvency for the duration of the contract period for which payment has been made, except that benefits to members who are confined on the date of insolvency in an inpatient facility shall be continued until their discharge; and

(D) Any agreement with providers for the provision of limited health care services;

(4) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section eight of this article;

(5) The prepaid limited health service organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of no more than four limited health services: Provided, That notwithstanding the requirement of this subdivision, a prepaid limited health service organization may obtain reinsurance acceptable to the commissioner from an accredited reinsurer or make other arrangements:

(A) For the cost of providing to any enrollee limited health services, the aggregate value of which exceeds four thousand dollars in any year;

(B) For the cost of providing no more than four limited health services to its enrollees on a nonelective emergency basis; or

(C) For not more than ninety-five percent of the amount by which the prepaid limited health service organization's costs for
any of its fiscal years exceed one hundred five percent of its
income for those fiscal years;

(6) The ownership, control and management of the prepaid
limited health service organization is competent and trustwor-
thy and possesses managerial experience that would make the
proposed organization operation beneficial to the subscribers.
The commissioner may, at his or her discretion, refuse to grant
or continue authority to transact the business of a prepaid
limited health service organization in this state at any time
during which the commissioner has probable cause to believe
that the ownership, control or management of the organization
includes any person whose business operations are or have been
marked by business practices or conduct that is to the detriment
of the public, stockholders, investors or creditors; and

(7) The prepaid limited health service organization has
deposited and maintained in trust with the state treasurer, for
the protection of its subscribers or its subscribers and creditors,
cash or government securities eligible for the investment of
capital funds of domestic insurers as described in paragraph (A)
or (B), subdivision (1), subsection (a), section eleven, article
eight of this chapter or paragraph (A), (B) or (C), subdivision
(3) of said subsection, in the amount of fifty thousand dollars.

(c) A certificate of authority may be denied only after
compliance with the requirements of section twenty-three of
this article.

(d) No person who has not been issued a certificate of
authority may use the words "prepaid limited health service
organization" or the initials "PLHSO" in its name, contracts,
logo or literature: Provided, That persons who are operating
under a contract with, operating in association with, enrolling
enrollees for, or otherwise authorized by a prepaid limited
health service organization licensed under this article to act on
its behalf may use the terms “prepaid limited health service organization” or “PLHSO” for the limited purpose of denoting or explaining their association or relationship with the authorized prepaid limited health service organization. No prepaid limited health service organization which has a minority of board members who are consumers may use the words “consumer controlled” in its name or in any way represent to the public that it is controlled by consumers.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business with the commissioner’s prior approval:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) Acting as an insurance agent for its parent or for any of its parent’s insurer subsidiaries;

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) Ownership and management of assets which the parent corporation could itself own or manage;

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business;

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section; and

(13) Organizing or acquiring one or more subsidiaries that are depository institutions.

(b) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under any other provision of this chapter, a domestic insurer may also with the commissioner’s prior approval:

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer’s assets or fifty percent of the insurer’s surplus as regards policyholders: Provided, That after the investments, the
insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

- (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

- (B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

- (2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer: Provided, That each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (1) of this subsection or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, “the total investment of the insurer” includes:

- (A) Any direct investment by the insurer in an asset; and

- (B) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s
investment by the percentage of the ownership of the subsidiary.

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after investment the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) of this section are not subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.

(d) Whether any investment pursuant to subsection (a) or (b) of this section meets the applicable requirements of said subsections is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary made pursuant to this section within three years from the time of the cessation of control or within any further time prescribed by the commissioner, unless at any time after the investment was made, the investment meets the requirements for investment under any other provision of this chapter and the insurer has notified the commissioner of compliance with the provisions of this chapter.