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AN ACT to amend and reenact §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, all relating to licensing boards; establishing a time limit for licensing boards to issue a status report and a final ruling on complaints; exception; and authorizing licensing boards to suspend and revoke licenses when a licensee cannot be located.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-5. Meetings; quorum; investigatory powers; duties.
§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

§30-1-5. Meetings; quorum; investigatory powers; duties.

(a) Every board referred to in this chapter shall hold at least one meeting each year, at such time and place as it may prescribe by rule, for the examination of applicants who desire to practice their respective professions or occupations in this
state and to transact any other business which may legally come before it. The board may hold additional meetings as may be necessary, which shall be called by the secretary at the direction of the president or upon the written request of any three members. A majority of the members of the board constitutes a quorum for the transaction of its business.

(b) The board is authorized to compel the attendance of witnesses, to issue subpoenas, to conduct investigations and hire an investigator and to take testimony and other evidence concerning any matter within its jurisdiction. The president and secretary of the board are authorized to administer oaths for these purposes.

(c) Every board referred to in this chapter has a duty to investigate and resolve complaints which it receives and shall, within six months of the complaint being filed, send a status report to the party filing the complaint by certified mail with a signed return receipt and within one year of the status report’s return receipt date issue a final ruling, unless the party filing the complaint and the board agree in writing to extend the time for the final ruling.

(d) Every board shall provide public access to the record of the disposition of the complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this code. Every board has a duty to report violations of individual practice acts contained in this chapter to the board by which the individual may be licensed and shall do so in a timely manner upon receiving notice of such violations. Every person licensed or registered by a board has a duty to report to the board which licenses or registers him or her a known or observed violation of the practice act or the board’s rules by any other person licensed or registered by the same board and shall do so in a timely manner. Law-enforcement agencies or their personnel and courts shall report in a timely manner to the
appropriate board any violations of individual practice acts by any individual.

(e) Whenever a board referred to in this chapter obtains information that a person subject to its authority has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this chapter which are administered and enforced by that board, it may apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging or is about to engage in any such act, the court shall order an injunction, restraining order or other order as the court may deem appropriate.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

(a) Every board referred to in this chapter may suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter may enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board may also assess administrative costs. Any costs which are assessed shall be placed in the special account of the board and any fine which is levied shall be deposited in the state treasury's general revenue fund.

(b) For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state or the United States.
(c) Every board referred to in this chapter may promulgate rules in accordance with the provisions of chapter twenty-nine of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(d) Every board referred to in this chapter may revoke the license or registration of an individual licensed or otherwise lawfully practicing within this state whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof.

(e) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority, except:

(1) A board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public; or

(2) After due diligence, if a board cannot locate a person licensed under the provisions of this chapter within sixty days of a complaint being filed against the licensee, then the board may suspend the license, certificate, registration or authority of the person without holding a hearing. After due diligence, if a Board still cannot locate the person licensed under the provisions of this chapter thirty days after the suspension of the person's license, certificate, registration or authority, then the board may revoke the license, certificate, registration or authority of the person without holding a hearing.
(f) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder of the certificate, license, registration or authority and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code at least thirty days prior to the hearing and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may consider advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(g) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(h) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection are in accordance with the provisions for hearings which are set forth in this section.

(i) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript of the hearing retained in its files. The board shall
make a written report of its findings, which shall constitute part
of the record.

(j) All proceedings under the provisions of this section are
subject to review by the supreme court of appeals.

(k) On or before the first day of July, two thousand one,
every board referred to in this chapter shall adopt procedural
rules in accordance with the provisions of article three, chapter
twenty-nine-a of this code, which shall specify a procedure for
the investigation and resolution of all complaints against
persons licensed under this chapter. The proposed legislative
rules relating only to complaint procedures or contested case
hearing procedures required by the prior enactment of this
subsection shall be redesignated as procedural rules in accord-
dance with the provisions of article three, chapter twenty-nine-
a of this code. Each board shall file the procedural rules
required by this subsection by the thirty-first day of January,
two thousand one. The public hearing or public comment
period conducted for the proposed legislative rules shall serve
as the public hearing or public comment period required by
section five, article three, chapter twenty-nine-a of this code.

CHAPTER 181

(Com. Sub. for S. B. 450 — By Senator Bowman)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]
prohibiting a board member from receiving compensation for travel days not on the same day as the official meeting or official duties.

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

That §30-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION CREATED IN CHAPTER.**

§30-1-11. Compensation of members; expenses.

1 (a) Each member of every board in this chapter is entitled to receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. A board member may not receive compensation for travel days that are not on the same day as the official meeting or official duties.

1 (b) The limitations contained in this section do not apply if they conflict with provisions of this chapter relating to a particular board and enacted after the first day of January, one thousand nine hundred ninety-five.

1 (c) A board may reimburse actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

1 (d) No member of any board in this chapter may receive compensation as an employee of the board.
AN ACT to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended, relating to allowing the Board of Medicine to issue a license to a physician convicted of certain drug related offenses.

Be it enacted by the Legislature of West Virginia:

That §30-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to Board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the Board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

1 (a) The Board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based
on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

The Board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies or others; or unfavorable outcomes arising out of medical professional liability. The Board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against the physician or podiatrist within a five-year period. The Board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the Board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the Board, the provision of such copies will not jeopardize the Board’s investigation. In the event that copies are provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the Board.

The chief executive officer of every hospital shall, within sixty days after the completion of the hospital’s formal disciplinary procedure and also within sixty days after the com-
mencement of and again after the conclusion of any resulting
legal action, report in writing to the Board the name of any
member of the medical staff or any other physician or podiatrist
practicing in the hospital whose hospital privileges have been
revoked, restricted, reduced or terminated for any cause,
including resignation, together with all pertinent information
relating to such action. The chief executive officer shall also
report any other formal disciplinary action taken against any
physician or podiatrist by the hospital upon the recommenda-
tion of its medical staff relating to professional ethics, medical
incompetence, medical professional liability, moral turpitude or
drug or alcohol abuse. Temporary suspension for failure to
maintain records on a timely basis or failure to attend staff or
section meetings need not be reported. Voluntary cessation of
hospital privileges for reasons unrelated to professional
competence or ethics need not be reported.

Any managed care organization operating in this state
which provides a formal peer review process shall report in
writing to the Board, within sixty days after the completion of
any formal peer review process and also within sixty days after
the commencement of and again after the conclusion of any
resulting legal action, the name of any physician or podiatrist
whose credentialing has been revoked or not renewed by the
managed care organization. The managed care organization
shall also report in writing to the Board any other disciplinary
action taken against a physician or podiatrist relating to
professional ethics, professional liability, moral turpitude or
drug or alcohol abuse within sixty days after completion of a
formal peer review process which results in the action taken by
the managed care organization. For purposes of this subsection,
"managed care organization" means a plan that establishes,
operates or maintains a network of health care providers who
have entered into agreements with and been credentialed by the
plan to provide health care services to enrollees or insureds to
whom the plan has the ultimate obligation to arrange for the
71 provision of or payment for health care services through
72 organizational arrangements for ongoing quality assurance, 
73 utilization review programs or dispute resolutions.

74 Any professional society in this state comprised primarily
75 of physicians or podiatrists which takes formal disciplinary
76 action against a member relating to professional ethics, profes-
77 sional incompetence, medical professional liability, moral
78 turpitude or drug or alcohol abuse shall report in writing to the
79 Board within sixty days of a final decision the name of the
80 member, together with all pertinent information relating to the
81 action.

82 Every person, partnership, corporation, association, 
83 insurance company, professional society or other organization 
84 providing professional liability insurance to a physician or 
85 podiatrist in this state, including the State Board of Risk and 
86 Insurance Management, shall submit to the Board the following 
87 information within thirty days from any judgment or settlement 
88 of a civil or medical professional liability action excepting 
89 product liability actions: The name of the insured; the date of 
90 any judgment or settlement; whether any appeal has been taken 
91 on the judgment and, if so, by which party; the amount of any 
92 settlement or judgment against the insured; and other informa-
93 tion required by the Board.

94 Within thirty days from the entry of an order by a court in 
95 a medical professional liability action or other civil action in 
96 which a physician or podiatrist licensed by the Board is 
97 determined to have rendered health care services below the 
98 applicable standard of care, the clerk of the court in which the 
99 order was entered shall forward a certified copy of the order to 
100 the Board.

101 Within thirty days after a person known to be a physician 
102 or podiatrist licensed or otherwise lawfully practicing medicine
and surgery or podiatry in this state or applying to be licensed
is convicted of a felony under the laws of this state or of any
crime under the laws of this state involving alcohol or drugs in
any way, including any controlled substance under state or
federal law, the clerk of the court of record in which the
conviction was entered shall forward to the Board a certified
true and correct abstract of record of the convicting court. The
abstract shall include the name and address of the physician or
podiatrist or applicant, the nature of the offense committed and
the final judgment and sentence of the court.

Upon a determination of the Board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or other
organization has failed or refused to make a report required by
this subsection, the Board shall provide written notice to the
alleged violator stating the nature of the alleged violation and
the time and place at which the alleged violator shall appear to
show good cause why a civil penalty should not be imposed.
The hearing shall be conducted in accordance with the provi-
sions of article five, chapter twenty-nine-a of this code. After
reviewing the record of the hearing, if the Board determines
that a violation of this subsection has occurred, the Board shall
assess a civil penalty of not less than one thousand dollars nor
more than ten thousand dollars against the violator. The Board
shall notify any person so assessed of the assessment in writing
and the notice shall specify the reasons for the assessment. If
the violator fails to pay the amount of the assessment to the
Board within thirty days, the Attorney General may institute a
civil action in the circuit court of Kanawha County to recover
the amount of the assessment. In any civil action, the court’s
review of the Board’s action shall be conducted in accordance
with the provisions of section four, article five, chapter twenty-
ine-a of this code. Notwithstanding any other provision of this
article to the contrary, when there are conflicting views by
recognized experts as to whether any alleged conduct breaches
an applicable standard of care, the evidence must be clear and convincing before the Board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

Any person may report to the Board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

The Board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the Board.

The filing of a report with the Board pursuant to any provision of this article, any investigation by the Board or any disposition of a case by the Board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of physicians or podiatrists to suspend, restrict or revoke the privileges or membership of the physician or podiatrist.

(c) The Board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the Board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the Board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates
to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;
As used in this subdivision, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity;

(9) Making a deceptive, untrue or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances or drugs;

(13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice: Provided, That a physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as
231 defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;

233 (14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed and written consent;

238 (15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

242 (16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience or licensure to perform them;

246 (17) Violating any provision of this article or a rule or order of the Board or failing to comply with a subpoena or subpoena duces tecum issued by the Board;

249 (18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his or her services;

253 (19) Gross negligence in the use and control of prescription forms;

255 (20) Professional incompetence; or

256 (21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol. A
physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the Board shall be used against the physician or podiatrist in any other proceeding.

(d) The Board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the Board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug related felony conviction, upon completion of any sentence of confinement, parole, probation or other court-ordered supervision and full satisfaction of any fines, judgments or other fees imposed by the sentencing court, the Board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: Provided, That the Board may place whatever terms, conditions or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The Board may refer any cases coming to its attention to an appropriate committee of an appropriate professional
organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: Provided, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the Board within ninety days of any referral. The recommendations shall be considered by the Board and the case may be further investigated by the Board. The Board after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in subsection (e) of this section, may request and the Board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the Board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the Board. The expense of the examination shall be paid by the Board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to
have given his or her consent to submit to all examinations when requested to do so in writing by the Board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the Board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the Board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the Board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The Board shall make all its final actions public. The order shall contain the terms of all action taken by the Board.

(i) In disciplinary actions in which probable cause has been found by the Board, the Board shall, within twenty days of the
date of service of the written notice of charges or sixty days
prior to the date of the scheduled hearing, whichever is sooner,
provide the respondent with the complete identity, address and
telephone number of any person known to the Board with
knowledge about the facts of any of the charges; provide a copy
of any statements in the possession of or under the control of
the Board; provide a list of proposed witnesses with addresses
and telephone numbers, with a brief summary of his or her
anticipated testimony; provide disclosure of any trial expert
pursuant to the requirements of Rule 26(b)(4) of the West
Virginia Rules of Civil Procedure; provide inspection and
copying of the results of any reports of physical and mental
examinations or scientific tests or experiments; and provide a
list and copy of any proposed exhibit to be used at the hearing:
Provided, That the Board shall not be required to furnish or
produce any materials which contain opinion work product
information or would be a violation of the attorney-client
privilege. Within twenty days of the date of service of the
written notice of charges, the Board shall disclose any exculpa-
tory evidence with a continuing duty to do so throughout the
disciplinary process. Within thirty days of receipt of the
Board’s mandatory discovery, the respondent shall provide the
Board with the complete identity, address and telephone
number of any person known to the respondent with knowledge
about the facts of any of the charges; provide a list of proposed
witnesses with addresses and telephone numbers, to be called
at hearing, with a brief summary of his or her anticipated
testimony; provide disclosure of any trial expert pursuant to the
requirements of Rule 26(b)(4) of the West Virginia Rules of
Civil Procedure; provide inspection and copying of the results
of any reports of physical and mental examinations or scientific
tests or experiments; and provide a list and copy of any
proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any
of the grounds set forth in subsection (c) of this section, the
Board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for a period not to exceed ten years;

(5) Require him or her to submit to care, counseling or treatment designated by the Board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the Board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the Board for a specified period of time; and

(8) Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

(k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the Board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice
constitutes an immediate danger to the public, the Board may take any of the actions provided in subsection (j) of this section on a temporary basis and without a hearing if institution of proceedings for a hearing before the Board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The Board shall render its decision within five days of the conclusion of a hearing under this subsection.

(1) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine of this code: Provided, That a circuit judge may also remand the matter to the Board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the Board and:

(1) The evidence appears to have been discovered since the Board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending or limiting his or her license while any appeal is pending. Within sixty days, the Board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American
Podiatry Association, professional societies of physicians or
podiatrists in the state and any entity responsible for the fiscal
administration of medicare and medicaid.

(m) Any person against whom disciplinary action has been
taken under the provisions of this article shall, at reasonable
intervals, be afforded an opportunity to demonstrate that he or
she can resume the practice of medicine and surgery or podiatry
on a general or limited basis. At the conclusion of a suspension,
limitation or restriction period the physician or podiatrist may
resume practice if the Board has so ordered.

(n) Any entity, organization or person, including the Board,
any member of the Board, its agents or employees and any
entity or organization or its members referred to in this article,
any insurer, its agents or employees, a medical peer review
committee and a hospital governing board, its members or any
committee appointed by it acting without malice and without
gross negligence in making any report or other information
available to the Board or a medical peer review committee
pursuant to law and any person acting without malice and
without gross negligence who assists in the organization,
investigation or preparation of any such report or information
or assists the Board or a hospital governing body or any
committee in carrying out any of its duties or functions pro-
vided by law is immune from civil or criminal liability, except
that the unlawful disclosure of confidential information
possessed by the Board is a misdemeanor as provided in this
article.

(o) A physician or podiatrist may request in writing to the
Board a limitation on or the surrendering of his or her license
to practice medicine and surgery or podiatry or other appro-
appropriate sanction as provided in this section. The Board may grant
the request and, if it considers it appropriate, may waive the
commencement or continuation of other proceedings under this
section. A physician or podiatrist whose license is limited or
surrendered or against whom other action is taken under this
subsection may, at reasonable intervals, petition for removal of
any restriction or limitation on or for reinstatement of his or her
license to practice medicine and surgery or podiatry.

(p) In every case considered by the Board under this article
regarding discipline or licensure, whether initiated by the Board
or upon complaint or information from any person or organiza-
tion, the Board shall make a preliminary determination as to
whether probable cause exists to substantiate charges of
disqualification due to any reason set forth in subsection (c) of
this section. If probable cause is found to exist, all proceedings
on the charges shall be open to the public who are entitled to all
reports, records and nondeliberative materials introduced at the
hearing, including the record of the final action taken: Pro-
vided, That any medical records, which were introduced at the
hearing and which pertain to a person who has not expressly
waived his or her right to the confidentiality of the records, may
not be open to the public nor is the public entitled to the
records.

(q) If the Board receives notice that a physician or podia-
trist has been subjected to disciplinary action or has had his or
her credentials suspended or revoked by the Board, a hospital
or a professional society, as defined in subsection (b) of this
section, for three or more incidents during a five-year period,
the Board shall require the physician or podiatrist to practice
under the direction of a physician or podiatrist designated by
the Board for a specified period of time to be established by the
Board.

(r) Notwithstanding any other provisions of this article, the
Board may, at any time, on its own motion, or upon motion by
the complainant, or upon motion by the physician or podiatrist,
or by stipulation of the parties, refer the matter to mediation.
The Board shall obtain a list from the West Virginia State Bar’s
mediator referral service of certified mediators with expertise
in professional disciplinary matters. The Board and the physician or podiatrist may choose a mediator from that list. If the Board and the physician or podiatrist are unable to agree on a mediator, the Board shall designate a mediator from the list by neutral rotation. The mediation shall not be considered a proceeding open to the public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

CHAPTER 183

(Com. Sub. for H. B. 2929 — By Mr. Speaker, Mr. Kiss (By Request))

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of the Code of West Virginia, 1931, as amended; and that said code be amended by
adding thereto a new section, designated §30-4A-18, all relating to the administration of anesthesia by dentists.

Be it enacted by the Legislature of West Virginia:

That §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 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 §30-4A-18, all to read as follows:

ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

§30-4A-1. Legislative findings and declaration of purpose.
§30-4A-2. Definitions.
§30-4A-4. Requirement for Anesthesia Certificate or Permit.
§30-4A-5. Classes of Anesthesia Certificates and Permits.
§30-4A-6. Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Certificate or Permit.
§30-4A-7. Authority of the West Virginia Board of Dental Examiners to review, inspect and reinspect dentists for issuance of permits. On-site inspection by West Virginia Board of Dental Examiners.
§30-4A-9. Reporting of Death, Serious Complications or Injury.
§30-4A-10. Immunity from liability.
§30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation.
§30-4A-12. New applicants.
§30-4A-14. Waiting period for reapplication or reinspection of facilities.
§30-4A-15. Application and Annual renewal of regular permits; fees.
§30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.
§30-4A-17. Appointment of Subcommittee by the West Virginia Board of Dental Examiners; credentials review; and on-site inspections.

§30-4A-1. Legislative findings and declaration of purpose.
The Legislature hereby finds and declares that dentists are increasingly administering anesthesia in their offices on an out-patient basis; that the administration of anesthesia carries with it an inherent risk and danger to the patient; that, however, the administration of anesthesia on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of, it is necessary to insure that the persons administering and supervising such anesthesia are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of anesthesia unless those dentists meet certain minimal training and competency standards in the administration and supervision of anesthesia; and that requiring a dentist to obtain a special certificate or permit before he or she can administer or supervise anesthesia is the best method to preserve the use of anesthesia by dentists on out-patients and, at the same time, ensure that such administration and supervision is performed by competent dentists trained in the use of such techniques.

§30-4A-2. Definitions.

(a) “General anesthesia” means an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command. “Deep conscious sedation/general anesthesia” includes partial loss of protective reflexes and the patient retains the ability to independently and continuously maintain an airway.

(b) “Relative Analgesia” means an induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, or
single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command. Dosage of oral premedication is not to exceed the recommended dosage limits set by the manufacturer for the treatment of anxiety, insomnia or pain.

(c) "Conscious Sedation" means an induced controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(d) "Anxiolysis" or premedication for anxiety - means removing, eliminating or decreasing anxiety by the use of a single anxiolytic or analgesia medication that is administered in an amount consistent with the manufacturer’s current recommended dosage for the unsupervised treatment of anxiety, insomnia or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient (at home), for the treatment of anxiety.

(e) "Central Nervous System Anesthesia" means an induced controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method.

(f) "ACLS" means Advanced Cardiac Life Support.

(g) "BLS" means Basic Life Support.

(h) "CPR" means Cardiopulmonary Resuscitation.

(i) "Health Care Provider BLS/CPR" means Health Care Provider Basic Life Support/ Cardiopulmonary Resuscitation.

1 (1) In any hearing where a question exists as to the degree of central nervous system depression a licensee has induced (i.e., general anesthesia/deep conscious sedation, conscious sedation, anxiolysis, or relative analgesia), the Board may base its findings on, among other things, the types, dosages and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status.

2 (2) No permit holder may have more than one person under conscious sedation and/or general anesthesia/deep conscious sedation at the same time, exclusive of recovery.

§30-4A-4. Requirement for Anesthesia Certificate or Permit.

1 (1) No dentist may induce central nervous system anesthesia without first having obtained an anesthesia permit under these rules for the level of anesthesia being induced.

2 (2) The applicant for an anesthesia permit must pay the appropriate permit fees and renewal fees, designated in section six of this article, submit a completed Board-approved applica-
tion and consent to an office evaluation. The fees are to be set in accordance with section eighteen of this article.

(3) Permits shall be issued to coincide with the applicant’s licensing period.

§30-4A-5. Classes of Anesthesia Certificates and Permits.

The Board shall issue the following certificates and/or permits:

(1) Class 2 Certificate: A Class 2 Certificate authorizes a dentist to induce anxiolysis.

(2) Class 3 Permit: A Class 3 Permit authorizes a dentist to induce conscious sedation as limited enteral (3a) and/or comprehensive parenteral (3b), and anxiolysis.

(3) Class 4 Permit: A Class 4 Permit authorizes a dentist to induce general anesthesia/deep conscious sedation, conscious sedation, and anxiolysis.

§30-4A-6. Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Certificate or Permit.

(a) Relative Analgesia.

(1) The Board shall allow administration of relative analgesia without a permit if the practitioner:

(A) Is a licensed dentist in the State of West Virginia;

(B) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course; and
(C) Has completed a training course of instruction in dental school, continuing education or as a postgraduate in the administration of relative analgesia.

(2) A practitioner who administers relative analgesia shall have the following facilities, equipment and drugs available during the procedure and during recovery:

(A) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow delivery of age appropriate care in an emergency situation;

(B) An operating table or chair which permits the patient to be positioned so that the patient’s airway can be maintained, quickly alter the patient’s position in an emergency, and provide a firm platform for the administration of basic life support;

(C) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(D) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(E) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(F) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(G) All equipment used must be appropriate for the height and weight of the patient.
38 (3) Before inducing nitrous oxide sedation, a practitioner shall:

40 (A) Evaluate the patient;

41 (B) Give instruction to the patient or, when appropriate due to age or psychological status of the patient, the patient’s guardian;

44 (C) Certify that the patient is an appropriate candidate for relative analgesia.

46 (4) A practitioner who administers relative analgesia shall see that the patient’s condition is visually monitored. At all times the patient shall be observed by trained personnel until discharge criteria have been met. Trained personnel shall be certified in both adult and pediatric CPR. Documentation of credentials and training must be maintained in the personnel records of the trained personnel. The patient shall be monitored as to response to verbal stimulation and oral mucosal color.

54 (5) The record must include documentation of all medications administered with dosages, time intervals and route of administration.

57 (6) A discharge entry shall be made in the patient’s record indicating the patient’s condition upon discharge.

59 (7) Hold valid and current documentation:

60 (A) Showing successful completion of a Health Care Provider BLS/CPR course; and

62 (B) Have received training and be competent in the recognition and treatment of medical emergencies, monitoring vital signs, the operation of nitrous oxide delivery systems and the use of the sphygmomanometer and stethoscope.
(8) The practitioner shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(A) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(B) The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;

(C) The patient can sit up unaided or without assistance or to preoperative neurological status;

(D) The patient can ambulate with minimal assistance or to preoperative neurological status; and

(E) The patient does not have nausea, vomiting or dizziness.

(b) Class 2 Certificate.

Class 2 Certificate: Anxiolysis.

(1) The Board shall issue a Class 2 Certificate to an applicant who:

(A) Is a licensed dentist in West Virginia;

(B) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR; and

(C) Has completed a Board approved course of at least 6 hours didactic and clinical of either predoctoral dental school or postgraduate instruction.

(2) A dentist who induces anxiolysis shall have the following facilities, properly maintained equipment and appropriate drugs available during the procedures and during recovery:
(A) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(B) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s airway, quickly alter the patient’s position in an emergency, and provide a firm platform for the administration of basic life support;

(C) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(D) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(E) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(F) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(G) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(H) Sphygmomanometer, stethoscope, and pulse oximeter;

(I) Emergency drugs; and

(J) A defibrillator device is recommended.
(K) All equipment and medication dosages must be in accordance with the height and weight of the patient being treated.

(3) Before inducing anxiolysis, a dentist shall:

(A) Evaluate the patient;

(B) Certify that the patient is an appropriate candidate for anxiolysis sedation; and

(C) Obtain written informed consent from the patient or patient’s guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient’s record.

(4) The dentist shall monitor and record the patient’s condition or shall use trained personnel qualified as a monitor to monitor and record the patient’s condition. The trained personnel must have a certificate showing successful completion in the last two years of BLS/CPR training. A Class 2 Certificate holder shall have no more than one person under anxiolysis at the same time.

(5) The patient shall be monitored as follows:

(A) Patients must have continuous monitoring using pulse oximetry. The patient’s blood pressure, heart rate, and respiration shall be recorded at least once before, during and after the procedure, and these recordings shall be documented in the patient record. At all times the patient shall be observed by trained personnel until discharge criteria have been met. If the dentist is unable to obtain this information, the reasons shall be documented in the patient’s record. The record must also include documentation of all medications administered with dosages, time intervals and route of administration.
(B) A discharge entry shall be made by the dentist in the patient’s record indicating the patient’s condition upon discharge.

(6) A permit holder who uses anxiolysis shall see that the patient’s condition is visually monitored. The patient shall be monitored as to response to verbal stimulation, oral mucosal color and preoperative and postoperative vital signs.

(7) The dentist shall assess the patient’s responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(A) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(B) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(C) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(D) The patient can sit up unaided, or to preoperative neurological status;

(E) The patient can ambulate with minimal assistance, or to preoperative neurological status; and

(F) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(G) A dentist shall not release a patient who has undergone anxiolysis except to the care of a responsible adult third party.

(c) Class 3 Permit (includes a limited (enteral) and a comprehensive (parenteral) permit);

Class 3 Permit: Conscious sedation and anxiolysis.
(1) The Board shall issue or renew a Class 3 Permit to an applicant who:

(A) Is a licensed dentist in West Virginia;

(B) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course, ACLS and/or a PALS course if treating pediatric patients; and

(C) Satisfies one of the following criteria:

(i) Certificate of completion of a comprehensive training program in conscious sedation that satisfies the requirements described in Part III of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced.

(ii) Certificate of completion of an ADA accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage conscious sedation, commensurate with these guidelines.

(iii) In lieu of these requirements, the Board may accept documented evidence of equivalent training or experience in conscious sedation anesthesia:

(I) Limited (Enteral) Permit (3(a)) must have a Board approved course of at least eighteen hours didactic and twenty mentored clinical cases (PALS or ACLS course).

(II) Comprehensive (Parenteral) Permit (3(b)) must have a Board approved course of at least sixty hours didactic and twenty-mentored clinical cases (ACLS course).

(2) A dentist who induces conscious sedation shall have the following facilities, properly maintained age appropriate
equipment and age appropriate medications available during the procedures and during recovery:

(A) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(B) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s airway, quickly alter the patient’s position in an emergency, and provide a firm platform for the administration of basic life support;

(C) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(D) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(E) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(F) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(G) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(H) Sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, intravenous fluid administration equipment;
(I) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants; and

(J) A defibrillator device.

(3) Before inducing conscious sedation, a dentist shall:

(A) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for conscious sedation;

(B) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient's guardian; and

(C) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(4) The dentist shall monitor and record the patient's condition or shall use an assistant qualified as a monitor to monitor and record the patient's condition. A qualified monitor shall be present to monitor the patient at all times.

(5) The patient shall be monitored as follows:

(A) Patients must have continuous monitoring using pulse oximetry. At no time shall the patient be unobserved by trained personnel until discharge criteria have been met. The trained personnel must have a certificate showing successful completion in the last two years of BLS/CPR training and the American Association of Oral and Maxillofacial Surgeon Office Anesthesia Assistant certification or an equivalent. The patient's blood pressure, heart rate, and respiration shall be recorded every 5 minutes, and these recordings shall be
documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If the dentist is unable to obtain this information, the reasons shall be documented in the patient’s record.

(B) During the recovery phase, the patient must be monitored by a qualified monitor.

(C) A discharge entry shall be made by the dentist in the patient’s record indicating the patient’s condition upon discharge and the name of the responsible party to whom the patient was discharged.

(6) A dentist shall not release a patient who has undergone conscious sedation except to the care of a responsible adult third party.

(7) The dentist shall assess the patient’s responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(A) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(B) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(C) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(D) The patient can sit up unaided, or to preoperative neurological status;

(E) The patient can ambulate with minimal assistance, or to preoperative neurological status; and
(F) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(8) A dentist who induces conscious sedation shall employ the services of an assistant at all times who holds a valid BLS/CPR certification and maintains such certification.

(9) A dentist granted a Class 3 Permit must hold a valid Health Care Provider BLS/CPR and ACLS certification for Comprehensive (3(a)) Permit and ACLS or PALS certification for Limited (3(b)) Permit and maintain such certification.

(d) Class 4 Permit

Class 4 Permit: general anesthesia/deep conscious sedation, conscious sedation, and anxiolysis.

(1) The Board shall issue a Class 4 Permit to an applicant who:

(A) Is a licensed dentist in West Virginia;

(B) Has a current Advanced Cardiac Life Support (ACLS) Certificate;

(C) Satisfies one of the following criteria:

(i) Completion of an advanced training program in anesthe-sia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced;

(ii) Completion of an ADA or AMA accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these Guidelines;
(iii) In lieu of these requirements, the Board may accept documented evidence of equivalent training or experience in general anesthesia.

(2) A dentist who induces general anesthesia/deep conscious sedation shall have the following facilities, properly maintained age appropriate equipment and age appropriate drugs available during the procedure and during recovery:

(A) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

(B) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s airway, quickly alter the patient’s position in an emergency, and provide a firm platform for the administration of basic life support;

(C) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(D) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(E) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(F) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;
G) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(H) Sphygmomanometer, pulse oximeter, electrocardiograph monitor, defibrillator or automated external defibrillator, laryngoscope with endotracheal tubes, oral and nasopharyngeal airways, intravenous fluid administration equipment;

(I) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, intravenous medications for treatment of cardiac arrest, narcotic antagonist, antihistaminic, antiarrhythmics, antihypertensives and anticonvulsants; and

(J) A defibrillator device.

(3) Before inducing general anesthesia/deep conscious sedation the dentist shall:

(A) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for general anesthesia or deep conscious sedation;

(B) Shall give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient’s guardian; and

(C) Shall obtain written informed consent from the patient or patient’s guardian for the anesthesia.

(4) A dentist who induces general anesthesia/deep conscious sedation shall monitor and record the patient’s condition on a contemporaneous record or shall use an assistant qualified as a monitor to monitor and record the patient’s condition on a contemporaneous record. The trained personnel must have a
certificate showing successful completion in the last two years of BLS/CPR training and the American Association of Oral and Maxillofacial Surgeon Office Anesthesia Assistant certification or an equivalent. No permit holder shall have more than one patient under general anesthesia at the same time.

(5) The patient shall be monitored as follows:

(A) Patients must have continuous monitoring of their heart rate, oxygen saturation levels and respiration. At no time shall the patient be unobserved by trained personnel until discharge criteria have been met. The patient’s blood pressure, heart rate and oxygen saturation shall be assessed every five minutes, and shall be contemporaneously documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. The person administering the anesthesia may not leave the patient while the patient is under general anesthesia;

(B) During the recovery phase, the patient must be monitored, including the use of pulse oximetry, by a qualified individual to monitor patients recovering from general anesthesia.

(6) A dentist shall not release a patient who has undergone general anesthesia/deep conscious sedation except to the care of a responsible adult third party.

(7) The dentist shall assess the patient’s responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(A) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(B) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;
(C) The patient can talk and respond coherently to verbal questioning, or to preoperative neurological status;

(D) The patient can sit up unaided, or to preoperative neurological status;

(E) The patient can ambulate with minimal assistance, or to preoperative neurological status; and

(F) The patient does not have nausea or vomiting and has minimal dizziness.

(8) A discharge entry shall be made in the patient’s record by the dentist indicating the patient’s condition upon discharge and the name of the responsible party to whom the patient was discharged.

(9) A dentist who induces general anesthesia shall employ the services of a qualified dental assistant who holds a valid BLS/CPR certification and maintains such certification.

(10) A Class 4 permit holder must hold a valid Health Care Provider BLS/CPR and ACLS certification and maintain such certification.

§30-4A-7. Authority of the West Virginia Board of Dental Examiners to review, inspect and reinspect dentists for issuance of permits. On-site inspection by West Virginia Board of Dental Examiners.

By making application to the Board for an anesthesia permit, said dentist consents and authorizes the Board to review his or her credentials, inspect or reinspect his or her facilities, and investigate any alleged anesthesia mortalities, misadventure, or other adverse occurrences which the Board feels is justified in the best interest of the public and the Board. The Board shall have the authority and right to conduct an in-office
review or on-site inspection of any dentist applying for or holding a permit to administer anesthesia at any time the Board deems necessary.

Prior to issuing a permit, the Board has the right to conduct an on-site inspection of facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for such permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee directly appointed by the Board as prescribed in section eight of this article. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the Office Anesthesia Evaluation Manual of the West Virginia Board of Dental Examiners. On-site inspections are required and shall be performed for all Class 3(a), 3(b) and 4 Permit Holders. Thereafter, the Board may reinspect annually, at its discretion, but must perform an on-site inspection for all permit holders at least once every five years excepting Class 2 Certificate holders. The Board reserves the right to conduct an on-site inspection whenever it deems necessary for all permit or certificate holders. However, all on-site inspections shall be held during regular business hours.


(1) The in-office evaluation shall include:

(a) Observation of one or more cases of anesthesia to determine the appropriateness of technique and adequacy of patient evaluation and care;

(b) Inspection of facilities, equipment, drugs and records; and

(2) The evaluation shall be performed by a team appointed by the Board and shall include:
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(a) A permit holder who has the same type of license as the licensee to be evaluated and who holds a current anesthesia permit in the same class or in a higher class than that held by the licensee being evaluated;

(b) A member of the Board's Anesthesia Committee;

class Holders may be audited periodically as determined by the committee; and

d) Class 3 and 4 Permit holders shall be evaluated once every five years.

§30-4A-9. Reporting of Death, Serious Complications or Injury.

If a death, any serious complication or any injury occurs which may have resulted from the administration of general anesthesia/deep conscious sedation, conscious sedation, anxiolysis, or relative analgesia, the licensee performing the dental procedure must submit a written detailed report to the Board within five days of the incident along with copies of the patient's original complete dental records. If the anesthetic agent was administered by a person other than the person performing the dental procedure, that person must also submit a detailed written report. The detailed report(s) must include:

(1) Name, age and address of patient;

(2) Name of the licensee and other persons present during the incident;

(3) Address where the incident took place;

(4) Type of anesthesia and dosages of drugs administered to the patient;

(5) A narrative description of the incident including approximate times and evolution of symptoms; and
(6) The anesthesia record and the signed informed consent form for the anesthesia when required.

§30-4A-10. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the Board of Dental Examiners or to the Subcommittee may be held, by reason of having provided such information, to be civilly liable under any law unless such information was false and the person providing such information knew or had reason to believe that such information was false.

(b) No member or employee of the Board of Dental Examiners or the Subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the Board or the Subcommittee to be civilly liable. The foregoing provisions of this subsection shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such action.

§30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation.

Existing parenteral conscious sedation permits shall become Class 3(b) Permits and general anesthesia permits shall become Class 4 Permits.

§30-4A-12. New applicants.

On the effective date of this article and from that date forward, any dentist not previously administering or supervising Class 2, 3 or 4 anesthesia or techniques but wishing to do so, shall make application to the Board as prescribed herein. The Board and the Subcommittee shall then review the applicant’s
6 credentials and further will require an on-site evaluation of the
dentist’s facilities, equipment, techniques, and personnel prior
to issuing a regular annual permit or certification. After the
initial on-site inspection, the Board, at its discretion, will
conduct further on-site evaluations.


1 Upon the recommendation of the Subcommittee to the
2 Board of Dental Examiners, the Board shall issue regular
3 permits to applicable dentists. An anesthesia permit or certifica-
4 tion must be renewed annually as described in section fifteen of
5 this article.

§30-4A-14. Waiting period for reapplication or reinspection of
facilities.

1 A dentist whose application has been denied for failure to
2 satisfy the requirements in the application procedure or the
3 on-site evaluation must wait thirty days from the date of such
denial prior to reapplying and must submit to another on-site
4 evaluation prior to receiving a regular annual permit. It is the
5 responsibility of the Board and the Subcommittee to promptly
6 reinspect the applicant dentist’s facilities, techniques, equip-
7 ment, and personnel within ninety days after said applicant has
8 made reapplication.

§30-4A-15. Application and annual renewal of regular permits;
fees.

1 The Board of Dental Examiners shall require an initial
2 application fee and an annual renewal fee for Class 2 Certificate
3 and Class 3 and 4 Permits: Provided, That a person currently
4 holding a general anesthesia and/or parenteral conscious
5 sedation permit shall make application without an application
6 fee as set forth hereinabove. All permits shall expire on June
30th of every year and renewal fees shall be due on or before June 30th of every year. The Board shall renew permits for the use of anesthesia after receiving the renewal fee unless the permit holder has been informed in writing within sixty days prior to such renewal date that a reevaluation of his or her credentials is required. In determining whether such reevaluation is necessary, the Board may consider such factors as it deems appropriate, including, but not limited to patient, dentist or physician complaints and reports of adverse occurrence or misadventures. Reevaluation may also include a yearly on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such permit. However, an on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such a permit will be required for all Class 3 and 4 Permit holders within a five-year period from the permit holder's last on-site inspection.

§30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.

Violations of any of the provisions of this article, whether intentional or unintentional, may result in the revocation or suspension of the dentist’s permit to administer anesthesia; multiple or repeated violations or gross infractions, such as practicing anesthesia without a valid permit may result in suspension of the dentist’s license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate by the Board of Dental Examiners.

§30-4A-17. Appointment of Subcommittee by the West Virginia Board of Dental Examiners; credentials review; and on-site inspections.

(1) The West Virginia Board of Dental Examiners shall appoint a minimum of a four member Subcommittee to carry out the review and on-site inspection of any dentist applying for
or renewing a permit under this article. The Subcommittee shall also make a recommendation for issuing or revoking a permit under this article. This Subcommittee shall be known as the “West Virginia Board of Dental Examiners Subcommittee on Anesthesia,” hereinafter referred to as the “Subcommittee.” The Subcommittee shall consist of one member of the Board of Dental Examiners who shall act as chairman of the Subcommittee, and two members holding a Class 4 Permit and two members holding a Class 3 Permit. Further, the Board may appoint additional members to this Subcommittee provided they have the same credentials set forth hereinabove as necessary to carry out the duties of the Subcommittee.

(2) The Subcommittee shall have the authority to adopt policies and procedures related to the regulation of general anesthesia/deep conscious sedation, conscious sedation, anxiolysis, and relative analgesia with the same being approved by the Board. Said Subcommittee members shall be paid and reimbursed expenses pursuant to article four of this chapter.


The Board shall propose additional rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

(a) Fees;

(b) Evaluations;

(c) Equipment; and

(d) Education.
AN ACT to amend and reenact §30-5-1b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §30-5-26, §30-5-27, §30-5-28, and §30-5-29, all relating to requirements for collaborative pharmacy practice agreements between physicians and pharmacists, establishing locations, sunset provisions, and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §30-5-26, §30-5-27, §30-5-28, and §30-5-29, all to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.
§30-5-26. Pharmacist requirements to participate in a collaborative pharmacy practice agreement.
§30-5-27. Collaborative pharmacy practice agreement.
§30-5-29. Collaborative pharmacy practice continuation.

§30-5-1b. Definitions.
The following words and phrases, as used in this article, have the following meanings, unless the context otherwise requires:

(1) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(2) "Board of pharmacy" or "board" means the West Virginia State Board of Pharmacy.

(3) "Collaborative pharmacy practice" is that practice of pharmacy where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist or pharmacists may perform certain patient care functions authorized by the physician or physicians under certain specified conditions and limitations.

(4) "Collaborative pharmacy practice agreement" is a written and signed agreement between a pharmacist, a physician, and the individual patient or the patients' authorized representative who has granted his or her informed consent, that provides for collaborative pharmacy practice for the purpose of drug therapy management of a patient, which has been approved by the Board of Pharmacy, the Board of Medicine in the case of an allopathic physician or the West Virginia Board of Osteopathy in the case of an osteopathic physician.

(5) "Compounding" means:

(A) The preparation, mixing, assembling, packaging or labeling of a drug or device:

(i) As the result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist
relationship in the course of professional practice for sale or dispensing; or

(ii) For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing; and

(B) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(6) “Confidential information” means information maintained by the pharmacist in the patient record or which is communicated to the patient as part of patient counseling or which is communicated by the patient to the pharmacist. This information is privileged and may be released only to the patient or to other members of the health care team and other pharmacists where, in the pharmacists’ professional judgment, the release is necessary to the patient’s health and well-being; to other persons or governmental agencies authorized by law to receive the privileged information; as necessary for the limited purpose of peer review and utilization review; as authorized by the patient or required by court order.

(7) “Deliver” or “delivery” means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(8) “Device” means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, “Caution: Federal or state law requires dispensing by or on the order of a physician.”

(9) “Dispense” or “dispensing” means the preparation and delivery of a drug or device in an appropriately labeled and suitable container to a patient or patient’s representative or
surrogate pursuant to a lawful order of a practitioner for subsequent administration to, or use by, a patient.

(10) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(11) "Drug" means:

(A) Articles recognized as drugs in the USP-DI, facts and comparisons, physicians desk reference or supplements thereto, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals;

(B) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

(C) Articles intended for use as a component of any articles specified in paragraphs (A) or (B) of this subdivision.

(12) "Drug regimen review" includes, but is not limited to, the following activities:

(A) Evaluation of the prescription drug orders and patient records for:

(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

(B) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(C) Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:
(i) Drug-drug;
(ii) Drug-food;
(iii) Drug-disease; and
(iv) Adverse drug reactions.

(D) Evaluation of the prescription drug orders and patient records for proper use, including over use and under use and optimum therapeutic outcomes.

(13) “Drug therapy management” means the review of drug therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a physician regarding adjustment of the regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving drug therapy management shall be made in the best interest of the patient.

Drug therapy management shall be limited to:
(A) Implementing, modifying, and managing drug therapy according to the terms of the collaborative pharmacy practice agreement;
(B) Collecting and reviewing patient histories;
(C) Obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;
(D) Ordering screening laboratory tests that are dose related and specific to the patient’s medication or are protocol driven and are also specifically set out in the collaborative pharmacy practice agreement between the pharmacist and physician.

(14) “Intern” means an individual who is:
(A) Currently registered by this state to engage in the practice of pharmacy while under the supervision of a licensed
pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or

(B) A graduate of an approved college of pharmacy or a graduate who has established educational equivalency by obtaining a foreign pharmacy graduate examination committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(C) A qualified applicant awaiting examination for licensure; or

(D) An individual participating in a residency or fellowship program.

(15) "Labeling" means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal law or regulation and state law or rule.

(16) "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than ten percent prescription drugs via the mail.

(17) "Manufacturer" means a person engaged in the manufacture of drugs or devices.

(18) "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its contents and the promotion and marketing of the drugs or devices. Manufactur-
ing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons.

(19) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(20) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient to improve therapy by aiding in the proper use of drugs and devices.

(21) "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

(22) "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms or arresting or slowing of a disease process as defined in the rules of the board.

(23) "Pharmacist" or "registered pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care.

(24) "Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and personnel.

(25) "Pharmacist's scope of practice pursuant to the collaborative pharmacy practice agreement" means those duties
and limitations of duties placed upon the pharmacist by the collaborating physician, as jointly approved by the Board of Pharmacy and the Board of Medicine or the Board of Osteopathy.

(26) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or displayed for sale at retail and pharmaceutical care is provided and any place outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(27) "Physician" means an individual currently licensed, in good standing and without restrictions, as an allopathic physician by the West Virginia Board of Medicine, or an osteopathic physician by the West Virginia Board of Osteopathy.

(28) "Pharmacy technician" means registered supportive personnel who work under the direct supervision of a pharmacist who have passed an approved training program as described in this article.

(29) "Practitioner" means an individual currently licensed, registered or otherwise authorized by any state, territory or district of the United States to prescribe and administer drugs in the course of professional practices, including allopathic and osteopathic physicians, dentists, physician’s assistants, optometrists, veterinarians, podiatrists and nurse practitioners as allowed by law.

(30) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor under the rules of the Board and participates in the instructional training of pharmacy interns.

(31) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed
or delivered, to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription"; or

(B) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only.

(32) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(33) "Prospective drug use review" means a review of the patients' drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(34) "USP-DI" means the United States pharmacopoeia-dispensing information.

(35) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including, but not limited to, manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug trader and retail pharmacies that conduct wholesale distributions.

§30-5-26. Pharmacist requirements to participate in a collaborative pharmacy practice agreement.

For a pharmacist to participate in a collaborative pharmacy practice agreement, the pharmacist must:

(a) Have an unrestricted and current license to practice as a pharmacist in West Virginia;
5 (b) Have at least one million dollars of professional liability
6 insurance coverage;
7
7 (c) Meet one of the following qualifications, at a minimum:
8
8 (1) Earned a Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner, or has
9 completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two
10 years of clinical experience approved by the Boards;
11
12 (2) Successfully completed the course of study and holds
13 the academic degree of Doctor of Pharmacy and has three years
14 of clinical experience approved by the Board and has completed
15 an Accreditation Council for Pharmacy Education (ACPE)
16 approved certificate program in the area of practice covered by
17 the collaborative pharmacy practice agreement; or
18
19 (3) Successfully completed the course of study and holds
20 the academic degree of Bachelor of Science in Pharmacy and
21 has five years of clinical experience approved by the Boards
22 and has completed two ACPE approved certificate programs
23 with at least one program in the area of practice covered by a
24 collaborative pharmacy practice agreement.

§30-5-27. Collaborative pharmacy practice agreement.
1 (a) A pharmacist engaging in collaborative pharmacy
2 practice shall have on file at his or her place of practice the
3 collaborative pharmacy practice agreement. The existence and
4 subsequent termination of the agreement and any additional
5 information the rules may require concerning the agreement,
6 including the agreement itself, shall be made available to the
7 appropriate licensing board for review upon request. The
8 agreement may allow the pharmacist, within the pharmacist’s
9 scope of practice pursuant to the collaborative pharmacy
10 practice agreement, to conduct drug therapy management
activities approved by the collaborating physician. The collabora-
tive pharmacy practice agreement must be a voluntary
process, which is a physician directed approach, that is entered
into between an individual physician, an individual pharmacist
and an individual patient or the patient's authorized representa-
tive who has given informed consent.

(b) A collaborative pharmacy practice agreement may
authorize a pharmacist to provide drug therapy management. In
instances where drug therapy is discontinued, the pharmacist
shall notify the treating physician of such discontinuance in the
time frame and in the manner established by joint legislative
rules. Each protocol developed, pursuant to the collaborative
pharmacy practice agreement, shall contain detailed direction
concerning the services that the pharmacists may perform for
that patient. The protocol shall include, but need not be limited
to; (1) the specific drug or drugs to be managed by the pharma-
cist; (2) the terms and conditions under which drug therapy may
be implemented, modified or discontinued; (3) the conditions
and events upon which the pharmacist is required to notify the
physician; and (4) the laboratory tests that may be ordered in
accordance with drug therapy management. All activities
performed by the pharmacist in conjunction with the protocol
shall be documented in the patient's medical record. The
pharmacists shall report at least every thirty days to the
physician regarding the patient's drug therapy management.
The collaborative pharmacy practice agreement and protocols
shall be available for inspection by the West Virginia Board of
Pharmacy, the West Virginia Board of Medicine, or the West
Virginia Board of Osteopathy, depending on the licensing board
of the participating physician. A copy of the protocol shall be
filed in the patient's medical record.

(c) Collaborative pharmacy agreements shall not include
the management of controlled substances.
(d) A collaborative pharmacy practice agreement, meeting the requirements herein established and in accordance with joint rules, shall be allowed in the hospital setting, the nursing home setting, the medical school setting and the hospital community and ambulatory care clinics. The pharmacist shall be employed by or under contract to provide services to such hospital, nursing home or medical school, or hold a faculty appointment with one of the schools of pharmacy or medicine in this state.

(e) Up to five pilot project sites in the community based pharmacy setting which meet the requirements established in rule shall be jointly selected by the Board of Pharmacy, Board of Medicine and the Board of Osteopathy.

(f) For the purpose of proposing a legislative rule to clarify and define a collaborative pharmacy practice relationship, the Boards responsible for promulgating the rule shall establish an advisory committee to assist them in the development and implementation of the pharmacy collaborative practice act. The advisory committee shall be made up of fourteen members. These members shall include one representative appointed by the West Virginia State Medical Association; one representative appointed by the West Virginia Academy of Family Physicians; one representative appointed by the West Virginia Society of Osteopathic Medicine; one representative appointed by the West Virginia School of Medicine; one representative appointed by the Marshall University School of Medicine; one representative appointed by the West Virginia School of Osteopathic Medicine; two representatives appointed by the West Virginia Pharmacy Association, one of whom shall represent chain pharmacies and one of whom shall represent independent pharmacies; two representatives appointed by the West Virginia Society of Health System Pharmacists, one of whom shall represent long term care settings and one of whom shall represent hospital pharmacists; one representative appointed by the West Virginia School of Pharmacy; one
representative appointed by the University of Charleston School
of Pharmacy; one representative appointed by the West Virginia
Hospital Association; and one representative appointed by the
West Virginia Health Care Association. A representative of
each board with rule-making authority shall serve as an ex
officio member of the advisory committee.


The Board of Pharmacy, the Board of Medicine and the
Board of Osteopathy shall jointly agree and propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of the code.

§30-5-29. Collaborative pharmacy practice continuation.

Pursuant to the provisions of article ten, [§§4-10-1 et seq.]
chapter four of this code, pharmacy collaborative agreements
in community settings shall continue to exist until the first day
of July, two thousand eight, unless sooner terminated, contin-
ued or reestablished pursuant to that article.

CHAPTER 185

(H. B. 3151 — By Delegates Beane, Michael, Leach,
Long, Kominar, Perdue, Hatfield, Palumbo,
Fragale, Trump and H. White)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-7C-1, §30-7C-2, §30-7C-3,
§30-7C-4, §30-7C-5 and §30-7C-6 of the Code of West Virginia,
1931, as amended; and to amend said code by adding thereto seven new sections, designated §30-7C-7, §30-7C-8, §30-7C-9, §30-7C-10, §30-7C-11, §30-7C-12 and §30-7C-13, all relating to regulating dialysis technicians by the Board of Examiners for Registered Professional Nurses; authorizing performance and delegation of dialysis care; defining terms and activities; establishing qualifications and exceptions; providing for an application process and payment of fees to the Board; authorizing the use of titles; providing for approval of training programs and testing standards; defining powers and duties of the Board; providing for rule-making authority; establishing a dialysis technician advisory council; establishing a disciplinary procedure and grounds for discipline; prohibiting certain acts; providing for penalties; and providing for judicial review and injunctive and other relief.

Be it enacted by the Legislature of West Virginia:

That §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-7C-7, §30-7C-8, §30-7C-9, §30-7C-10, §30-7C-11, §30-7C-12 and §30-7C-13, all to read as follows:

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-1. Definitions.
§30-7C-2. Authority to delegate care; dialysis care by trainees in approved program.
§30-7C-3. Qualifications; exceptions; application form and fees.
§30-7C-4. Use of title “West Virginia dialysis technician” or “dialysis technician”; dialysis technician trainees.
§30-7C-5. Authorized activities.
§30-7C-6. Approval of training programs and testing standards.
§30-7C-7. Powers and duties of Board; rule-making authority.
§30-7C-8. Fees.
§30-7C-9. Dialysis technician advisory council.
§30-7C-10. Disciplinary proceeding; grounds for discipline of a dialysis technician.
§30-7C-11. Prohibited acts; penalties.
§30-7C-1. Definitions.

As used in this article:

(1) "Approved dialysis technician training program" means any board approved program used to train dialysis technicians including, but not limited to, a Board approved dialysis facility-sponsored training program or another state approved program.

(2) "Board" means the West Virginia Board of Examiners for Registered Professional Nurses.

(3) "Dialysis care" means performing and monitoring dialysis procedures which includes initiating and discontinuing dialysis, drawing blood, and administering medications authorized under section seven of this article.

(4) "Dialysis technician trainee" means an individual enrolled in an approved dialysis technician program.

(5) "Direct supervision" means initial and ongoing direction, procedural guidance, observation and evaluation, and the on-site presence of a registered nurse or physician.

(6) "Facility" means any entity that is certified by the Office of Health Facilities Licensure and Certification to provide dialysis services.

(7) "West Virginia dialysis technician or dialysis technician" means an individual certified by the Board who has successfully completed an approved dialysis technician training program and who has achieved national certification as a dialysis technician, or an individual who meets the requirements set forth in subsection (b), section three of this article.
§30-7C-2. Authority to delegate care; dialysis care by trainees in approved program.

(a) A registered professional nurse licensed under the provisions of article seven of this chapter may delegate dialysis care to a dialysis technician if:

1. The dialysis technician has completed the requirements set forth in this article and established by the Board by legislative rule;

2. The registered professional nurse considers the dialysis technician to be competent; and

3. The dialysis technician provides the care under the direct supervision of the registered professional nurse.

(b) A registered professional nurse licensed under the provisions of article seven of this chapter may not delegate dialysis care to an individual who is listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect or misappropriation of property.

(c) Nothing in this article may be construed to prohibit a dialysis technician trainee from performing dialysis care as a part of and within the scope of the clinical skills instruction segment of an approved dialysis technician training program.

§30-7C-3. Qualifications; exceptions; application form and fees.

(a) In order to be certified by the Board as a dialysis technician, an individual must demonstrate that he or she:

1. Is of good moral character;

2. Has acquired at least a high school diploma, general equivalency diploma or equivalent;
(3) Has successfully completed an approved dialysis technician training program;

(4) Has achieved national certification as a dialysis technician; and

(5) Has met such other qualifications required by the Board by legislative rule.

(b) On or before the first day of July, two thousand five, an individual who is currently working as a dialysis technician in a dialysis facility, and whose administrative registered professional nurse in charge acknowledges that he or she is competent to perform the delegated duties and practices in accordance with the laws regulating the provision of dialysis care, the rules of the Board and any other applicable federal and state laws and rules, will be considered as having met the requirements of subdivisions (3) and (4), subsection (a) of this section for the purposes of being certified by the Board as a dialysis technician.

(c) On or before the first day of July, two thousand six, an individual who has successfully completed an approved dialysis technician training program and who was working on or before the first day of July, two thousand five, as a dialysis technician trainee in a dialysis facility, and whose administrative registered professional nurse in charge acknowledges that he or she is competent to perform the delegated duties and practices in accordance with the laws regulating the provision of dialysis care, the rules of the Board and any other applicable federal and state laws and rules, will be considered as having met the requirements of subdivision (4), subsection (a) of this section for the purposes of being certified by the Board as a dialysis technician.

(d) An applicant for certification must file with the Board an application in the form and manner established by the Board.
demonstrating that he or she has met the qualifications set forth in subsection (a) of this section, and pay an application fee as established by legislative rule.

(e) The Board may, upon receipt of a completed application and fee in accordance with legislative rule, issue a temporary permit to practice as a dialysis technician to any applicant who has completed a board approved dialysis technician training program. A temporary permit is not renewable, and is effective from the date of issuance until three days following receipt by the applicant and the Board of the results of the first written certification examination, unless the Board revokes the temporary permit prior to its expiration.

(f) The Board may, upon receipt of a completed application and fee in accordance with legislative rule, issue a temporary endorsement to practice as a dialysis technician to an applicant who has been certified as a dialysis technician under the laws of another state, territory or foreign country and who meets the qualifications of the Board. A temporary endorsement is not renewable and is effective for ninety days unless the Board revokes the endorsement prior to its expiration.

§30-7C-4. Use of title “West Virginia dialysis technician” or “dialysis technician”; dialysis technician trainees.

(a) An individual certified by the Board as a dialysis technician pursuant to the provisions of this article shall be known as a West Virginia dialysis technician or dialysis technician and may use the initials “D.T.” after his or her name. After the thirtieth day of June, two thousand five, no other individual may use the title, abbreviation or any other words, letters, figures, signs or devices to indicate that he or she is a dialysis technician.

(b) An individual enrolled in an approved dialysis technician training program shall use the title dialysis technician
A dialysis technician trainee shall adhere to the standards for dialysis technicians and is subject to disciplinary action by the Board as provided in the Board's rules.

§30-7C-5. Authorized activities.

A dialysis technician is authorized to perform the following, under the direct supervision of a registered professional nurse or a licensed physician:

1. Preparation and initiation of dialysis access sites;
2. Initiating, delivering or discontinuing dialysis care; and
3. Administration of the following medications only:
   a. Heparin to prime the pump, initiate treatment or for administration throughout the treatment, in an amount prescribed by a physician or other authorized practitioner. This may be done intravenously, peripherally via a fistula needle or in another clinically acceptable manner;
   b. Normal saline via the dialysis extra corporeal circuit as needed throughout the dialysis procedure; and
   c. Intradermal anesthetic in an amount prescribed by a physician or other authorized practitioner;
4. Obtaining a blood specimen via the dialysis extra corporeal circuit or a peripheral access site;
5. Reporting changes that arise in conjunction with dialysis care to the registered nurse or physician; and
6. Engaging in other acts as delegated by the registered nurse or physician in order to provide dialysis care.
§30-7C-6. Approval of training programs and testing standards.

(a) The Board shall prescribe standards for approved dialysis technician training programs, and prescribe testing standards and requirements, by legislative rule.

(b) Persons and organizations providing training programs and testing services must be approved by the Board.

(c) Approval may be denied or withdrawn for failure to meet the standards set out in code or rule.

§30-7C-7. Powers and duties of Board; rule-making authority.

(a) The Board may:

(1) Adopt and amend rules consistent with this article necessary to enable it to carry into effect the provisions of this article, including disciplinary rules;

(2) Prescribe standards for preparing individuals for the role of dialysis technician under this article;

(3) Provide for standards for approved dialysis technician training programs;

(4) Accredit educational programs for the preparation of dialysis technicians that meet the requirements of this article;

(5) Provide surveys of educational programs when the Board considers it necessary;

(6) Approve, reapprove and prescribe standards for testing organizations and the tests offered by organizations for dialysis technicians;

(7) Deny or withdraw approval of testing organizations;
(8) Prescribe standards for dialysis technician trainees;

(9) Issue, renew or revoke temporary permits, endorsements and certifications for dialysis technicians;

(10) Deny or withdraw accreditation of approved dialysis technician training programs for failure to meet or maintain prescribed standards required by this article and by the Board;

(11) Conduct hearings upon charges calling for discipline of a dialysis technician;

(12) Keep a record of all proceedings of the Board; and

(13) Further regulate, as necessary, dialysis technicians:

Provided, That the Board is not authorized to establish staffing ratios.

(b) The Board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code to:

(1) Prescribe standards for training programs;

(2) Prescribe testing standards and requirements;

(3) Prescribe requirements for persons and organizations providing training programs and testing services;

(4) Assess fees for the certification of dialysis technicians, approval of training programs, tests and providers of training programs and testing services, and other services performed by the Board; and

(5) Provide for any other requirements necessary to carry out the purposes of this article.
(c) The Board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the purposes set forth in this section.

§30-7C-8. Fees.

All fees and other moneys collected by the Board pursuant to the provisions of this article shall be kept in a separate special fund called the Dialysis Technician Fund to be established for the Board in the State Treasury and shall be used for the administration of this article. No part of this special fund reverts to the General Fund of this state. The costs and all expenses incurred under this article are to be paid from this special fund. No compensation or expense incurred under this article is a charge against the general fund of this state.

§30-7C-9. Dialysis technician advisory council.

(a) There is created, under the Board, the dialysis technician advisory council, which shall advise the Board regarding qualifications, standards for training, competency determination of dialysis technicians and all other matters related to dialysis technicians.

(b) The council shall be appointed by the Board and consists of:

(1) One member of the Board, who serves as chair of the council;

(2) Two dialysis technicians;

(3) Two nurses who regularly perform dialysis and care for patients who receive dialysis; and

(4) One physician who regularly treats patients receiving dialysis care.
(c) The Board may solicit nominations for the council from interested parties or organizations.

(d) The Board shall specify the terms for the council members. Members serve at the discretion of the Board and shall receive reimbursement for their actual and necessary expenses incurred in the performance of their official duties.

§30-7C-10. Disciplinary proceeding; grounds for discipline of a dialysis technician.

(a) The Board may, in accordance with rules promulgated under the provisions of article three, chapter twenty-nine-a of this code, refuse to approve a dialysis technician.

(b) The Board may deny, revoke or suspend its certification of a dialysis technician in accordance with the provisions of this article, or to otherwise impose discipline upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or attempting to procure approval to be a dialysis technician;

(2) Has been convicted of a felony;

(3) Is unfit or incompetent by reason of negligence, habits or other causes;

(4) Is habitually intemperate or is addicted to the use of alcohol or habit-forming drugs;

(5) Is mentally incompetent;

(6) Is guilty of conduct derogatory to the morals or standing of the practice;

(7) Is practicing or attempting to practice as a dialysis technician without Board approval; or
(8) Has willfully or repeatedly violated any of the provisions of this article.

(c) After following procedures to be determined by the Board in rules, the discipline may include any of the following:

(1) Summary suspension of the right to practice or reprimand of the dialysis technician;

(2) Probation of the dialysis technician for a specified period of time, with or without limitations and conditions;

(3) Suspension of the dialysis technician for a specified period of time; or

(4) Permanent revocation of dialysis technician privileges.

(d) The Board may establish a committee that has the authority to resolve disciplinary matters through a formal consent agreement with a licensee, permitting the licensee to voluntarily agree to disciplinary action in lieu of a formal evidentiary hearing.

§30-7C-11. Prohibited acts; penalties.

(a) No individual, firm, corporation, facility or association of individuals may:

(1) Sell or fraudulently obtain or furnish any national dialysis technician certification credential or documentation of successful completion of a dialysis technician training program or aid or abet therein;

(2) Act as a dialysis technician unless authorized by the provisions of this article;

(3) Use in connection with his or her name any designation tending to imply that he or she is a dialysis technician unless authorized by the provisions of this article; or
(4) Otherwise violate any provision of this article.

(b) An individual violating a provision of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars.

(c) It is unlawful for any individual to practice as a dialysis technician who is listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect or misappropriation of property.

§30-7C-12. Judicial review; appeal to Supreme Court of Appeals.

(a) Any individual, firm, corporation, facility or association of individuals adversely affected by a decision of the Board rendered after a hearing held in accordance with the provisions of this article is entitled to a judicial review of the decision. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the judicial review with like effect as if the provisions of section four of this article were set forth in this section.

(b) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine of this code.

§30-7C-13. Injunction or other relief against unlawful acts.

(a) The practice of dialysis technician by an individual who has not met the requirements of this article is declared to be inimical to the public health and welfare and to be a public nuisance.

(b) Whenever, in the judgment of the Board, an individual has engaged in, is engaging in, or is about to engage in, the
practice of dialysis technician without holding a valid certification under this article, or has engaged, is engaging or is about to engage in any act which constitutes, or will constitute, a violation of this article, the Board may make application to the appropriate court having equity jurisdiction for an order enjoining the practices or acts, and upon a showing that the individual has engaged, is engaging or is about to engage, in any such practices or acts, an injunction, restraining order, or other order as the court considers appropriate shall be entered by the court.

(c) The remedy provided in this section is in addition to, and not in lieu of, all other penalties and remedies provided in this article.

CHAPTER 186

(H. B. 3031 — By Delegates Beane, Butcher, Martin, Perdue and Yost)

[Passed April 9, 2005; in effect July 1, 2005.] [Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-22-5a, relating to the West Virginia State Board of Landscape Architects; authorizing an increase of fees for one year; and limiting the increase.

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 §30-22-5a, to read as follows:
ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-5a. Limited fee increase.

1 Notwithstanding the fees set forth in this article, the West Virginia State Board of Landscape Architects is hereby authorized to increase the fees it assesses under the provisions of this article. The fee increase shall be for one year, commencing the first day of July, two thousand five. Each increased fee may not exceed one hundred dollars.

CHAPTER 187

(H. B. 3016 — By Mr. Speaker, Mr. Kiss, and Delegates G. White, Beach, Beane, Ennis, Varner, H. White, Browning, Staton, Mahan and Stalnaker)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §30-40-5 of the Code of West Virginia, 1931, as amended, relating to excepting the making of appointments by secretaries of licensed real estate brokers and salespersons with buyers and sellers or potential buyers and sellers of real estate from the scope of practice of real estate brokerage subject to licensing.

Be it enacted by the Legislature of West Virginia:

That §30-40-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.
§30-40-5. Scope of practice; exceptions.

(a) The practice of real estate brokerage includes acting in the capacity of a broker, associate broker or salesperson as defined in section four of this article.

(b) The practice of real estate brokerage does not include the activities normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector or other professional who may perform an ancillary service in conjunction with a real estate transaction.

(c) The provisions of this article do not apply to:

(1) Any person acting on his or her own behalf as owner or lessor of real estate.

(2) The regular employees of an owner of real estate, who perform any acts regulated by this article, where the acts are incidental to the management of the real estate: Provided, That the employee does not receive additional compensation for the act and does not perform the act as a vocation.

(3) Attorneys-at-law: Provided, That attorneys-at-law shall be required to submit to the written examination required under section twelve of this article in order to qualify for a broker's license: Provided, however, That an attorney-at-law who is licensed as a real estate broker prior to the first day of July, one thousand nine hundred eighty, is exempt from the written examination required under section twelve of this article.

(4) Any person holding, in good faith, a valid power of attorney from the owner or lessor of the real estate.

(5) Any person acting as a receiver, trustee, administrator, executor, guardian, conservator or under the order of any court or under the authority of a deed of trust or will.
(6) A public officer while performing his or her official duties.

(7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or disposing of properties for easements and rights-of-ways for pipelines, electric power lines and stations, public utilities, railroads or roads.

(8) Any person employed exclusively to act as the management or rental agent for the real estate of one person, partnership or corporation.

(9) Any person properly licensed pursuant to the provisions of article two-c, chapter nineteen of this code when conducting an auction, any portion of which contains any leasehold or estate in real estate, only when the person so licensed is retained to conduct an auction by:

(A) A receiver or trustee in bankruptcy;

(B) A fiduciary acting under the authority of a deed of trust or will; or

(C) A fiduciary of a decedent's estate.

(10) Any person employed by a broker in a noncommissioned secretarial or clerical capacity who may in the normal course of employment, be required to:

(A) Disseminate brokerage preprinted and predetermined real estate sales and rental information;

(B) Accept and process rental reservations or bookings for a period not to exceed thirty consecutive days in a manner and procedure predetermined by the broker;

(C) Collect predetermined rental fees for the rentals which are to be promptly tendered to the broker;
(D) Make appointments on behalf of the broker or licensed salesperson with buyers and sellers of real estate and potential buyers and sellers of real estate; or

(E) Any combination thereof.

CHAPTER 188

(Com. Sub. for S. B. 498 — By Senators Bowman, Kessler, Jenkins, McCabe, Dempsey, McKenzie, Barnes, Unger and Plymale)

[Passed April 8, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §7-4-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-4-6a, all relating to the West Virginia Prosecuting Attorneys Institute; clarifying the scope of responsibility of the Institute to include services to the entire staff of prosecutors; authorizing the Institute to train state and local law-enforcement and investigative personnel; allowing the Institute to accept moneys for reimbursement of expenses; and continuation of the West Virginia Prosecuting Attorneys Institute.

Be it enacted by the Legislature of West Virginia:

That §7-4-6 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 §7-4-6a, all to read as follows:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia Prosecuting Attorneys Institute.
§7-4-6a. West Virginia Prosecuting Attorneys Institute continued.
§7-4-6. West Virginia Prosecuting Attorneys Institute.

(a) There is continued the West Virginia Prosecuting Attorneys Institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The Institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the Institute’s business.

(b) There is continued the Executive Council of the West Virginia Prosecuting Attorneys Institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia Prosecuting Attorneys Institute at its annual meeting and two persons appointed annually by the County Commissioner’s Association of West Virginia. The Executive Council shall elect one member of the Council to serve as Chairman of the Institute for a term of one year without compensation. The Executive Council shall serve as the regular executive body of the Institute.

(c) There is continued the position of Executive Director of the West Virginia Prosecuting Attorneys Institute to be employed by the Executive Council of the Institute. The Executive Director of the West Virginia Prosecuting Attorneys Institute shall serve at the will and pleasure of the Executive Council of the Institute. The Executive Director shall be licensed to practice law in the State of West Virginia and shall devote full time to his or her official duties and may not engage in the private practice of law.

(d) The duties and responsibilities of the Institute, as implemented by and through its Executive Council and its Executive Director, shall include the following:

(1) The provision for special prosecuting attorneys to pursue a criminal matter in any county upon the request of a
(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys, their staffs and, where determined practical by the Executive Council and Executive Director, all statutorily authorized law-enforcement or investigative agencies of the state or its political subdivisions;

(3) The provision of materials for prosecuting attorneys and their staffs, including legal research, technical assistance and technical and professional publications;

(4) The compilation and dissemination of information on behalf of prosecuting attorneys and their staffs on current developments and changes in the law and the administration of criminal justice;

(5) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) The acceptance and expenditure of grants, moneys for reimbursement of expenses, gifts and acceptance of services from any public or private source;

(7) The entering into of agreements and contracts with public or private agencies, groups, organizations or educational institutions;

(8) The identification of experts and other resources for use by Prosecutors in criminal matters;
(9) The recommendation to the Legislature or the Supreme Court of Appeals of the State of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

(10) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the Institute considers appropriate.

(e) Each prosecuting attorney is subject to appointment by the Institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the Institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The Executive Director of the Institute shall, upon written request to the Institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the Executive Council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. No person who is serving as a prosecuting attorney or an assistant prose-
93 cutting attorney of any county is required to take an additional
94 oath when appointed to serve as a special prosecuting attorney.

95 (f) The Executive Director of the Institute shall maintain an
96 appointment list that shall include the names of all fifty-five
97 prosecuting attorneys and that shall also include the names of
98 any assistant prosecuting attorney who wishes to serve as a
99 special prosecuting attorney upon the same terms and condi-
100 tions as set forth in this section. The Executive Director of the
101 Institute, with the approval of the Executive Council, shall
102 appoint special prosecuting attorneys from the appointment list
103 for any particular matter giving due consideration to the
104 proximity of the proposed special prosecuting attorney’s home
105 county to the county requesting a special prosecutor and giving
106 due consideration to the expertise of the special prosecuting
107 attorney.

108 (g) Each county commission shall pay, on a monthly basis,
109 a special prosecution premium to the Treasurer of the state for
110 the funding of the West Virginia Prosecuting Attorneys
111 Institute. The monthly premiums shall be paid according to the
112 following schedule:

113 MONTHLY PREMIUMS

114 Assessed Valuation of Property
115 of All Classes in the County

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
</tr>
<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
</tr>
<tr>
<td>C</td>
<td>$ 800,000,000</td>
<td>$ 999,999,000</td>
<td>$350</td>
</tr>
<tr>
<td>D</td>
<td>$ 700,000,000</td>
<td>$ 799,999,000</td>
<td>$325</td>
</tr>
<tr>
<td>E</td>
<td>$ 600,000,000</td>
<td>$ 699,999,000</td>
<td>$300</td>
</tr>
<tr>
<td>F</td>
<td>$ 500,000,000</td>
<td>$ 599,999,000</td>
<td>$250</td>
</tr>
<tr>
<td>G</td>
<td>$ 400,000,000</td>
<td>$ 499,999,000</td>
<td>$200</td>
</tr>
</tbody>
</table>
PROFESSIONS AND OCCUPATIONS

(h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the Treasurer shall deposit the funds into a special revenue fund to be known as the “West Virginia Prosecuting Attorneys Institute Fund”. All costs of operating the West Virginia Prosecuting Attorneys Institute shall be paid from the West Virginia Prosecuting Attorneys Institute Fund upon proper authorization by the Executive Council or by the Executive Director of the Institute and subject to annual appropriation by the Legislature of the amounts contained within the Fund.

(i) The Institute shall annually, by the first day of the regular Legislative session, provide the Joint Committee on Government and Finance with a report setting forth the activities of the Institute and suggestions for legislative action.

(j) Neither the Institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the Institute set forth in subsection (d) of this section.

§7-4-6a. West Virginia Prosecuting Attorneys Institute continued.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Prosecuting Attorneys Institute shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
CHAPTER 189

(H. B. 3106 — By Delegates Michael, Stainaker, Ron Thompson, G. White, H. K. White, Border, Wakim, Hall, Anderson, Cann and Susman)

[Passed April 5, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §5-16-18 of the Code of West Virginia, 1931, as amended, relating to the ability of the Public Employees Insurance Agency to participate in the investment pools of the Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §5-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds or federal funds or any combination of those funds shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired employees of the employer as a separate line item, titled “PEIA”, in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds.
Any agency wishing to charge general revenue funds for insurance benefits for retirees under section thirteen of this article shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with general revenue funds for twelve months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer's participating employees, retired employees and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items. The amount of the payments for county boards of education shall be determined by the method set forth in section twenty-four, article nine-a, chapter eighteen of this code: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan, but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the State General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers (namely: A county, city or town) in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public
corporation charged by law with the performance of a govern-
mental function and whose jurisdiction is coextensive with one
or more counties, cities or towns; any comprehensive commu-
nity mental health center or comprehensive mental retardation
facility established, operated or licensed by the Secretary of
Health and Human Resources pursuant to section one, article
two-a, chapter twenty-seven of this code, and which is sup-
ported in part by state, county or municipal funds; and a
combined city-county health department created pursuant to
article two, chapter sixteen of this code for their employees
shall be the percentage of the cost of the employees’ insurance
package as the employers determine reasonable and proper
under their own particular circumstances.

(e) The employee’s proportionate share of the premium or
cost shall be withheld or deducted by the employer from the
employee’s salary or wages as and when paid and the sums
shall be forwarded to the director with any supporting data as
the director may require.

(f) All moneys received by the Public Employees Insurance
Agency shall be deposited in a special fund or funds as are
necessary in the State Treasury and the Treasurer of the State is
custodian of the fund or funds and shall administer the fund or
funds in accordance with the provisions of this article or as the
director may from time to time direct. The Treasurer shall pay
all warrants issued by the State Auditor against the fund or
funds as the director may direct in accordance with the provi-
sions of this article. All funds received by the agency, includ-
ing, but not limited to, basic insurance premiums, administra-
tive expenses and optional life insurance premiums, shall be
deposited, as determined by the director, in any of the invest-
ment pools with the West Virginia Investment Management
Board, including, but not limited to, the equity and fixed
income pools, with the interest income or other earnings a
proper credit to all such funds for the benefit of the public
employees insurance agency.
CHAPTER 190

(Com. Sub. for S. B. 558 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-1-2, §12-1-12 and §12-1-13 of said code; to amend said code by adding thereto a new section, designated §12-1-12c; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-4 of said code; to amend and reenact §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code; to amend and reenact §12-6B-4 of said code; and to amend said code by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all relating generally to the management and investment of public funds; authorizing investment accounts for the Board of Treasury Investments; adding State Treasurer to entities receiving reports from depositories regarding accounts not approved by the State Treasurer; allowing the Board of Treasury Investments to accept funds remitted by the State Treasurer; codifying and clarifying the duties of the State Treasurer in administering the Federal Cash Management Improvement Act; authorizing the Federal Cash Management Interest Fund and the Federal Cash Management - Administration Fund; enabling the Board of Treasury Investments to invest moneys in the consolidated fund; codifying current
method of handling receipts using the state accounting system; authorizing Legislature to transfer moneys; requiring spending units to comply with procedures for receipt and disbursement of moneys not due the state; clarifying roles and administration of the West Virginia pay card; transferring management of consolidated fund from Investment Management Board to West Virginia Board of Treasury Investments; removing provision that the Investment Management Board can order the State Auditor and the State Treasurer to transmit funds; creating West Virginia Board of Treasury Investments; changing the date the debt capacity report is due from the first day of October to the fifteenth day of January; providing purposes, legislative findings and definitions for the Board of Treasury Investments; specifying membership of Board, appointment of certain directors of Board, terms of office, vacancies in office, removal of directors, expenses of directors, meetings and powers of Board; transferring management, control and administration of consolidated fund to the Board of Treasury Investments; requiring annual review of asset allocation plans and investment policies; specifying requirements and restrictions on investments; authorizing loans for industrial development; handling of securities; establishing the standard of care for investments; transferring existing cash, securities and other investments to the Board of Treasury Investments; requiring audits, financial statements and reports; continuing the current powers of spending units as to investments; transferring all loans from the consolidated fund to the Board of Treasury Investments; creating the fee fund and the investment fund; authorizing fees for administration and expenses; and termination of Board.

Be it enacted by the Legislature of West Virginia:

That §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended, be repealed; that §12-1-2, §12-1-12 and §12-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12c; that §12-2-2 and §12-2-3
of said code be amended and reenacted; that §12-3A-4 of said code be amended and reenacted; that §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code be amended and reenacted; that §12-6B-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all to read as follows:

Article

1. State Depositories.
2. Payment and Deposit of Taxes and Other Amounts Due the State or any Political Subdivision.
3A. Financial Electronic Commerce.
6. West Virginia Investment Management Board.
6B. Debt Capacity Advisory Division.
6C. West Virginia Board of Treasury Investments.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.

§12-1-12. Investing funds in treasury; depositories outside the state.
§12-1-12c. Cash management improvement act; administration; reports.
§12-1-13. Payment of banking services and litigation costs for prior investment losses.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.

1 (a) The State Treasurer shall designate the state and national banks and the state and federal savings and loan associations in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits.
(b) (1) Demand deposit accounts shall consist of receipt and disbursement accounts. Receipt accounts are accounts in which are deposited moneys belonging to or due the State of West Virginia or any official, department, board, commission or agency of the state.

(2) Disbursement accounts are accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency of the state to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

(3) Investment accounts are accounts established by the West Virginia Investment Management Board, the West Virginia Board of Treasury Investments or the State Treasurer for the buying and selling of securities for investment purposes.

(c) The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and any other contractual terms it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value of the banking services rendered or to be rendered the state by the depositories; and (3) the value and importance of the deposits to the economy of the communities and the various areas of the state affected by the deposits.

(d) The State Treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. If none of the eligible banks in this state are able to provide the needed services, then the State Treasurer may include eligible banks outside this state in the competitive bidding process. The State Treasurer shall propose rules for legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The State Treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and any other contractual terms the State Treasurer considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the State Treasurer, shall be maintained at all times in the State Treasury, in cash, in short term investments not to exceed five days or in disbursement accounts with financial institutions designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in financial institutions which have not been designated as depositories.

(e) Except as otherwise provided in this code, only banks and state and federal savings and loan associations designated by the State Treasurer as depositories may accept deposits of state funds. Only the Legislature and the State Treasurer may determine whether funds are state funds and only the State Treasurer may approve the opening of an account or processing of a transaction with a financial institution.

(f) Boards, commissions and spending units with authority pursuant to this code to deposit moneys in a financial institution without approval of the State Treasurer shall retain that authority and are not required to have the State Treasurer designate a financial institution as a depository: Provided, That boards, commissions and spending units with moneys deposited in financial institutions not approved for that purpose by the State Treasurer shall submit a report on those moneys annually to the Legislative Auditor and the State Treasurer.
(g) The provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority.

(h) As used in this chapter, "spending unit" means a department, agency, board, commission or institution of state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

§12-1-12. Investing funds in treasury; depositories outside the state.

(a) When the funds in the Treasury exceed the amount needed for current operational purposes, as determined by the State Treasurer, the State Treasurer shall make all excess funds available for investment by the Board of Treasury Investments which shall invest the excess for the benefit of the general revenue fund: Provided, That the State Treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed one hundred twenty-five million dollars of the operating funds needed to meet current operational purposes. Investments made by the State Treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in section eight, article six of this chapter, including all cash and investments of the fund.

(b) Spending units with authority to retain interest or earnings on a fund or account may submit requests to the State Treasurer to transfer moneys to a specific investment pool of the Investment Management Board or the Board of Treasury Investments and retain any interest or earnings on the money
invested. The general revenue fund shall receive all interest or 
other earnings on money invested that are not designated for a 
specific fund or account.

(c) Whenever the funds in the Treasury exceed the amount 
for which depositories within the state have qualified, or the 
depositories within the state which have qualified are unwilling 
to receive larger deposits, the State Treasurer may designate 
depositories outside the state, disbursement accounts being bid 
for in the same manner as required by depositories within the 
state, and when depositories outside the state have qualified by 
giving the bond prescribed in section four of this article, the 
State Treasurer shall deposit funds in the same manner as funds 
are deposited in depositories within the state under this article.

(d) The State Treasurer may transfer funds to financial 
institutions outside the state to meet obligations to paying 
agents outside the state if the financial institution meets the 
same collateral requirements as set forth in this article.

§12-1-12c. Cash management improvement act; administration; 
reports.

(a) The Cash Management Improvement Act of 1990, 
Public Law 101-453, October 24, 1990, 31 USCA Section 6501, 
et seq., (CMIA) and regulations, as amended, establishes 
requirements and techniques, including calculations, for the 
receipt and disbursement of federal funds by states. The 
authorized official and representative of the State of West 
Virginia for the CMIA is the State Treasurer.

(b) In administering the CMIA, the State Treasurer is 
authorized to do all things reasonably necessary, including 
without limitation, entering into agreements with, negotiating 
settlements with, refunding any interest due and satisfying any 
liability to the United States Treasury in accordance with the 
CMIA.
Periodically the State Treasurer shall transfer to the Federal Cash Management Interest Fund, which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the State Treasurer estimates is needed to make refunds in accordance with the CMIA. After each annual settlement with the United States Treasury, the State Treasurer shall transfer to the State General Revenue Fund any moneys remaining in the Federal Cash Management Interest Fund for the period just settled.

The State Treasurer shall also transfer periodically to the Federal Cash Management – Administration Fund, which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the State Treasurer determines is needed to pay for the costs of administering the CMIA. The State Treasurer may pay the costs he or she incurs in administering the CMIA from the Federal Cash Management – Administration Fund.

All state spending units shall cooperate fully with the State Treasurer in accumulating all the necessary data elements to fully comply with the CMIA.

The State Treasurer shall send quarterly reports on the activities involving the CMIA to the Governor, State Auditor, Secretary of Revenue and Joint Committee on Government and Finance.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The State Treasurer is authorized to pay for banking services, and goods and services ancillary to the banking services, by either a compensating balance in an account maintained at the financial institution providing the services or with a state warrant as described in section one, article three of this chapter.
(b) The Investment Management Board may pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of August, one thousand nine hundred eighty-nine. The payment may be in the form of a state warrant.

(c) If payment is made by a state warrant, the West Virginia Board of Treasury Investments, at the request of the State Treasurer, may establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking services provided to the state and to pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the State Treasurer known as the banking services account to pay for all banking services and goods and services ancillary to the banking services provided to the state, for the investigation and pursuit of the prior investment loss claims, and for amortization of the balance in the investment imbalance fund.

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

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

§12-2-3. Deposit of moneys not due the state.

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

(a) All officials and employees of the state authorized by statute to accept moneys due the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within twenty-four hours
with the State Treasurer all moneys received or collected by
them for or on behalf of the state for any purpose whatsoever.
The State Treasurer may review the procedures and methods
used by officials and employees authorized to accept moneys
due the state and change the procedures and methods if he or
she determines it is in the best interest of the state: Provided,
That the State Treasurer may not review or amend the proce-
dures by which the Department of Revenue accepts moneys due
the state. The State Treasurer shall propose rules for legislative
approval, in accordance with the provisions of article three,
chapter twenty-nine-a of this code governing the procedure for
deposits. The official or employee making deposits with the
State Treasurer shall prepare deposit lists in the manner and
upon report forms prescribed by the State Treasurer in the state
accounting system. The State Treasurer shall review the
deposits in the state accounting system and forward the
information to the State Auditor and to the Secretary of
Revenue.

(b) All moneys received by the state from appropriations
made by the Congress of the United States shall be recorded in
special fund accounts, in the State Treasury apart from the
general revenues of the state, and shall be expended in accor-
dance with the provisions of article eleven, chapter four of this
code. All moneys, other than federal funds, defined in section
two, article eleven, chapter four of this code, shall be credited
to the state fund and treated by the State Auditor and State
Treasurer as part of the general revenue of the state except the
following funds which shall be recorded in separate accounts:

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

(2) All funds derived from the sale of farm and dairy
products from farms operated by any spending unit of the state;
(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

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

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

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

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

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

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

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

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be
paid into the State Treasury in the same manner as collections
not excepted and recorded in separate accounts for receipt and
expenditure for the purposes for which the moneys are autho-
ized to be collected by law: Provided, That amounts collected
pursuant to subdivision (10), subsection (b) of this section,
which are found, from time to time, to exceed funds needed for
the purposes set forth in general law may be transferred to other
accounts or funds and redesignated for other purposes by
appropriation of the Legislature. The gross amount collected in
all cases shall be paid into the State Treasury. Commissions,
costs and expenses, including, without limitation, amounts
charged for use of bank, charge, credit or debit cards, incurred
in the collection process shall be paid from the gross amount
collected in the same manner as other payments are made from
the State Treasury.

(d) The State Treasurer may establish an imprest fund or
funds in the office of any state spending unit upon receipt of a
proper application. To implement this authority, the State
Treasurer shall propose rules for legislative approval in
accordance with the provisions of article three, chapter
twenty-nine-a of this code. The State Treasurer or his or her
designee shall annually audit all imprest funds and prepare a list
of the funds showing the location and amount as of fiscal year
end, retaining the list as a permanent record of the State
Treasurer until the Legislative Auditor has completed an audit
of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a
centralized receipts processing center. The State Treasurer may
request the transfer of equipment and personnel from appropri-
ate state agencies to the centralized receipts processing center
in order to implement the provisions of this section: Provided,
That the Governor or appropriate constitutional officer has
authority to authorize the transfer of equipment or personnel to
the centralized receipts processing center from the respective
agency.
§12-2-3. Deposit of moneys not due the state.

All officials and employees of the state authorized to accept moneys that the State Treasurer determines or that this code specifies are not funds due the state pursuant to the provisions of section two of this article shall deposit the moneys, as soon as practicable, in the manner and in the depository specified by the State Treasurer. The State Treasurer shall prescribe the forms and procedures for depositing the moneys.

Notwithstanding any provision of this code to the contrary, including provisions stating funds collected are not state funds and provisions authorizing a spending unit to have one or more accounts outside the Treasury, a spending unit shall comply with the State Treasurer's procedures for the receipt and disbursement of moneys not due the state and obtain written authorization from the State Treasurer before depositing any moneys in an account outside the Treasury. Upon the State Treasurer's written revocation of the authorization, the spending unit shall deposit funds deposited in an account outside the Treasury into the Treasury in the manner and in the depository specified by the State Treasurer. The State Treasurer is the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article. The State Treasurer shall on a quarterly basis provide the Legislative Auditor with a report of all accounts authorized under this section.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state stored value debit card program known as the "West Virginia Pay Card" for recipients of employee payroll, retirement benefits or entitlement programs who do not possess a federally insured depository institution account. The State
Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with section three of this article to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1a. Legislative findings.
§12-6-5. Powers of the Board.
§12-6-8. Investment funds established; management thereof.
§12-6-13. Board as agency for investments; exceptions.

§12-6-1a. Legislative findings.

(a) The Legislature hereby finds and declares that all the public employees covered by the Public Employees Retirement System, the Teachers Retirement System, the West Virginia State Police Retirement System, the Death, Disability and Retirement Fund of the Division of Public Safety, the Judges’ Retirement System and the Deputy Sheriffs Retirement System should benefit from a prudent and conscientious staff of financial professionals dedicated to the administration, investment and management of those employees and employers financial contributions and that an independent board and staff should be immune to changing political climates and should provide a stable and continuous source of professional financial investment and management.
(b) The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees and to help foster sound financial practices, the West Virginia Investment Management Board may develop, implement and maintain an efficient and modern system for the investment and management of the state’s money, except those moneys managed in accordance with article six-c of this chapter. The Legislature further finds that in order to implement these sound fiscal policies, the West Virginia Investment Management Board shall operate as an independent board with its own full-time staff of financial professionals, immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

(c) The Legislature hereby finds and declares further that experience has demonstrated that prudent investment provides diversification and beneficial return not only for public employees but for all citizens of the state and that in order to have access to this sound fiscal policy, public employee and employer contributions to the 401(a) plans are declared to be made to an irrevocable trust on behalf of each plan, available for no use or purpose other than for the benefit of those public employees.

(d) The Legislature hereby finds and declares further that the Workers’ Compensation Fund and Coal-Workers’ Pneumoconiosis Fund are trust funds to be used exclusively for those workers, miners and their beneficiaries who have sacrificed their health in the performance of their jobs and further finds that the assets available to pay awarded benefits should be prudently invested so that awards may be paid.

(e) The Legislature hereby finds and declares further that an independent public body corporate with appropriate governance
(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia Investment Management Board, created and established by this article, is acting in all respects for the benefit of the state's public employees and ultimately the citizens of the state and the West Virginia Investment Management Board may act as trustee of the irrevocable trusts created by this article and to manage and invest other state funds.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees, the conduct of the affairs of the irrevocable trusts created by this article and the investment of other state funds is intended to be that applied to the investment of funds as described in the "Uniform Prudent Investor Act" codified as article six-c, chapter forty-four of this code and as described in section eleven of this article.

(h) The Legislature further finds and declares that the West Virginia Supreme Court of Appeals declared the West Virginia Trust Fund Act unconstitutional in its decision rendered on the twenty-eighth day of March, one thousand nine hundred ninety-seven, to the extent that it authorized investments in corporate stock, but the court also recognized that there were other permissible constitutional purposes of the West Virginia Trust Fund Act and that it is the role of the Legislature to determine those purposes consistent with the court's decision and the Constitution of West Virginia.

(i) The Legislature hereby further finds and declares that it is in the best interests of the state and its citizens to create a new investment management board in order to: (1) Be in full
79 compliance with the provisions of the Constitution of West
80 Virginia; and (2) protect all existing legal and equitable rights
81 of persons who have entered into contractual relationships with
82 the West Virginia Board of Investments and the West Virginia
83 Trust Fund.

§12-6-5. Powers of the Board.

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

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

(2) Sue and be sued;

(3) Enter into contracts and execute and deliver instruments;

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

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

(6) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;

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

(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
(9) Engage in financial transactions whereby securities are purchased by the Board under an agreement providing for the resale of the securities to the original seller at a stated price;

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

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

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

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

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the Board;

(16) Make and, from time to time, amend and repeal bylaws, rules and procedures not inconsistent with the provisions of this article;

(17) Hire its own employees, consultants, managers and advisors as it considers necessary and fix their compensation and prescribe their duties;

(18) Develop, implement and maintain its own banking accounts and investments;
(19) Do all things necessary to implement and operate the Board and carry out the intent of this article;

(20) Upon request of the State Treasurer, transmit funds for deposit in the State Treasury to meet the daily obligations of state government;

(21) Establish one or more investment funds for the purpose of investing the funds for which it is trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund shall be designated as units and the Board shall adopt industry standard accounting procedures to determine each fund's unit value. The securities in each investment fund are the property of the Board and each fund shall be considered an investment pool or fund and may not be considered a trust nor may the securities of the various investment funds be considered held in trust. However, units in an investment fund established by or sold by the Board and the proceeds from the sale or redemption of any unit may be held by the Board in its role as trustee of the participant plans; and

(22) Notwithstanding any other provision of the code to the contrary, conduct investment transactions, including purchases, sales, redemptions and income collections, which shall not be treated by the State Auditor as recordable transactions on the state's accounting system.

§12-6-8. Investment funds established; management thereof.

(a) There is continued a special investment fund designated as the Consolidated Fund. Effective the thirtieth day of June, two thousand five, the power and authority of the Board as to the consolidated fund terminates. On the first day of July, two thousand five, the Board shall transfer the consolidated fund, all moneys, obligations, assets, securities and other investments of the consolidated fund and all records, properties and any other document or item pertaining to the consolidated fund in its
possession or under its control to the West Virginia Board of Treasury Investments established in article six-c of this chapter.

(b) Each board, commission, department, official or agency charged with the administration of state funds may request the State Treasurer to make moneys available to the Board for investment.

c) Each political subdivision of this state through its treasurer or equivalent financial officer may enter into agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with a state spending unit from which it receives funds to request transfer of the funds to their investment account with the Investment Management Board or the West Virginia Board of Treasury Investments.

d) Moneys held in the various funds and accounts administered by the Board shall be invested as permitted by this article and subject to the restrictions contained in this article.. The Board shall report the earnings on the various funds under management to the State Treasurer at the times determined by the State Treasurer. The Board shall also establish rules for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses: Provided, That in the event any moneys made available to the Board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the Board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.
§12-6-13. Board as agency for investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are hereby transferred to the Board: Provided, That neither this section nor any other section of this article applies to the duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys and the acquisition, sale, exchange or disposal of securities or any other investment by the West Virginia Board of Treasury Investments pursuant to article six-c of this chapter, to the Board of the School Fund or to the School Fund established by section 4, article XII of the State Constitution: Provided, however, That funds under the control of the Municipal Bond Commission may, in the discretion of the Commission, be made available to the Board for investment by the Commission as provided in article three, chapter thirteen of this code.

ARTICLE 6B. DEBT_CAPACITY ADVISORY DIVISION.

§12-6B-4. Powers and duties.

The Division shall perform the following functions and duties:

(a) Promulgate rules pursuant to article three, chapter twenty-nine-a of this code, for the management and conduct of its affairs;

(b) Annually review the size and condition of the state's tax-supported debt and submit to the Governor and to the Legislature, on or before the fifteenth day of January of each year, an estimate of the maximum amount of new tax-supported debt that prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate. The
estimate shall be advisory and in no way restrict the Governor or the Legislature. In preparing its annual review and estimate, the Division shall, at a minimum, consider:

(1) The amount of net tax supported debt that, during the next fiscal year and annually for the following ten fiscal years: (A) Will be outstanding; and (B) has been authorized but not yet issued;

(2) Projected debt service requirements during the next fiscal year and annually for the following ten fiscal years based upon: (A) Existing outstanding debt; (B) previously authorized but unissued debt; and (C) projected bond authorizations;

(3) Any information available from the budget section of the Department of Administration in connection with anticipated capital expenditures projected for the next five fiscal years;

(4) The criteria that recognized bond rating agencies use to judge the quality of state bonds;

(5) Any other factor that the Division finds as relevant to: (A) The ability of the state to meet its projected debt service requirements for the next fiscal year; (B) the ability of the state to meet its projected debt service requirement for the next five fiscal years; and (C) any other factor affecting the marketability of the bond; and

(6) The effect of authorizations of new tax-supported debt on each of the considerations of this subsection.

(c) Conduct ongoing review of the amount and condition of bonds, notes and other security obligations of the state's spending units: (1) Not secured by the full faith and credit of the state or for which the Legislature is not obligated to replenish reserve funds or make necessary debt service pay-
ments; (2) for which the state has a contingent or limited liability or for which the Legislature is permitted to replenish reserve funds or make necessary debt service payments if deficiencies occur. When appropriate, the Division shall recommend limits on the additional obligations to the Governor and to the Legislature. The recommendation is advisory and in no way restricts the Governor, the Legislature or the spending unit.

(d) The State Treasurer may review all proposed offerings of debt, as defined in this article, submitted to the Division of Debt Management, as provided in section six, article six-a of this chapter. The Division may also request any additional information which may be needed to issue an advisory opinion to the Governor, the Speaker of the House of Delegates and the President of the Senate as to the impact of the proposed offering on the state’s net tax-supported debt outstanding and any other criteria which the State Treasurer feels may be relevant to the marketability of said offering and its impact on the state’s credit rating. The advisory opinion shall in no way restrict the Governor, the Legislature or the spending unit.

(e) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-1. Purposes and objects; how article cited.
§12-6C-2. Legislative findings.
§12-6C-3. Definitions.
§12-6C-4. West Virginia Board of Treasury Investments created; body corporate; board; directors; nomination and appointment of directors, qualifications and terms of appointment, advice and consent; annual and other meetings; committees; board approval of investment policies required; open meetings, qualifications.
§12-6C-5. Powers of the Board.
§12-6C-6. Consolidated fund continued; management.
§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.
§12-6C-8. Administration of Consolidated Fund.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

§12-6C-10. Investment authority for Consolidated Fund transferred to Board; exceptions.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

§12-6C-12. Securities handling.


§12-6C-14. Existing investments.

§12-6C-15. Annual audits; financial statements; information.

§12-6C-16. Reports to participants.

§12-6C-17. Legal status of spending units continued.

§12-6C-18. Authorization for loans by the Board.

§12-6C-19. Creation of fee account and investment account; budget.

§12-6C-20. Termination of board.

§12-6C-1. Purposes and objects; how article cited.

This article, cited as the West Virginia Treasury Investments Act, is enacted to provide for the investment and management of the Consolidated Fund for the purposes of making state moneys more accessible to state government and allowing the Investment Management Board to focus on long-term investment of the trust estates it manages pursuant to article six of this chapter.

§12-6C-2. Legislative findings.

(a) The Legislature finds and declares that the Consolidated Fund should benefit from financial professionals dedicated to and focused on the sound administration, investment and management of the Fund.

(b) The Legislature finds and declares that the State Treasurer currently enters into agreements on behalf of the West Virginia Investment Management Board with political subdivisions and provides reporting services for participants in the Consolidated Fund.
(c) The Legislature finds and declares that the transfer of the Consolidated Fund to the West Virginia Board of Treasury Investments will allow for management of the fund within state government and will encourage better cash management of state moneys.

(d) The Legislature finds and declares that a public body corporate within state government with appropriate governance is the best means of assuring reasonable access to and prudent management and investment of the Consolidated Fund.

(e) The Legislature finds and declares that in accomplishing these purposes, the West Virginia Board of Treasury Investments is acting in all respects for the benefit of the citizens of the state in managing and investing the Consolidated Fund.

(f) The Legislature further finds and declares that it is in the best interests of the state, its citizens and the political subdivisions to create the West Virginia Board of Treasury Investments to manage and invest the Consolidated Fund to: (1) Provide focused investment services for the operating funds of the state and of its political subdivisions; (2) provide better management of all state funds within state government; and (3) allow the West Virginia Investment Management Board to focus on the long-term investment of the trust estates it manages pursuant to article six of this chapter.

§12-6C-3. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

1. “Board” means the governing body for the West Virginia Board of Treasury Investments. References in this code to the entity investing the moneys of the Consolidated Fund, to the West Virginia Board of Investments, to the West Virginia Trust Fund or to the West Virginia Investment
Management Board in connection with investing moneys in the Consolidated Fund means the Board as defined in this subdivision;

(2) “Consolidated fund” means the investment fund continued in section six of this article and transferred to the Board by the West Virginia Investment Management Board for Management and Investment;

(3) “Director” means any member serving on the Board;

(4) “Local government funds” means the moneys of a political subdivision, including policemen’s and firemen’s pension and relief funds, and volunteer fire department funds, transferred to the Board for deposit;

(5) “Participant” means any state government spending unit or political subdivision which transfers moneys to the Board for investment;

(6) “Political subdivision” means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(7) “Securities” means all bonds, notes, debentures or other evidences of indebtedness and other lawful investment instruments; and

(8) “State funds” means all moneys of the state which may be lawfully invested except for the “school fund” established by section four, article XII of the State Constitution.

§12-6C-4. West Virginia Board of Treasury Investments created; body corporate; board; directors; nomination and
appointment of directors, qualifications and terms of appointment, advice and consent; annual and other meetings; committees; board approval of investment policies required; open meetings, qualifications.

(a) The West Virginia Board of Treasury Investments is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the Consolidated Fund.

(b) Any appointment to the Board is effective immediately upon appointment by the Governor with respect to voting, constituting a quorum, receiving expenses and all other rights and privileges of the Director position. A trustee of the West Virginia Investment Management Board other than the Governor, State Treasurer or State Auditor is not eligible to serve as a Director of the Board.

(c) The Board shall consist of five members, as follows:

(1) The Governor, the State Treasurer and the State Auditor or their designees. They shall serve by virtue of their offices and are not entitled to compensation under the provisions of this article. The Governor, State Treasurer and State Auditor or their designees are subject to all duties, responsibilities and requirements of the provisions of this article; and

(2) Two persons appointed by the Governor subject to the advice and consent of the Senate.

d) Of the two persons appointed by the Governor, one shall be a certified public accountant with experience in finance, investing and management, and one shall be an attorney with experience in finance, investing and management.

e) (1) Initial appointment of the appointed directors shall be for the following terms:
(A) One member shall be appointed for a term ending the thirtieth day of June, two thousand seven; and

(B) One member shall be appointed for a term ending the thirtieth day of June, two thousand nine.

(2) Except for appointments to fill vacancies, each subsequent appointment shall be for the term ending the thirtieth day of June of the fourth year following the year the preceding term expired. A Director may be reappointed. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A Director whose term has expired shall continue in office until a successor has been duly appointed and qualified. No appointed member of the Board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, gross negligence, misfeasance or gross immorality.

(f) All directors shall receive reasonable and necessary expenses actually incurred in discharging director's duties pursuant to this article.

(g) The Board shall hold quarterly meetings. Board bylaws may provide for calling and holding additional meetings. Representatives of participants and members of the public may attend any meeting held by the Board, except during those meetings or part of meetings closed by the Board as permitted by law. Attendees shall observe standards of decorum established by board policy.

(h) The Board shall annually adopt a fee schedule and a budget reflecting fee structures for the year.

(i) The Board chairman may appoint committees as needed, including, but not limited to, an investment policies committee to discuss drafting, reviewing or modifying written investment policies. Each committee shall seek input from participants
§12-6C-5. Powers of the Board.

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

1. Adopt and use a common seal and alter it at pleasure;
2. Sue and be sued;
3. Enter into contracts and execute and deliver instruments using the policies and procedures of the State Treasurer's Office;
4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
6. Notwithstanding any other provision of law to the contrary, specifically article three, chapter five-a of this code, retain and contract with legal, accounting, financial and investment managers, advisors and consultants;
(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in investments authorized by this article;

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

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

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

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

(12) Abide by agreements entered into by the State Treasurer with political subdivisions of the state for investment of moneys of the political subdivisions by the Board;

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

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(15) Use any contract or agreement of the Investment Management Board or the State Treasurer's Office and enter into its own contracts or agreements, including, without limitation entering into a contract or agreement with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the Board.
and with any investment manager and investment advisor needed;

(16) Make, and from time to time, amend and repeal bylaws, rules and procedures not inconsistent with the provisions of this article;

(17) Hire its own employees, consultants, managers and advisors as it considers necessary and fix their compensation and prescribe their duties;

(18) Develop, implement and maintain its own investment accounts;

(19) Offer assistance and seminars to spending units and to political subdivisions;

(20) Upon request of the State Treasurer, transmit funds for deposit to the State Treasury to meet the daily obligations of state government; and

(21) Establish one or more investment funds, pools or participant accounts within the consolidated fund for the purpose of investing the moneys and assets for which it is director, trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund, pool or participant account are designated as units and the Board shall adopt industry standard accounting procedures to determine the unit value of each fund, pool or participant account. The securities in each investment fund, pool or participant account are the property of the Board and each fund, pool or participant account is considered an investment pool, investment fund or investment participant account.

§12-6C-6. Consolidated fund continued; management.

(a) The consolidated fund is continued and notwithstanding any provision of this code to the contrary is vested in the West
Virginia Board of Treasury Investments on the first day of July, two thousand five.

(b) Each spending unit authorized to invest moneys shall unless prohibited by law, request the State Treasurer to invest its moneys. Based upon spending unit representations, the State Treasurer shall send the moneys to the West Virginia Board of Treasury Investments or to the Investment Management Board for investment.

(c) Each political subdivision of this state through its State Treasurer or equivalent financial officer may enter into agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with the state spending unit from which it receives moneys to allow the board to invest the moneys.

(d) Moneys held in the various funds and accounts administered by the Board are invested as permitted by this article and subject to the restrictions contained in this article.

(e) The State Treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds, pools and accounts. The Board shall report the earnings on the funds, pools, and accounts under management to the State Treasurer at the times determined by the State Treasurer.

(f) The Board shall establish policies for the administration of the various funds, pools and accounts authorized by this article as it determines necessary. The policies may specify the minimum amounts and timing of deposits and withdrawals and any other matters authorized by the Board.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.
(a) The management and control of the Consolidated Fund is vested solely in the Board in accordance with the provisions of this article.

(b) The State Treasurer is the Chairman of the Board. The Board shall elect a vice chairman. Annually, the Directors shall elect a secretary to keep a record of the proceedings of the Board and provide any other duties required by the Board. The Board may elect a person who is not a member of the Board as secretary.

(c) The board may use the staff of the State Treasurer, employ personnel and contract with any person or entity needed to perform the tasks related to operating the Consolidated Fund.

(d) The Board shall retain an internal auditor to report directly to the Board and shall fix his or her compensation. As a minimum qualification, the internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The Internal Auditor shall develop an internal audit plan, with Board approval, for the testing of procedures, internal controls and the security of transactions.

(e) The Board shall retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager.

(f) Each director shall give a separate fiduciary or surety bond from a surety company qualified to do business within this state in a penalty amount of one million dollars for the faithful performance of his or her duties as a director. The Board shall purchase a blanket bond for the faithful performance of its duties in the amount of fifty million dollars or in an amount equivalent to one percent of the assets under management, whichever is greater. The amount of the blanket bond is in addition to the one million dollar individual bond required of each director by the provisions of this section. The Board may
require a fiduciary or surety bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the Board and the amount of the fiduciary or surety bond are fixed by the Board. The premiums payable on all fiduciary or surety bonds are expenses of the Board.

(g) The Directors, employees of the Board and employees of the State Treasurer performing work for or on behalf of the Board are not liable personally, either jointly or severally, for any debt or obligation created by the Board: Provided, That the Directors and employees of the Board are liable for acts of misfeasance or gross negligence.

(h) The Board is exempt from the provisions of article three, chapter five-a, and sections seven and eleven, article three, chapter twelve of this code. However, the Board is subject to the purchasing policies and procedures of the State Treasurer’s Office.

§12-6C-8. Administration of Consolidated Fund.

(a) In the administration of the Consolidated Fund continued by this article, the Board may:

(1) Purchase, retain, hold, transfer and exchange and sell, at public or private sale, the whole or any part of the Fund or pools upon any terms and conditions it considers advisable;

(2) Invest and reinvest the fund and pools or any part thereof in fixed income securities as provided in this article;

(3) Carry the securities and other property held in trust either in the name of the Board or in the name of its nominee;

(4) Vote, in person or by proxy, all securities held; join in or dissent from and oppose the reorganization, recapitalization,
consolidation, merger, liquidation or sale of corporations or property; exchange securities for other securities issued in connection with or resulting from any transaction; pay any assessment or expense which the Board considers advisable for the protection of its interest as holder of the securities; exercise any option appurtenant to any securities for the conversion of any securities into other securities; and exercise or sell any rights issued upon or with respect to the securities of any corporation, all upon terms the Board considers advisable;

(5) Prosecute, defend, compromise, arbitrate or otherwise adjust or settle claims in favor of or against the board or a director;

(6) Employ and pay from the Fund any investment advisors, brokers, counsel, managers and any other assistants and agents the Board considers advisable;

(7) Develop, implement and modify an asset allocation plan and investment policy for each fund or pool; and

(8) Create a local government investment pool, a program to purchase certificates of deposit from West Virginia financial institutions that are state depositories and any funds, pools or participant accounts needed.

(b) All income and earnings are free from anticipation, alienation, assignment or pledge by, and free from attachment, execution, appropriation or control by or on behalf of, any and all creditors of any beneficiary by any proceeding at law, in equity, in bankruptcy or insolvency.

(c) The Board shall render an annual accounting not more than one hundred twenty days following the close of the fiscal year.
§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

(a) The Board shall develop, adopt, review or modify an asset allocation plan for the Consolidated Fund at each annual board meeting.

(b) The Board shall adopt, review, modify or cancel the investment policy of each fund or pool created at each annual board meeting. For each participant directed account authorized by the State Treasurer, staff of the Board shall develop an investment policy for the account and create the requested account. The Board shall review all existing participant directed accounts and investment policies at its annual meeting for modification.

(c) The Board shall consider the following when adopting, reviewing, modifying or canceling investment policies:

1. Preservation of capital;
2. Risk tolerance;
3. Credit standards;
4. Diversification;
5. Rate of return;
6. Stability and turnover;
7. Liquidity;
8. Reasonable costs and fees;
9. Permissible investments;
10. Maturity ranges;
(11) Internal controls;

(12) Safekeeping and custody;

(13) Valuation methodologies;

(14) Calculation of earnings and yields;

(15) Performance benchmarks and evaluation; and

(16) Reporting.

(d) No security may be purchased by the Board unless the type of security is on a list approved at a board meeting. The Board shall review the list at its annual meeting.

(e) Notwithstanding the restrictions which are otherwise provided by law with respect to the investment of funds, the Board and all participants, now and in the future, may invest funds in these securities:

(1) Obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency or corporation thereof and obligations and securities of the United States sponsored enterprises, including, without limitation:

(i) United States Treasury;

(ii) Export-Import Bank of the United States;

(iii) Farmers Home Administration;

(iv) Federal Farm Credit Banks;

(v) Federal Home Loan Banks;

(vi) Federal Home Loan Mortgage Corporation;
(vii) Federal Land Banks;

(viii) Government National Mortgage Association;

(ix) Merchant Marine bonds; and

(x) Tennessee Valley Authority Obligations.

(2) Obligations of the Federal National Mortgage Association;

(3) Commercial paper with one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(4) Corporate debt rated in one of the six highest rating categories by a nationally recognized rating agency;

(5) State and local government, or any instrumentality or agency thereof, securities with one of the three highest ratings by a nationally recognized rating agency;

(6) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(7) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(8) Asset-backed securities rated in the highest category by a nationally recognized rating agency, but excluding mortgage-backed securities; and

(9) Investments in accordance with the Linked Deposit Program, a program using financial institutions in West
Virginia to obtain certificates of deposit, loans approved by the Legislature and any other programs authorized by the Legislature.

(f) In addition to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the Consolidated Fund be invested in any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association;

(2) At no time shall more than five percent of the Consolidated Fund be invested in securities issued by a single private corporation or association; and

(3) At no time shall less than fifteen percent of the Consolidated Fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States of America.

§12-6C-10. Investment authority for Consolidated Fund transferred to Board; exceptions.

Effective the first day of July, two thousand and five, all duties vested by law in state spending units and the West Virginia Investment Management Board relating to the Consolidated Fund are transferred to the Board, including without limitation the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment: Provided, That neither this section nor any other section of this article applies to the “board of the school fund” and the “school fund” established by section 4, article XII of the State Constitution: Provided, however, That the municipal bond commission may make funds under its control available to the board for investment.
§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the Board and West Virginia Economic Development Authority Board. The Legislature further finds and declares that an investment in the West Virginia Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will assist in creating jobs and businesses within the state and provide the needed risk capital to assist business and industrial development. This section is enacted in view of these findings.

(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to one hundred seventy-five million dollars from the Consolidated Fund to loan the West Virginia Economic Development Authority for business or industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a one hundred seventy-five million dollar revolving loan and article eighteen-b, chapter thirty-one of this code which authorizes a fifty million dollar investment pool: Provided, That the West Virginia Economic Development Authority may not loan more than fifteen million dollars for any one business or industrial development project. The
revolving loan authorized by this subsection shall be secured by
one note at a variable interest rate equal to the twelve-month
average of the board's yield on its cash liquidity pool. The rate
shall be set on the first day of July and adjusted annually on the
same date. The maximum annual adjustment may not exceed
one percent. Monthly payments made by the West Virginia
Economic Development Authority to the Board shall be
calculated on a one hundred twenty-month amortization. The
revolving loan is secured by a security interest that pledges and
assigns the cash proceeds of collateral from all loans under this
revolving loan pool. The West Virginia Economic Develop-
ment Authority may also pledge as collateral certain revenue
streams from other revolving loan pools which source of funds
does not originate from federal sources or from the Board.

(c) The outstanding principal balance of the revolving loan
from the Board to the West Virginia Economic Development
Authority may at no time exceed one hundred three percent of
the aggregate outstanding principal balance of the business and
industrial loans from the West Virginia Economic Development
Authority to economic development projects funded from this
revolving loan pool. The independent audit of the West
Virginia Economic Development Authority financial records
shall annually certify that one hundred three-percent require-
ment.

(d) The interest rates and maturity dates on the loans made
by the West Virginia Economic Development Authority for
business and industrial development projects authorized by
section seven, article fifteen, chapter thirty-one of this code
shall be at competitive rates and maturities as determined by the
West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West
Virginia Board of Treasury Investments, or any predecessor
entity, to the West Virginia Economic Development Authority
are refundable by proceeds of the revolving loan contained in this section and the Board shall make no loans to the West Virginia Economic Development Authority pursuant to section twenty, article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

(f) The Directors of the Board shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

(g) Subject to cash availability, the Board shall make available to the West Virginia Economic Development Authority, from the Consolidated Fund, a nonresource loan in an amount up to twenty-five million dollars, for the purpose of the West Virginia Economic Development Authority making a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an affiliated nonprofit corporation of the West Virginia Economic Development Authority. The respective loans authorized by this subsection by the Board to the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia Economic Development Authority to the West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC, the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West Virginia Economic Development Authority authorized by this subsection shall be nonrevolving, and advances under the loan shall be made at times and in amounts requested or directed by the West Virginia Economic Development Authority, upon reasonable notice to the Board. The loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the fifteen
million-dollar limitation for any one business or industrial
development project and limitation of one hundred three
percent of outstanding loans, and may not be included in the
revolving fund loan principal balance for purposes of calculat-
ing the loan amortization in subsection (b) of this section. The
loan authorized by this subsection to the West Virginia Eco-

mic Development Authority shall be classified by the Board
as a long-term fixed income investment, shall bear interest on
the outstanding principal balance of the loan at the rate of three
percent per annum payable annually on or before the thirtieth
day of June of each year, and the principal of which shall be
repaid no later than the thirtieth day of June, two thousand
twenty-two, in annual installments due on or before the thirtieth
day of June of each year. The annual installments, which need
not be equal shall commence no later than the thirtieth day of
June, two thousand five, in annual principal amounts agreed
upon between the Board and the West Virginia Economic
 Development Authority. The loan authorized by this subsection
shall be nonrecourse and shall be payable by the West Virginia
Economic Development Authority solely from amounts or
returns received by the West Virginia Economic Development
Authority in respect of the loan authorized by this subsection to
the West Virginia Enterprise Advancement Corporation,
whether in the form of interest, dividends, realized capital
gains, return of capital or otherwise, in all of which the Board
shall have a security interest to secure repayment of the loan to
the West Virginia Economic Development Authority authorized
by this subsection. Any and all loans from the West Virginia
Enterprise Advancement Corporation made pursuant to this
subsection shall also bear interest on the outstanding principal
balance of the loan at the rate of three percent per annum
payable annually on or before the thirtieth day of June of each
year, shall be nonrecourse and shall be payable by the West
Virginia Enterprise Advancement Corporation solely from
amounts of returns received by the West Virginia Enterprise
Advancement Corporation in respect to its investment in the
West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that Board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the Board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The Directors or the Board shall bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

§12-6C-12. Securities handling.

In financial transactions whereby securities are purchased by the Board under an agreement providing for the resale of the securities to the original seller at a stated price, the Board shall take physical possession of the securities, directly, by its custodian bank or through a neutral third party: Provided, That an agreement with a neutral third party may not waive liability for the handling of the securities: Provided, however, That when the board is unable to take possession, directly, by its custodian bank or through a mutual third party, the Board may leave securities in a segregated account with the original seller, provided the amount of the securities with any one seller may not exceed one hundred fifty million dollars.

(a) The Uniform Prudent Investor Act, codified in article six-c, chapter forty-four of this code, is the standard for any investments made under this article. Investments are further subject to the following:

(1) The directors shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(2) The directors shall defray reasonable expenses of investing and managing the Consolidated Fund by charging fees as provided in this article; and

(3) The directors shall discharge their duties in accordance with the documents and instruments consistent with the provisions of this article.

(b) The duties of the directors apply only with respect to those assets deposited with or otherwise held by the Board.

§12-6C-14. Existing investments.

The Investments Management Board shall transfer the cash, securities and other investments of the Consolidated Fund it holds, maintains or administers to the West Virginia Board of Treasury investments on the first day of July, two thousand five, which will lawfully vest the West Virginia Board of Treasury Investments with ownership of all securities or other investments of the Consolidated Fund.

§12-6C-15. Annual audits; financial statements; information.

(a) The Board shall have an annual financial and compliance audit of the assets, funds, pools and participant accounts managed by the Board made by a certified public accounting
firm which has a minimum staff of ten certified public accountants and which is a member of the American Institute of Certified Public Accountants and, if doing business in West Virginia, a member of the West Virginia Society of Certified Public Accountants. The Board shall have financial and compliance audits of the Board’s books, accounts and records with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations completed annually.

(b) The Board shall produce monthly financial statements for the assets managed by the Board and send them to each member of the Board and provide copies as reasonably requested.

(c) Each quarter the Board shall deliver a report for the prior quarter to the Council of Finance and Administration.

(d) The Board shall contract with an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section for an annual audit of the reported returns of the assets managed by the Board.

(e) The Board shall prepare an annual report detailing all fees charged by the Board under this article. The Board shall furnish copies of the report to the Legislative Joint Committee on Government and Finance.

(f) Unless specifically otherwise stated, copies of the reports required in this section shall be furnished to the Board, Governor, President of the Senate, Speaker of the House of Delegates, Council of Finance and Administration, Legislative Librarian and upon request to any legislator, legislative committee, financial institution, member of the media and the public.
(g) The Board shall provide any other information requested in writing by the Council of Finance and Administration or any member of the Legislature.

§12-6C-16. Reports to participants.

(a) On a monthly basis, the Board shall timely provide the State Treasurer with information to enable the State Treasurer to provide an itemized statement of a spending unit’s or other participant’s account in the Consolidated Fund to each state spending unit and any other entity investing moneys in the Consolidated Fund. The statement shall include the beginning balance, contributions, withdrawals, income distributed, change in value and ending balance.

(b) The Board shall prepare annually, or more frequently if determined necessary by the Board, a report of its operations and the performance of the various funds, pools and participant accounts administered by it. The Board shall furnish copies of the report to each participant, the President of the Senate, Speaker of the House of Delegates, Legislative Auditor, and upon request to any legislative committee, any legislator, any banking institution or state or federal savings and loan association in this state and any member of the news media. The Board shall also keep the reports available for inspection by any citizen of this state.

§12-6C-17. Legal status of spending units continued.

Except as otherwise provided in this article, every state spending unit shall retain all of the powers and shall exercise all of the functions and duties vested in or imposed upon it by law, as to any fund or account.

§12-6C-18. Authorization for loans by the Board.
(a) Any loan made from the Consolidated Fund by a predecessor entity shall remain in existence and in accordance with the terms and conditions of the loan.

(b) The Board shall continue the work of the Investment Management Board in taking the steps necessary to increase the liquidity of the Consolidated Fund to allow for any loans authorized by the Legislature without increasing the risk of loss.

§12-6C-19. Creation of fee account and investment account; budget.

(a) The Board may charge fees, which are subtracted from the total return on investments, for the reasonable and necessary expenses incurred by the Board in rendering services. All fees collected shall be deposited in a special account in the State Treasury created and designated the Board of Treasury Investments Fee Fund. Expenditures from the Fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature, 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 eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(b) There is created in the State Treasury a special account designated the Board of Treasury Investments Investment Fund for use in receiving funds for investment, disbursing funds from investments and processing investment transactions.

(c) All fees dedicated, identified or readily identifiable to an entity, fund, pool or participant account shall be charged to that entity, fund, pool or participant account and all other fees shall be charged as a percentage of assets under management. At its
24 annual meeting, the Board shall adopt a fee schedule and a
25 budget reflecting fee schedules.

§12-6C-20. Termination of board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Board of Treasury Investments shall
3 continue to exist until the first day of July, two thousand ten.

CHAPTER 191

(H. B. 2939 — By Delegates Ron Thompson and Perry)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §12-1-12b; to amend and
reenact §12-3A-3 of said code; and to amend and reenact §44-1-28, all relating generally to the administration of moneys held by
the state; establishing specific authorization for the State Treasurer to continue as the authorized official and representative as
part of the cash management duties; allowing the Auditor and
Treasurer to accept electronic submittal of documents without
certification, notarization or verification under certain circum-
stances; and authorizing the Treasurer to remit property to heirs
under certain circumstances and establishing effect of such
remittance.

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 §12-1-12b; that §12-3A-3
of said code be amended and reenacted; and that §44-1-28 of said code be amended and reenacted, all to read as follows:

Chapter
44. Administration of Estates and Trusts.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
1. State Depositories.
3A. Financial Electronic Commerce.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12b. Cash Management Improvement Act; administration; reports.

(a) The Cash Management Improvement Act of 1990, Public Law 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA) and regulations, as amended, establishes requirements and techniques, including calculations, for the receipt and disbursement of federal funds by states. The authorized official and representative of the State of West Virginia for the CMIA is the State Treasurer.

(b) In administering the CMIA, the State Treasurer is authorized to do all things reasonably necessary, including without limitation, entering into agreements with, negotiating settlements with, refunding any interest due and satisfying any liability to the United States Treasury in accordance with the CMIA.

(c) Periodically, the State Treasurer shall transfer to the “Federal Cash Management Fund”, which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the Treasurer estimates is needed to make refunds in accordance with the CMIA. After each annual settlement with the United States Treasury, the State Treasurer shall transfer to
the State General Revenue Fund any moneys remaining in the Federal Cash Management Interest Fund for the period just settled.

(d) The State Treasurer shall also transfer periodically to the “Federal Cash Management - Administration Fund,” which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the Treasurer determines is needed to pay for the costs of administering the CMIA. The State Treasurer may pay the costs he or she incurs in administering the CMIA from the Federal Cash Management-Administration Fund.

(e) All state spending units shall cooperate fully with the State Treasurer in accumulating all the necessary data elements to fully comply with the CMIA.

(f) The State Treasurer shall send quarterly reports on the activities involving the CMIA to the Governor, Auditor, Secretary of Revenue and Joint Committee on Government and Finance.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.


The State Auditor and the State Treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Auditor or State Treasurer.

A record, an authentication, a document or a signature received, issued or used by the Auditor or the Treasurer shall be
considered an original and may not be denied legal effect on the
ground that it is in electronic form. The Auditor and Treasurer
may accept a document for the receipt or disbursements of
moneys requiring certification, notarization or verification in an
electronic format without the certification, notarization or
verification.

The head of each spending unit is responsible for adopting
and implementing security procedures to ensure adequate
integrity, security, confidentiality, and auditability of the
business transactions of his or her spending unit when utilizing
electronic commerce.

CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees of
decedents upon whose estates there have been no
qualifications.

(a) When there is due from the State of West Virginia, any
of its political subdivisions, the United States, or any employer,
as pension or money allowed for burial expenses, or money,
wages or salary due from any employer to a deceased em-
ployee, upon whose estate there has been no qualification, a
sum of not exceeding one thousand dollars, it shall be lawful for
the State of West Virginia, any of its political subdivisions, the
United States, or such employer, after one hundred and twenty
days from the death of said person to whom such money is due,
to pay said sum to his or her surviving consort, if any; if none
such, then to the distributees of the said decedent under the laws
of the State of West Virginia, whose receipt therefor shall be a
full discharge and acquittance to all persons whomsoever on
account of such sum.
(b) When the State Treasurer holds property in accordance with article eight, chapter thirty-six of this code on behalf of a decedent whose estate has no qualification or is closed and the amount of the property is five thousand dollars or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on account of the property.

CHAPTER 192

(Com. Sub. for S. B. 348 — By Senator Tomblin, Mr. President)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating to persons who receive state grants; providing definitions; clarifying when reports of state grants are required; providing consequences for not complying with reporting requirements; providing the withholding of state grants or funds; providing for the debarment from future state grants under certain circumstances; requiring state agencies who administer state grants to have additional duties under certain circumstances; removing filing fees for volunteer fire departments; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

(a) For the purposes of this section:

(1) “Grantor” means a state spending unit awarding a state grant.

(2) “Person” includes any corporation, partnership, association, individual or other legal entity. The term “person” does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of this code.

(3) “Report” means a compliance attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

(4) “State grant” means funding provided by a state spending unit to a person upon application for a specific purpose. The term “state grant” does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; and (G) retirement benefits. The term “state grant” does include formula distributions to volunteer and part-volunteer fire departments made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter.
(b)(1) Any person who receives one or more state grants in the amount of twenty-five thousand dollars or more in the aggregate in a calendar year shall file with the grantor a report of the disbursement of state grant funds.

(2) The report required by subdivision (1) of this subsection shall be filed within two years of the end of the calendar year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the person receiving the state grant. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(c)(1) Any person failing to file a required report within the two-year period provided in subdivision (2), subsection (b) of this section for any state grant funds disbursed after the first day of July, two thousand three, is barred from subsequently receiving state grants until the person has filed the report and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any persons failing to file a required report within the required time period provided in subdivision (2), subsection (b) of this section for any state grant disbursed after the first day of July, two thousand three, to the Legislative Auditor for purposes of debarment from receiving state grants.

(d)(1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the amount of funds to be disbursed, the identity of the person authorized to receive the funds and the
purpose and nature of the state grant within thirty days of making the state grant or authorizing the disbursement of the funds: *Provided*, That if the state grant was awarded prior to the effective date of the amendment and reenactment of this section in the year two thousand five, the grantor shall provide the information required by this section within ninety days of the effective date.

(3) All grantors making state grants that would be subject to the report requirements of this section shall, prior to awarding a state grant, take reasonable actions to verify that the person is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the person seeking the state grant provide a sworn statement from an authorized representative that the person has filed all reports for state grants received as required under this section; and

(B) Confirmation from the Legislative Auditor by the grantor that the person has not been identified as one who has failed to file a report under this section. Confirmation may be accomplished by accessing the computerized database provided in subdivision (4) of this subsection.

(4) The Legislative Auditor shall maintain a list identifying persons who have failed to file reports required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the Internet.

(c) If any report performed pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report to the Legislative Auditor within thirty days of receipt by the grantor.

(f) The grantor shall maintain copies of reports required by this section and make the reports available for public inspec-
tion, as well as for use in audits and performance reviews of the grantor.

(g) Reports of state grants not required under the provisions of this section may be authorized by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the grantee.

(h)(1) Volunteer and part-volunteer fire departments may satisfy the report requirements of this section by submitting a sworn statement of annual expenditures to the Legislative Auditor on or before the fourteenth day of February of each year. The sworn statement of expenditures shall be signed by the chief or director of the volunteer fire department and shall be made under oath and acknowledged before a notary public.

(2) If the sworn statement is not submitted on or before the fifteenth day of May, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may conduct a report of the volunteer or part-volunteer fire department.

(3) If the sworn statement of annual expenditures is not filed with the Legislative Auditor by the first day of July, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter until the report is complete. Moneys withheld pursuant to this subdivision are to be deposited in the special revenue account created in the State Treasury in subdivision (4) of this subsection.

(4) The Legislative Auditor may assign an employee or employees to perform audits or reviews at the direction of the
Legislative Auditor of the disbursement of state grant funds to volunteer fire departments. The volunteer fire department shall cooperate with the Legislative Auditor, the Legislative Auditor’s employees and the State Auditor in performing their duties under this section. If the Legislative Auditor determines a volunteer fire department is not cooperating, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter until the Legislative Auditor informs the Treasurer that the fire department has cooperated as required by this section. The State Treasurer shall pay the amount withheld into a special revenue account hereby created in the State Treasury and designated the “Volunteer Fire Department Audit Account”. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(5) Whenever the State Auditor performs an audit of a volunteer fire department for any purpose the Auditor shall also conduct an audit of other state funds received by the fire department pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing a report under this section.

(i) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of article one, chapter thirty-nine-a of this code.
(j) Any person who files a fraudulent sworn statement of expenditures under subsection (g) of this section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 193
(H. B. 3280 — By Delegates Staton, Browning, Pino, Varner, Ennis, Yost and DeLong)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-11 of said code, all relating to modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; removing the necessity for public service districts to prefile with the Public Service Commission; providing for a waiver of thirty day notice requirement for projects approved by the Infrastructure and Jobs Development Council; providing that the Public Service Commission render a final decision on infrastructure and jobs development council approved applications; providing that infrastructure and jobs development council approved projects receiving a certificate of public convenience may not be compelled to reopen; and allowing electric power projects to apply for and receive certain licenses and permits.
Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the Public Service Commission.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or
(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from
the Public Service Commission in accordance with the provisions of chapter twenty-four of this code, when a public service district is seeking to acquire or construct public service property.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

*§24-2-11. Requirements for certificate of public convenience and necessity.

(a) No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article

*CLERK'S NOTE: This section was also amended by H. B. 2813 (Chapter 194) which passed subsequent to this act.
three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days’ notice of the filing of any such application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty day notice requirement for projects approved by the infrastructure and jobs development council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-A of chapter thirty-one of this code, within one hundred-eighty days after filing of the application: Provided, That if a protest is received within thirty days after the notice is provided pursuant to subsection (b), the commission shall render its final decision within two hundred seventy days of the filing of the application.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than fifty million dollars, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.
55. (g) If a decision is not rendered within the aforementioned one hundred eighty-days, two hundred seventy days, four hundred days or ninety days, the commission shall issue a certificate of convenience and necessity as applied for in the application.

60. (h) The commission shall prescribe such rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

65. (i) Pursuant to the requirements of this section the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined, by rule, by the commission in the case of:

71. (1) Natural gas sold by a producer, pipeline or other seller to such person; or

73. (2) Natural gas produced by such person.

74. (j) A public utility which has received a certificate of public convenience and necessity from the commission and has been approved by the infrastructure and jobs development council, is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not effect the rates established for the project.

80. (k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.
CHAPTER 194

(H. B. 2813 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 5, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to requirements for certificate of public convenience and necessity; and removing the prohibition for electric power projects on applying for and obtaining franchises, licenses or permits prior to obtaining a certificate of public convenience and necessity from the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

That §24-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter nor apply for, nor obtain any franchise, license or permit from any municipality or other

*CLERK'S NOTE: This section was also amended by H. B. 3280 (Chapter 193) which passed subsequent to this act.
6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit. Upon the filing of any application
11 for such certificate, and after hearing, the Commission may, in
12 its discretion, issue or refuse to issue, or issue in part and refuse
13 in part, such certificate of convenience and necessity: Provided,
14 That the Commission, after it gives proper notice and if no
15 protest is received within thirty days after the notice is given,
16 may waive formal hearing on the application. Notice shall be
17 given by publication which shall state that a formal hearing may
18 be waived in the absence of protest, made within thirty days, to
19 the application. The notice shall be published as a Class I legal
20 advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code. The publication area shall
22 be the proposed area of operation. Any public utility, person or
23 corporation subject to the provisions of this section shall give
24 the Commission at least thirty days’ notice of the filing of any
25 such application for a certificate of public convenience and
26 necessity under this section: Provided, That the Commission
27 may modify or waive the thirty-day notice requirement. The
28 Commission shall render its final decision on any application
29 under the provisions of this section or section eleven-a of this
30 article within two hundred seventy days of the filing of the
31 application and within ninety days after final submission of any
32 such application for decision following a hearing: Provided,
33 however, That if the projected total cost of the project is greater
34 than fifty million dollars, the Commission shall render its final
35 decision on any such application filed under the provisions of
36 this section or section eleven-a of this article within four
37 hundred days of the filing of the application and within ninety
38 days after final submission of any such application for decision
39 after a hearing. If such decision is not rendered within the
40 aforementioned two hundred seventy days, four hundred days
41 or ninety days, the Commission shall issue a certificate of
convenience and necessity as applied for in the application. The Commission shall prescribe such rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(b) Pursuant to the requirements of subsection (a) of this section the Commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined, by rule, by the Commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(c) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

CHAPTER 195

(H. B. 3045 — By Delegates Boggs and Browning)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §16-13A-2 of the Code of West Virginia, 1931, as amended, relating to the creation and modifica-
tion of public service districts; requiring the county commission to provide the Public Service Commission a copy of the order or petition seeking the creation, modification or dissolution of a public service district, as well as the time of the hearing to be held by the county commission; providing that the Public Service Commission may conduct a hearing in the affected county on the matter.

Be it enacted by the Legislature of West Virginia:

That §16-13A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the Public Service Commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the Public
Service Commission, which approval and consent shall be in accordance with rules promulgated by the Public Service Commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting
after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. Within ten days of fixing the date of hearing, the county commission shall provide the Executive Secretary of the Public Service Commission with a copy of the order or petition and notification of the time and place of the hearing to be held by the county commission. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication 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 by publication in each incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the
public service districts are initiated by petition as aforesaid, the
person filing the petition shall advance or satisfactorily indem-
nify the payment of the cost and expenses of publishing the
hearing notice, and otherwise the costs and expenses of the
notice shall be paid in the first instance by the county commis-
sion out of contingent funds or any other funds available or
made available for that purpose. In addition to the notice
required herein to be published, there shall also be posted in at
least five conspicuous places in the proposed public service
district, a notice containing the same information as is con-
tained in the published notice. The posted notices shall be
posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest
in property in the proposed public service district shall have an
opportunity to be heard for and against its creation, enlarge-
ment, reduction, merger, dissolution or consolidation. At the
hearing the county commission before which the hearing is
conducted shall consider and determine the feasibility of the
creation, enlargement, reduction, merger, dissolution or
consolidation of the proposed district. If the county commission
determines that the construction or acquisition by purchase or
otherwise and maintenance, operation, improvement and
extension of public service properties by the public service
district will be conducive to the preservation of public health,
comfort and convenience of such area, the county commission
shall by order create, enlarge, reduce, merge, dissolve or
consolidate such public service district. If the county commis-
sion, after due consideration, determines that the proposed
district will not be conducive to the preservation of public
health, comfort or convenience of the area or that the creation,
enlargement, reduction, merger, dissolution or consolidation of
the proposed district as set forth and described in the petition or
order is not feasible, it may refuse to enter an order creating the
district or it may enter an order amending the description of the
proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the Public Service Commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the Public Service Commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the Public Service Commission. The Public Service Commission may provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The Public Service Commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the Public Service Commission pursuant to this section and section one-b, of this article.
(g) The county commission may, if in its discretion it
deems it necessary, feasible and proper, enlarge the district to
include additional areas, reduce the area of the district, where
facilities, equipment, service or materials have not been
extended, or dissolve the district if inactive or create or consoli-
date two or more such districts. If consolidation of districts is
not feasible, the county commission may consolidate and
centralize management and administration of districts within its
county or multi-county area to achieve efficiency of operations:
Provided, That where the county commission determines on its
own motion by order entered of record, or there is a petition to
enlarge the district, merge and consolidate districts, or the
management and administration thereof, reduce the area of the
district or dissolve the district if inactive, all of the applicable
provisions of this article providing for hearing, notice of
hearing and approval by the Public Service Commission shall
apply. The Commission shall at all times attempt to bring about
the enlargement or merger of existing public service districts in
order to provide increased services and to eliminate the need for
creation of new public service districts in those areas which are
not currently serviced by a public service district: Provided,
however, That where two or more public service districts are
consolidated pursuant to this section, any rate differentials may
continue for the period of bonded indebtedness incurred prior
to consolidation. The districts may not enter into any agree-
ment, contract or covenant that infringes upon, impairs,
abridges or usurps the duties, rights or powers of the county
commission, as set forth in this article, or conflicts with any
provision of this article.

(h) A list of all districts and their current board members
shall be filed by the county commission with the Secretary of
State and the Public Service Commission by the first day of
July of each year.
AN ACT to amend and reenact §16-13A-4 of the Code of West Virginia, 1931, as amended, authorizing a change in the official name of a public service district in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE, STORMWATER AND GAS SERVICES.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.
(b) Salaries of the board members are:

1. For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

2. For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

3. For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

4. For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the Public Service Commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

c. Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:
(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the perfor-
mance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: Provided, That such name change will not be effective until approved by the public service commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.
AN ACT to amend and reenact §11A-3-20 of the Code of West Virginia, 1931, as amended, relating to a sheriff’s tax on sale of real estate erroneously assessed or nonexistent; and modifying the method for a purchaser to recover the purchase money.

Be it enacted by the Legislature of West Virginia:

That §11A-3-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATE AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-20. Refund to purchaser of payment made at sheriff’s sale where property is subject of an erroneous assessment or is otherwise nonexistent.

1 If, by the thirty-first day of December of the year following payment of the amount bid at a sheriff’s sale, the purchaser discovers that the lien purchased at that sale is the subject of an erroneous assessment or is otherwise nonexistent, the purchaser shall submit the abstract or certificate of an attorney at law that the property is the subject of an erroneous assessment or is otherwise nonexistent. Upon receipt of the abstract or certificate, the sheriff shall cause the moneys so paid to be refunded.

2 Upon refund, the sheriff shall inform the assessor of the erroneous assessment for the purpose of having the assessor...
correct the error. For failure to meet this requirement, the purchaser shall lose all benefits of his or her purchase.

CHAPTER 198

(Com. Sub. for S. B. 716 — By Senators Chafin, Bailey, Plymale, Yoder, Jenkins and Helmick)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-10b; to amend and reenact §50-3-1, §50-3-2 and §50-3-4a of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to creating the Regional Jail Operations Partial Reimbursement Fund; calculation of reimbursement to counties and municipalities; providing duties of the State Treasurer; requiring report from the Regional Jail and Correctional Facility Authority; setting date for first reimbursement; and increasing court costs for criminal and civil proceedings.

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 §31-20-10b; that §50-3-1, §50-3-2 and §50-3-4a of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said code be amended and reenacted, all to read as follows:

Chapter
50. Magistrate Courts.
59. Fees, Allowances and Costs, Newspapers; Legal Advertisements.
CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

(a) There is created in the State Treasury a new fund designated the Regional Jail Operations Partial Reimbursement Fund.

(b) Revenues deposited into this Fund shall be composed of fees collected by magistrate courts pursuant to subsection (g), section one and subdivision (3), subsection (a), section two, article three, chapter fifty of this code and by circuit courts pursuant to section eleven, article one, chapter fifty-nine of this code.

(c) Revenues deposited into this Fund shall be used to reimburse those counties and municipalities participating in the regional jail system for the cost of incarceration.

(d) The State Treasurer shall, in cooperation with the Regional Jail and Correctional Facility Authority, administer the Fund. The State Treasurer shall determine the amount of funds available for reimbursement and, upon receiving a report from the Regional Jail and Correctional Facility Authority which presents the total number of inmate days in the fiscal year immediately concluded, the State Treasurer shall calculate the reimbursement to each participant based upon a pro rata share formula.

(e) A participant's share shall be comparable with its total of inmate days, which shall consist of the number of inmates it contributed to the regional jail system and the number of days those inmates remained incarcerated.
(f) Within ninety days of the first day of July, two thousand six, and annually thereafter, each participant shall receive its reimbursement from this Fund.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.

The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:

(a) For filing and trying any civil action and for all services connected therewith, but excluding services regarding enforcement of judgment, the following amounts dependent upon the amount of damages sought in the complaint:

Where the action is for five hundred dollars or less ............................................. $30.00

Where the action is for more than five hundred dollars but not more than one thousand dollars ...... $35.00

Where the action is for more than one thousand dollars but not more than two thousand dollars ...... $40.00

Where the action is for more than two thousand dollars ............................................. $50.00

Where the action seeks relief other than money damage ............................................. $30.00

Five dollars from each of the filing fees listed above shall be deposited in the Court Security Fund created by the provi-
sions of section fourteen, article three, chapter fifty-one of this code.

Five dollars from each of the filing fees listed above shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(b) For each service regarding enforcement of a judgment including execution, suggestion, garnishment and suggestee execution .............. $5.00

(c) For each bond filed in a case ............... $1.00

(d) For taking deposition of witness for each hour or portion thereof .................. $1.00

(e) For taking and certifying acknowledgment of a deed or other writing or taking oath upon an affidavit ........................................ $ .50

(f) For mailing any matter required or provided by law to be mailed by certified or registered mail with return receipt ......................... $1.00

(g) For filing and trying any civil action ........ $20.00

Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment of costs by poor persons, shall be applicable to all costs in civil actions.

§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is
imposed, in addition to other costs, fines, forfeitures or
penalties as may be allowed by law: (1) Costs in the amount of
sixty 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; (2) an amount equal to the one-day per diem
provided for in subsection (h), section ten, article twenty,
chapter thirty-one of this code; and (3) costs in the amount of
thirty dollars to be deposited in the Regional Jail Operations
Partial Reimbursement Fund created by section ten-b, article
twenty, chapter thirty-one of this code. A magistrate may not
collect costs in advance. Notwithstanding any other provision
of this code, a person liable for fines and court costs in a
criminal proceeding in which the defendant is confined in a jail
or prison and not participating in a work release program shall
not be held liable for the fines and court costs until ninety days
after completion of the term in jail or prison. A magistrate
court shall deposit five dollars from each of the criminal
proceedings fees collected pursuant to this section in the Court
Security Fund created in section fourteen, article three, chapter
fifty-one of this code. A magistrate court shall, on or before
the tenth day of the month following the month in which the
fees imposed in this section were collected, remit an amount
equal to the one-day per diem provided for in subsection (h),
section ten, article twenty, chapter thirty-one of this code from
each of the criminal proceedings in which the fees 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. These moneys are paid to the sheriff who
shall distribute the moneys solely in accordance with the
provisions of section fifteen, article five, chapter seven of this
code. Amendments made to this section during the regular
session of the Legislature, two thousand one, are effective after
the thirtieth day of June, two thousand one.
(b) A magistrate shall assess costs in the amount of two dollars and fifty cents for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of ten dollars shall be imposed by the magistrate court and is certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.

(a) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail and Prison Development Fund in the State Treasury an amount equal to forty dollars of the costs collected in each criminal proceeding and all but ten dollars of the costs collected for the filing of each civil action.

(b) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in section ten-a, article twenty, chapter thirty-one of this code the fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section two of this article.

CHAPTER 59. FEES, ALLOWANCES AND COSTS, NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.
§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.
§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 forty-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;
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, eighty-five dollars; and

(2) In the case of any felony, one hundred 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 col-
selected at the time of issuance of each bond instrument pro-
cessed 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
may be construed as authorizing the clerk to collect the above
fee from any person for the processing of a personal recogni-
zance 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.

§59-1-28a. Disposition of filing fees in civil actions and fees for
services in criminal cases.

(a) Except for those payments to be made from amounts
equaling filing fees received for the institution of divorce
actions as prescribed in subsection (b) of this section, and
except for those payments to be made from amounts equaling
filing fees received for the institution of actions for divorce,
separate maintenance and annulment as prescribed in said
subsection, for each civil action instituted 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 in the circuit court the
clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

1. Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of sixty dollars;

2. Into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of five dollars; and

3. Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code the amount of twenty dollars.

(b) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals the number of actions filed by persons unable to pay and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

1. Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of ten dollars;

2. Into the special revenue account of the State Treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code an amount of thirty dollars;
(3) Into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount of seventy dollars; and

(4) Into the Court Security Fund in the State Treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of five dollars.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4) of said subsection.

(d) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(e) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.
(f) The clerk of the circuit court shall, at the end of each month, pay into the Medical Liability Fund established under article twelve-b, chapter twenty-nine of this code, an amount equal to one hundred sixty-five dollars of every filing fee received for instituting a medical professional liability action.

(g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code, those amounts received by the clerk which are dedicated for deposit in the Fund.

(h) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code, those amounts received by the clerk which are dedicated for deposit in the fund.

CHAPTER 199

(Com. Sub. for S. B. 428 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended; to repeal §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code; to repeal §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-
11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code; to amend and reenact §7-1-3ff of said code; to amend and reenact §17-2A-21 of said code; to amend and reenact §17-23-2 of said code; to amend and reenact §17A-10-16 of said code; to amend and reenact §17C-14-14 of said code; to amend and reenact §22-15-2 and §22-15-21 of said code; to amend said code by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; to amend and reenact §22C-3-7 and §22C-3-24 of said code; to amend and reenact §22C-4-24 and §22C-4-25 of said code; to amend and reenact §31-15A-17a of said code; and to amend and reenact §49-5-13 and §49-5-13b of said code, all relating to the Rehabilitation Environmental Action Plan; consolidating litter control, open dump elimination and reclamation, waste tire clean up and recycling programs; defining certain terms; providing for litter control and recycling programs; providing additional duties of Secretary of the Department of Environmental Protection; transferring assets, contracts and personnel of the Litter Control Program; providing penalties for the unlawful disposal of litter; providing for litter control education; creating the Pollution Prevention and Open Dump Program; providing for assistance to solid waste authorities for litter and solid waste plans; prohibiting waste tires in certain places; providing for penalty for violations thereof; providing that the Department of Environmental Protection is to administer funds for waste tire remediation; authorizing the Secretary of the Department of Environmental Protection to promulgate rules; providing for the disposal of waste tires; providing for the continuation of the A. James Manchin Fund; establishing purposes for expenditure from the A. James Manchin Fund; providing that the Commissioner of the Division of Highways work with the Secretary of the Department of Environmental Protection in certain circumstances; establishing
remediation and liability for remediation; clarifying that Commissioner for Bureau for Public Health has the authority to regulate public health matters; establishing recycling goals and plans; establishing county recycling programs for solid waste; providing for a recycling assessment fee; providing for criminal penalties; establishing state recycling program for solid waste; providing for the procurement of recycled products; prohibiting the disposal of certain items; and exempting certain recycling facilities from regulation.

Be it enacted by the Legislature of West Virginia:


Chapter

7. County Commissions and Officers.

17. Roads and Highways.
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17C. Traffic Regulations and Laws of the Road.
22. Environmental Resources.
22C. Environmental Resources: Boards, Authorities, Commissions and Compacts.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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 clean up 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 four, article fifteen-a, chapter twenty-two of this code after completing a training course offered by the West Virginia Department of Environmental Protection. 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 enforce-
ment agency, or its agents, in the investigation of dwelling or
building conditions, accumulation of refuse or debris, over-
grown 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 com-
plaint. Service shall be accomplished in the manner provided
in Rule 4 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 clean up 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 commis-
sion to the circuit court shall be in accordance with the provi-
sions 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 clean up. 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 clean up.

(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 clean up, 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 clean up. 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 responsible 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 17. ROADS AND HIGHWAYS.

Article

2A. West Virginia Commissioner of Highways.

23. Salvage Yards.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-21. Commissioner authorized to contract for implementation of litter control programs.
In addition to all other powers granted and duties imposed upon the Commissioner, he or she shall contract with the Secretary of the Department of Environmental Protection and expend moneys from the highway litter control fund to implement the litter control program and litter control maintenance of the highways pursuant to article fifteen-a, chapter twenty-two of this code.

ARTICLE 23. SALVAGE YARDS.


As used in this article:

(a) “Abandoned salvage yard” means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

(b) “Commissioner” means the Commissioner of the West Virginia Division of Highways.

(c) “Fence” means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

(d) “Occupied private residence” means a private residence which is occupied for at least six months each year.

(e) “Owner or operator” includes an individual, firm, partnership, association or corporation or the plural thereof.

(f) “Residential community” means an area wherein five or more occupied private residences are located within any one thousand-foot radius.
(g) "Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

(h) "Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: Provided, That no salvage yard shall accept, store or process more than one hundred waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently has on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the Department of Environmental Protection for the proper disposal of the waste tires.

(i) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in section two, article fifteen-a, chapter twenty-two of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(j) "Waste tire monofill or monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.
(k) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin Fund.

In addition to each fee provided for in this article, an additional five-dollar fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the State Treasury and credited to the A. James Manchin Fund to be established within the division of highways for waste tire remediation in accordance to the provisions of article fifteen-a, chapter twenty-two of this code. The Commissioner is to work with the Secretary of the Department of Environmental Protection to accomplish the goals of said chapter. The additional fee provided herein shall be imposed for each application for certificate and renewal thereof made on or after the first day of July, two thousand: Provided, That no further collections or deposits shall be made after the Commissioner certifies to the Governor and the Legislature that the remediation of all waste tire piles that were determined by the Commissioner to exist on the first day of June, two thousand one, has been completed.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.
ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(c) In addition to any penalty imposed for littering under the provisions of article fifteen-a, chapter twenty-two of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

(d) The Commissioner shall assess points against the driver's license of any driver of a motor vehicle or other conveyance found guilty of violating this section upon receiving notice from a circuit clerk, magistrate court or municipal court of this state of the conviction. Circuit clerks, magistrate courts and municipal courts of this state shall promptly notify the Commissioner of the convictions.
(c) When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(f) The Commissioner of the Division of Motor Vehicles shall propose or amend legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article

15. Solid Waste Management Act.

15A. The A. James Manchin Rehabilitation Environmental Action Plan.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


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

(1) "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed:

(A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

(B) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(2) "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and
any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

(3) "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article.

(4) "Back hauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

(5) "Bulking agent" means any material mixed and composted with sewage sludge.

(6) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten thousand and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(7) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(8) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or
composting of solid wastes created by that person or such
person and other persons on a cost-sharing or nonprofit basis
and does not include land upon which reused or recycled
materials are legitimately applied for structural fill, road base,
mine reclamation and similar applications.

(9) "Compost" means a humus-like material resulting from
aerobic, microbial, thermophilic decomposition of organic
materials.

(10) "Composting" means the aerobic, microbial,
thermophilic decomposition of natural constituents of solid
waste to produce a stable, humus-like material.

(11) "Commercial composting facility" means any solid
waste facility processing solid waste by composting, including
sludge composting, organic waste or yard waste composting,
but does not include a composting facility owned and operated
by a person for the sole purpose of composting waste created by
that person or such person and other persons on a cost-sharing
or nonprofit basis and shall not include land upon which
finished or matured compost is applied for use as a soil amend-
ment or conditioner.

(12) "Cured compost" or "finished compost" means
compost which has a very low microbial or decomposition rate
which will not reheat or cause odors when put into storage and
that has been put through a separate aerated curing cycle stage
of thirty to sixty days after an initial composting cycle or
compost which meets all regulatory requirements after the
initial composting cycle.

(13) "Department" means the Department of Environmental
Protection.

(14) "Energy recovery incinerator" means any solid waste
facility at which solid wastes are incinerated with the intention
of using the resulting energy for the generation of steam,
electricity or any other use not specified herein.

(15) "Incineration technologies" means any technology that
uses controlled flame combustion to thermally break down solid
waste, including refuse-derived fuel, to an ash residue that
contains little or no combustible materials, regardless of
whether the purpose is processing, disposal, electric or steam
generation or any other method by which solid waste is
incinerated.

(16) "Incinerator" means an enclosed device using con-
trolled flame combustion to thermally break down solid waste,
including refuse-derived fuel, to an ash residue that contains
little or no combustible materials.

(17) "Landfill" means any solid waste facility for the
disposal of solid waste on or in the land for the purpose of
permanent disposal. Such facility is situated, for purposes of
this article, in the county where the majority of the spatial area
of such facility is located.

(18) "Materials recovery facility" means any solid waste
facility at which source-separated materials or materials
recovered through a mixed waste processing facility are
manually or mechanically shredded or separated for purposes
of reuse and recycling, but does not include a composting
facility.

(19) "Mature compost" means compost which has been
produced in an aerobic, microbial, thermophilic manner and
does not exhibit phytotoxic effects.

(20) "Mixed solid waste" means solid waste from which
materials sought to be reused or recycled have not been source-
separated from general solid waste.
(21) "Mixed waste processing facility" means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.

(22) "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

(23) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(24) "Person" or "persons" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(25) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.
(26) "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article four, chapter twenty-two-c of this code.

(27) "Sewage sludge" means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(28) "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to article one of this chapter.

(29) "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial and anaerobic digestion.

(30) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.
"Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters.

"Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited, dumped or thrown.

"Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

"Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other
appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with section twenty of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

(35) "Solid waste facility operator" means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

(36) "Source-separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.


(a) No person, except those persons who have received and maintained a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted activities, shall accumulate waste tires without obtaining a license or permit from the Division: Provided, That persons who use waste tires for beneficial uses may in the discretion of the Secretary of the Department of Environmental Protection accumulate waste tires without a permit.
(b) No person shall dispose of waste tires in or upon any public or private land, any site or facility other than a site or facility which holds a valid permit issued by the Department for such disposal or usage.

(c) No person shall knowingly transport or knowingly allow waste tires under his or her control to be transported to a site or facility that does not have a valid permit or license to accept waste tires.

(d) No person shall engage in the open burning of waste tires.

(e) Persons who violate this article are subject to all enforcement actions available to the Secretary under the provisions of section fifteen, article fifteen, chapter twenty-two of this code.

(f) Except as otherwise provided in subsection (g) of this section, each retailer is required to accept one tire of comparable size for each new tire sold at retail. The retailer may charge a disposal fee to cover the actual costs of lawful waste tire disposal. No retail tire dealer may deliver any waste tire, or part thereof, to a person not authorized by the state of West Virginia to transport or accept waste tires.

(g) Any person purchasing a new tire from a retailer must provide a used or waste tire for each tire purchased or sign a waiver, provided to the tire retailer by the Department, acknowledging that he or she is retaining the waste tire and that he or she is legally responsible for proper disposal of each tire retained. These forms are to be kept by the retailer for three years. If the tire purchaser returns to the tire retailer with a signed form given to the purchaser by that retailer, the retailer must accept up to the total number of comparable size tires as previously retained by the purchaser: Provided, That persons having winter tires changed or buying new winter tires and
keeping usable summer tires for later installation are not required to provide a used or waste tire or sign a waiver.

(h) Each tire retailer shall post in a conspicuous place a written notice, provided by the Department, that bears the following statements:

(1) “State law requires us to accept your (old) waste tires for recycling or proper disposal if you purchase new tires from us.”

(2) “State law authorizes us to charge you no more than the actual cost of disposal of your waste tires even if you do not leave your tires with us.”

(3) “It is a crime to burn, bury, abandon or throw away waste tires without authorization and or permits from the Department of Environmental Protection.”

This notice must be at least eight and one-half inches wide and eleven inches high.

(i) Solid waste facilities shall accept whole waste tires and may charge a reasonable fee for acceptance of waste tires. All waste tires except those disposed of in a landfill shall be excluded from the calculation of monthly tonnage limits and from any solid waste disposal assessment fees imposed by section nineteen, article fifteen-a, chapter twenty-two; section eleven, article fifteen, chapter twenty-two; section four, article sixteen, chapter twenty-two; and section thirty, article four, chapter twenty-two-c of this code.

(j) Solid waste facilities shall accept and dispose of whole tires from state authorized tire remediation projects. All waste tires from state authorized tire remediation projects except those disposed of in a landfill shall be excluded from the calculation of monthly tonnage limits and from any solid waste
Disposal assessment fees imposed by section nineteen, article fifteen-a, chapter twenty-two; section eleven, article fifteen, chapter twenty-two; section four, article sixteen, chapter twenty-two; and section thirty, article four, chapter twenty-two-c of this code. For state-sponsored tire remediation projects, the state may negotiate with the solid waste facility for rates and charges for the disposal of waste tires regardless of the rates and charges established by the Public Service Commission pursuant to article one, chapter twenty-four of this code: Provided, That the disposal of whole tires in a solid waste facility is allowed only when the Department of Environmental Protection has determined there is no other reasonable alternative available.

(k) The Department shall propose for legislative promulgation emergency and legislative rules to effectuate the purposes of this section.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-1. Legislative findings and purpose.
§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of Secretary; grants to counties and municipalities; and rules relating thereto.
§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.
§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.
§22-15A-6. Assistance to solid waste authorities.
§22-15A-9. Creation of the A. James Manchin Fund; proceeds from sale of waste tires; fee on issuance of certificate of title.
§22-15A-10. Department to administer funds for waste tire remediation; rules authorized; duties of Secretary.
§22-15A-12. Remediation; liability for remediation and court costs.
§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.
§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

§22-15A-1. Legislative findings and purpose.

(a) The Legislature finds that litter is a public nuisance and distracts from the beauty of the state and its natural resources. It is therefore necessary to establish and implement a litter control program to coordinate public and private litter control efforts; to establish penalties for littering; to provide for litter pickup programs; to create education programs; and to provide assistance to local solid waste authority litter control efforts.

(b) The Legislature further finds that the improper management of commercial and residential solid waste and the unlawful disposal of such waste creates open dumps that adversely impacts the state’s natural resources, public water supplies and the public health, safety and welfare of the citizens of the state. It is therefore necessary to establish a program to promote pollution prevention and to eliminate and remediate open dumps.

(c) The Legislature further finds that waste tire piles are a direct product of state citizens use and enjoyment of state roads and highways and proper tire waste disposal is a necessary component of maintenance of the transportation system. The accumulation of waste tires has also become a significant
environmental and public health hazard to the state and the
location and number of waste tires are directly related to the
efficiency of travel, by citizens, visitors and of commerce,
along public highways in West Virginia. In particular, the
Legislature recognizes that waste tires are widespread in
location and in number throughout the state; waste tires
physically touch and concern public highways, including, but
not limited to, state roads, county roads, park roads, secondary
routes and orphan roads, all of which interferes with the
efficiency of public highways; and further that the existence of
waste tires along and near public highways is sometimes
accompanied by other hazards and, in turn, adversely impacts
the proper maintenance and efficiency of public highways for
citizens.

(d) The Legislature also recognizes and declares that waste
tires are a public nuisance and hazard; that waste tires serve as
haborage and breeding places for rodents, mosquitoes, fleas,
ticks and other insects and pests injurious to the public health,
safety and general welfare; that waste tires collected in large
piles pose an excessive risk to public health, safety and welfare
from disease or fire; that the environmental, economic and
societal damage resulting from fires in waste tire piles can be
avoided by removing the piles; and that tire pile fires cause
extensive pollution of the air and surface and groundwater for
miles downwind and downstream from the fire.

(e) Therefore, in view of the findings relating to waste tires,
the Legislature declares it to be the public policy of the State of
West Virginia to eliminate the present danger resulting from
discarded or abandoned waste tires and to eliminate the visual
pollution resulting from waste tire piles and that in order to
provide for the public health, safety and welfare, quality of life
and to reverse the adverse impacts to the proper maintenance
and efficiency of public highways, it is necessary to enact
(f) The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills, reduce the need for new landfills, and create markets for recyclable materials. It is therefore necessary to establish goals for recycling solid waste; to require certain municipalities to implement recycling programs; to authorize counties to adopt comprehensive recycling programs; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.

(g) The Legislature finds that the effectiveness of litter control, open dump, tire clean up programs and recycling programs have been made less efficient by fragmented implementation of the various programs by different agencies. It is therefore necessary to coordinate all such programs under one program managed by the Department to ensure that all current and future litter, open dump, waste tire and recycling issues are managed and addressed efficiently and effectively.

(h) This article implements the A. James Manchin Rehabilitation Environmental Action Plan, a coordinated effort to address litter, waste, open dump, tire clean up and recycling programs.


Unless the context clearly indicates a different meaning or defined elsewhere in this chapter, as used in this article:

(1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing
retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers, feed hopper or watering troughs for livestock, other agricultural uses approved by the Department of Environmental Protection, playground equipment, boat or truck dock construction, house or building construction, go-cart, motorbike or race track barriers, or similar types of beneficial applications: Provided, That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the Secretary of the Department of Environmental Protection, is put at risk.

(2) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.

(3) "Court" means any circuit, magistrate or municipal court.

(4) "Department" means the Department of Environmental Protection.

(5) "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(6) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the Secretary's rules promulgated pursuant to subsection (e), section three of this article.
(7) “Person” means a natural person, corporation, firm, partnership, association or society, and the plural as well as the singular.

(8) “Public area” means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state, or an area held open for unrestricted access by the general public.

(9) “Remediate or Remediation” means to remove all litter, solid waste, and tires located above grade at a site: Provided, That remediation does not include clean up of hazardous waste.

(10) “Secretary” means the Secretary of the Department of Environmental Protection.

(11) “Waste tire” means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(12) “Waste tire monofill or monofill” means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(13) “Waste tire processing facility” means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis,
pyroprossing cutting, splitting, shredding, quartering, grinding
or otherwise breaking down waste tires for the purposes of
disposal, reuse, recycling and/or marketing.

(14) "Waters of the state" means generally, without
limitation, natural or artificial lakes, rivers, streams, creeks,
branches, brooks, ponds, impounding reservoirs, springs, wells,
watercourses and wetlands.

§22-15A-3. West Virginia litter control and recycling programs;
transfer of programs and employees; additional
duties of Secretary; grants to counties and mu­
nicipalities; and rules relating thereto.

(a) On and after the first day of July, two thousand five, the
litter control and recycling programs heretofore operated and
managed by the Division of Natural Resources shall transfer to
the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and
Recycling Programs from the jurisdiction of the Division of
Natural Resources to the jurisdiction of the Department of
Environmental Protection, all records, assets and contracts,
along with rights and obligations thereunder, obtained or signed
on behalf of the Litter Control and Recycling Programs are
hereby transferred and assigned to the Department of Environ­
mental Protection.

(b) The Commissioner of the Division of Natural Resources
and the Secretary of the Department of Environmental Protec­
tion shall determine which employees of the Division of
Natural Resources will be transferred to the Department of
Environmental Protection. All employees including administra­
tors of the litter control and recycling programs are subject to
being transferred to the Department of Environmental Protec­
tion. Employees in the classified service who have gained
permanent status as of the effective date of this article, enacted
during the two thousand five regular session of the Legislature,
will not be subject to further qualifying examination in their
respective classifications by reason of the transfer required by
the provisions of this section. Nothing contained in this section
may be construed to either abridge the rights of employees
within the classified service of the state to the procedures and
protections set forth in article six, chapter twenty-nine of this
code or to preclude the reclassification or reallocation of
positions in accordance with procedures set forth in said article.
The Division of Personnel shall work with the Commission and
Secretary to efficiently transfer employees from the Division of
Natural Resources to the Department of Environmental
Protection.

(c) In addition to all other powers, duties and responsibili-
ties granted and assigned to the Secretary of the Department of
Environmental Protection in this chapter and elsewhere by law,
the Secretary, in the administration of the West Virginia Litter
Control Program created by this section, shall:

(1) Coordinate all industry and business organizations
seeking to aid in the litter control and recycling effort;

(2) Cooperate with all local governments to accomplish
coordination of local litter control and recycling efforts;

(3) Encourage, organize, coordinate and increase public
awareness of and participation in all voluntary litter control and
recycling campaigns, including citizen litter watch programs,
seeking to focus the attention of the public on the litter control
and recycling programs of the state and local governments and
of private recycling centers;

(4) Recommend to local governing bodies that they adopt
ordinances similar to the provisions of section four of this
article;
(5) Investigate the methods and success of techniques of litter control, removal and disposal utilized in other states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;

(7) Attract to the state persons or industries that purchase, process or use recyclable materials; and

(8) Contract for the development, production and broadcast of radio and television messages promoting the West Virginia Litter Control Program. The messages should increase public awareness of and promote citizen responsibility toward the reduction of litter.

(d) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the two thousand five session of the Legislature: Provided, That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.
(e) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code designating public areas where litter receptacles shall be placed and the minimum number of litter receptacles in accordance with subsection (g), section four of this article is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the two thousand five session of the Legislature. Any rule promulgated by the Division of Natural Resources relating to littering receptacles shall remain in effect as if promulgated by the Secretary until amended by the Secretary.

(f) Commencing on the first day of July, two thousand five, the Secretary shall expend annually at least fifty percent of the moneys credited to the Litter Control Fund in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of litter control programs. The Secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for the awarding of matching grants.

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia State Police, the United States Forestry Service and other local, state and federal law-enforcement agencies shall be responsible for the administration and enforcement of all laws and rules relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and any other private or public areas of the state. These other agencies shall make recommendations to the Secretary, from time to time, concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. Such cooperation shall include, but not be limited to, contracts with
§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section two of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for
(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars, or confinement in a county or regional jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in
section two, article fifteen, chapter twenty-two of this code and
subject to the enforcement provisions of section fifteen of said
article.

(7) Any person convicted of a second or subsequent
violation of this section is subject to double the authorized
range of fines and community service for the subsection
violated.

(8) The sentence of litter clean up shall be verified by
environmental inspectors from the Department of Environmental
Protection. Any defendant receiving the sentence of litter
clean up shall provide, within a time to be set by the court,
written acknowledgment from an environmental inspector that
the sentence has been completed and the litter has been dis-
posed of lawfully.

(9) Any person who has been found by the court to have
willfully failed to comply with the terms of a litter clean up
sentence imposed by the court pursuant to this section is subject
to, at the discretion of the court, double the amount of the
original fines and community service penalties originally
ordered by the court.

(10) All law-enforcement agencies, officers and environ-
mental inspectors shall enforce compliance with this section
within the limits of each agency’s statutory authority.

(11) No portion of this section restricts an owner, renter or
lessee in the lawful use of his or her own private property or
rented or leased property or to prohibit the disposal of any
industrial and other wastes into waters of this state in a manner
consistent with the provisions of article eleven, chapter
twenty-two of this code. But if any owner, renter or lessee,
private or otherwise, knowingly permits any such materials or
substances to be placed, deposited, dumped or thrown in such
location that high water or normal drainage conditions will
cause any such materials or substances to wash into any waters
of the state, it is prima facie evidence that the owner, renter or
lessee intended to violate the provisions of this section:
Provided, That if a landowner, renter or lessee, private or
otherwise, reports any placing, depositing, dumping or throwing
of these substances or materials upon his or her property to the
prosecuting attorney, county commission, the Division of
Natural Resources or the Department of Environmental
Protection, the landowner, renter or lessee will be presumed to
not have knowingly permitted the placing, depositing, dumping
or throwing of the materials or substances.

(b) Any indication of ownership found in litter shall be
prima facie evidence that the person identified violated the
provisions of this section: Provided, That no inference may be
drawn solely from the presence of any logo, trademark, trade
name or other similar mass reproduced things of identifying
character appearing on the found litter.

c) Every person who is convicted of or pleads guilty to
disposing of litter in violation of subsection (a) of this section
shall pay a civil penalty in the sum of not less than one hundred
dollars nor more than one thousand dollars as costs for clean up,
investigation and prosecution of the case, in addition to any
other court costs that the court is otherwise required by law to
impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal
court in which these additional costs are imposed shall, on or
before the last day of each month, transmit fifty percent of a
civil penalty received pursuant to this section to the State
Treasurer for deposit in the State Treasury to the credit of a
special revenue fund to be known as the Litter Control Fund
which is hereby continued and transferred to the Department of
Environmental Protection. Expenditures for purposes set forth
in this section are not authorized from collections but are to be
made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon 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 the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator’s or chauffeur’s license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the Secretary by rule promulgated pursuant to
subdivision (8), subsection (a), section three of this article shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the Secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the Secretary shall be fined fifteen dollars per day of the violation.

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.

(a) Litter pickup and removal. —

1 (1) Each county commission and the Regional Jail Authority may establish a jail or prison inmate program including a regular litter pickup work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for these programs shall be from the Litter Control Fund. Funding requirements may include salaries for additional personnel needed for the program. The program may include the cooperative help of the Division of Highways or any other voluntary state, local, private, civic or public agency for personnel, equipment or materials in establishing a county or regionwide, continual program of inmate litter pickup. Upon final approval of the projected cost of the program for a given fiscal year, the Secretary shall disburse the approved amount to the county or Regional Jail Authority. The funds will be used by the Authority to reimburse the county commission or Regional Jail Authority for its expenses related to the program and to pay other costs related to the use of inmates for litter pickup. Nothing contained herein shall preclude a county or
(2) All persons involved with litter pickup may separate identifiable recyclable materials from other litter collected. The funds resulting from the sale of those recyclable materials shall be returned to the Litter Control Fund.

(3) The county or regional solid waste authority may also contract with local governments, civic organizations or chief correctional officers in any county to implement litter pickup and removal pursuant to this act when the state offender work force is not available. In such cases, the contract provisions shall require that identifiable recyclable materials shall be separated from other litter collected, with resulting funds returned to the Litter Control Fund. Priority shall be given to those contracts that maximize the use of community service hours by inmates and youth employment programs.

(b) Education. —

(1) The Department of Education in cooperation with the Department of Environmental Protection shall distribute educational materials to the schools based on the goals of litter clean up and proper solid waste disposal, the rationale for the goals and how primary and secondary school students can contribute to the achievement of the goals. The Department of Education shall further incorporate this information into the curriculum of the public school system as appropriate.

(2) The Division of Highways and local governments shall conduct public awareness programs to notify the public of the provisions of this law and how they can participate, to inform them as to the rationale behind the provisions of this law, to advise them of other avenues for achievement of the noted goals and to encourage their participation.
(3) The Department of Environmental Protection and the Solid Waste Management Board shall provide technical assistance to local governments in the implementation of this law.

(c) Government recycling responsibilities. —

(1) All state agencies and regional planning councils may establish and implement aluminum container, glass and paper recycling programs at their public facilities. To the extent practicable, programs for other metals, plastics, rubber and other recyclable materials may be established and implemented. The moneys collected from the sale of such materials shall be deposited and accounted for in the Litter Control Fund pursuant to the authority of section four of this article.

(2) To further promote recycling and reduction of the waste stream, county and municipal governments shall consider the establishment of recycling programs as provided in this section in the operation of their facilities and shall evaluate the cost-effectiveness of:

(A) Procedures that separate identifiable recyclable materials from solid waste collected; and

(B) Programs that provide for:

(i) The establishment of a collection place for recyclables at all landfills and other interim solid waste collection sites and arrangements for the material collected to be recycled;

(ii) Public notification of such places and encouragement to participate;

(iii) The use of rate differentials at landfills to facilitate public participation in on-site recycling programs.
(d) Each affected agency and local government shall monitor and evaluate the programs implemented pursuant to this law.

(e) The Secretary shall submit a report to the Speaker of the House and the President of the Senate not later than the first day of March, two thousand six, and every five years thereafter regarding the effectiveness of the programs authorized by this law.

§22-15A-6. Assistance to solid waste authorities.

The Secretary may expend funds from the Litter Control Fund established pursuant to section four of this article to assist county and regional solid waste authorities in the formulation of their comprehensive litter and solid waste control plans pursuant to section eight, article four, chapter twenty-two-c of this code and in the construction and maintenance of approved commercial solid waste facilities authorities which would in the opinion of the Secretary be unable to construct or maintain an approved commercial solid waste facility without grant funds.


(a) The Secretary shall establish the Pollution Prevention and Open Dump (PPOD) Program to encourage the proper disposal of commercial and residential solid waste and to undertake all reclamation, clean up and remedial actions necessary to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner. The program shall seek to eliminate open dumps, which often include waste tires and to recycle as many items as possible from these reclamation efforts. This program shall be funded through the Solid Waste Reclamation and Environmen-
(b) Authorized representatives of the Department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of an open dump, to determine the feasibility of the reclamation or prevention of such adverse effects and to conduct reclamation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.


(a) No person shall, within this state, place, deposit or abandon any waste tire or part thereof upon the right-of-way of any public highway or upon any other public property nor deposit or abandon any waste tire or part thereof upon any private property unless it is at a licensed monofill, solid waste facility or at any other business authorized by the Department of Environmental Protection to accept, process, manufacture or remanufacture waste tires: Provided, That the Secretary may temporarily accumulate as many waste tires as he or she deems necessary at any location or locations necessary to effectuate the purposes of this article.
(b) No person, except those persons who have received and maintain a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted activities, shall accumulate more than one hundred waste tires for beneficial use without obtaining a license or permit from the Department of Environmental Protection.

(c) Any person who violates any provision of this section shall be guilty of creating an open dump and subject to enforcement actions or prosecution under the provisions of article fifteen of this chapter.

§22-15A-9. Creation of the A. James Manchin Fund; proceeds from sale of waste tires; fee on issuance of certificate of title.

(a) There is continued in the State Treasury a special revenue fund known as the A. James Manchin Fund. All moneys appropriated, deposited or accrued in this Fund shall be used exclusively for remediation of waste tire piles as required by this article, for the tire disposal program established under section ten of this article or for the purposes of subsection (h), section ten of this article or for the purposes of subsection (c), section eleven of this article. The Commissioner of the Division of Highways shall work with and may use moneys in the fund to contract with the Secretary of the Department of Environmental Protection to accomplish the remediation of waste tire piles. The Fund consists of the proceeds from the sale of waste tires; fees collected by the Division of Motor Vehicles as provided in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or private grants; legislative appropriations; loans; and any other funding source available for waste tire remediation. Any unprogrammed balance remaining in the Fund at the end of any state fiscal year shall be transferred to the State Road Fund.
(b) No further collections or deposits shall be made after the Commissioner of the Division of Highways certifies to the Governor and the Legislature that the remediation of all waste tire piles that were determined by the Commissioner to exist on the first day of July, two thousand one, has been completed and that all infrastructure bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code have been paid in full or legally defeased.

(c) If infrastructure bonds are not issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state on or before the thirty-first day of December, two thousand six, all further collections and deposits to the A. James Manchin Fund which are not programmed for remediation or disposal shall be transferred to the state road fund at the end of each fiscal year.

§22-15A-10. Department to administer funds for waste tire remediation; rules authorized; duties of Secretary.

(a) The Department shall administer all funds made available to the Department by legislative appropriation or by funds made available by the Division of Highways, as well as federal, state or private grants for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles.

(b) All authority to promulgate legislative rules necessary to implement the provisions of this article is hereby transferred from the Division of Highways to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the two thousand
five session of the Legislature. Any legislative rules promul-
gated by the Commissioner of the Division of Highways in
furtherance of the waste tire remediation program established
in former article twenty-four, chapter seventeen of this code
shall remain in force and effect as if promulgated by the
Secretary until they are amended in accordance with the
provisions of article three, chapter twenty-nine-a of this code.

(c) The Secretary also has the following powers:

(1) To apply and carry out the provisions of this article and
the rules promulgated under this article.

(2) To investigate, from time to time, the operation and
effect of this article and of the rules promulgated under this
article and to report his or her findings and recommendations to
the Legislature and the Governor.

(d) On or before the first day of July, two thousand six, the
Secretary shall determine the location, approximate size and
potential risk to the public of all waste tire piles in the state and
establish, in descending order, a waste tire remediation list.

(e) The Secretary may contract with the Department of
Health and Human Resources or the Division of Corrections, or
both, to remediate or assist in remediation of waste tire piles
throughout the state. Use of available Department of Health
and Human Resources and the Division of Corrections work
programs shall be given priority status in the contract process
so long as such programs prove a cost-effective method of
remediating waste tire piles.

(f) Waste tire remediation shall be stopped upon the
discovery of any potentially hazardous material at a
remediation site. The Department shall respond to the discov-
ery in accordance with the provisions of article nineteen of this
chapter.
(g) The Secretary may establish a tire disposal program within the Department to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at locations designated by the Department that have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The Secretary may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the Department. The Secretary may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The Secretary may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The Commissioner of the Division of Highways may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin Fund created by section nine of this article to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the Solid Waste Management Board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: Provided, however, That the waste tire processing facility shall have a capital cost of not less than three hundred million dollars and the council for community and economic development shall determine that the waste tire processing facility is a viable economic development project of benefit to the state’s economy.

(a) The Department may sell waste tires collected during remediation of waste tire piles at public auction or to a waste tire monofill, waste tire processing facility or business authorized by the Department of Environmental Protection to accept, store, use or process waste tires.

(b) If there is no market in West Virginia for the sale of waste tires the Department may sell them at any available market.

(c) If there is no market for the sale of waste tires the Department may dispose of them in any lawful manner.

§22-15A-12. Remediation; liability for remediation and court costs.

(a) Any person who has, prior or subsequent to the effective date of this act, illegally disposed of waste tires or has waste tires illegally disposed on his or her property shall be liable for:

(1) All costs of removal or remedial action incurred by the Department;

(2) Any other necessary costs of remediation, including properly disposing of waste tires and damage to adjacent property owners; and

(3) All costs incurred in bringing civil actions under this article.

(b) The Department shall notify any person who owns real property or rights to property where a waste tire pile is located that remediation of the waste tire pile is necessary. The Department shall make and enter an order directing such person or persons to remove and properly dispose of the waste tires.
The Department shall set a time limit for completion of the remediation. The order shall be served by registered or certified mail, return receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit or the person cannot be located or the person notifies the Department that he or she is unable to comply with the order, the Department may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person owing remediation costs or damages shall be liable at law until such time as all costs or damages are fully paid.

(d) Authorized representatives of the Department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a waste tire pile, to determine the feasibility of the remediation or prevention of such adverse effects and to conduct remediation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

(e) There is hereby created a statutory lien upon all real property and rights to the property from which a waste tire pile was remediated for all reclamation costs and damages incurred by the Department. The lien created by this section shall arise at the later of the following:

(1) The time costs are first incurred by the Department; or
(2) The time the person is provided, by certified or registered mail or personal service, written notice as required by this section.

The lien shall continue until the liability for the costs or judgment against the property is satisfied.

(f) Any person, who is a bona fide purchaser of real property prior to the first day of July, two thousand one, who did not cause, permit or profit from the illegal disposal of waste tires on the property is only liable for the costs of remediation to the extent that the fair market value of the property, when remediation is completed, exceeds the fair market value of the property that existed on the first day of July, two thousand one. The Department shall have a cause of action against any previous owner who caused, permitted, contributed or profited from the illegal disposal of waste tires on the property for the difference in the amount recovered from the purchaser and the cost of remediation.

(g) Liens created by this section shall be duly recorded in the office of the clerk of the county commission in the county where the real property is located and be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The Department shall have the power and authority to enforce such liens in a civil action to recover the money due for remediation costs and damages plus court fees and costs and reasonable attorney’s fees.

(h) The Department may foreclose upon the premises by bringing a civil action, in the circuit court of the county where the property is located, for foreclosure and an order to sell the property to satisfy the lien.

(i) Any proceeds from any sale of property obtained as a result of execution of a lien or judgment under this section for
remediation costs, excluding costs of obtaining judgment and
perfecting the lien, shall be deposited into the A. James
Manchin Fund of the State Treasury.

(j) The provisions of this section do not apply and no lien
may attach to the right-of-way, easement or other property
interest of a utility, whether electric, gas, water, sewer, tele-
phone, television cable or other public service, unless the utility
contributed to the illegal tire pile.

(k) Upon determining the existence of a waste tire pile, the
Department shall file a notice of the location of the waste tire
pile in the office of the county clerk in the county where
property containing a waste tire pile is situate. The Department
shall immediately file the notice for all property known to have
waste tire piles as of the day the Legislature enacted the
amendment to this section during the two thousand five
legislative session. The notice shall contain the property
owner’s name, a location and description of the property and
the waste tire pile and the potential liability for remediation.
The county clerk shall record the notice in the same manner as
a lien and index the notice by the name of the property owner.


In addition to all other remedies provided in this article, the
Attorney General of this state, the Department, the prosecuting
attorney of any county where any violation of any provision of
this article occurs, or any citizen, resident or taxpayer of the
county where any violation of any provision of this article
occurs, may apply to the circuit court, or the judge thereof in
vacation, of the county where the alleged violation occurred, for
an injunction to restrain, prevent or abate the maintenance and
storage of waste tires in violation of any provision of this
article, or the violation of any other provision of this article. In
seeking an injunction, it is not necessary for the Secretary or
any state agency seeking an injunction under this section to post bond.


Although the Secretary is primarily responsible for remediation of waste tire piles under the provisions of this article, the Commissioner of the Bureau for Public Health may enforce the public health laws in any instance where the Commissioner of the Bureau for Public Health determines there is an imminent and substantial endangerment to the public health.


The waste tire remediation program shall continue to exist, pursuant to the provisions of article ten, chapter four of this code until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.


By the first day of January, two thousand ten, it is the goal of this state to reduce the disposal of municipal solid waste by fifty percent of the amount of per capita solid waste disposed of in one thousand nine hundred ninety-one.


(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section eight, article four, chapter twenty-two-c of this code, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section sixteen of this article.
(b) Each recycling plan required by this section shall include, but not be limited to:

(1) Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) On or before the eighteenth day of October, one thousand nine hundred ninety-two, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The Solid Waste Management Board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan and the statewide management plan. The Solid Waste Management Board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before the eighteenth day of October, one thousand nine hundred ninety-three, each municipality with a population of ten thousand or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Imple-
mentation shall be phased in by the first day of July, one
thousand nine hundred ninety-five. Such program shall include,
at a minimum, the following:

(1) An ordinance adopted by the governing body of the
municipality requiring that each person, partnership, corpora-
tion or other entity in the municipality shall separate at least
three recyclable materials, as deemed appropriate by the
municipality, from other solid waste: Provided, That the list of
recyclables to be separated may be adjusted according to
whether the generator is residential, commercial or other type
of establishment.

(2) A scheduled day, at least one per month, during which
separated materials are to be placed at the curbside, or similar
location, for collection.

(3) A system that collects recyclable materials from the
curbside, or similar location, at least once per month: Provided,
That to encourage full participation, the program shall, to the
maximum extent possible, provide for the collection of
recyclables at the same rate of frequency, and simultaneous
with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance,
including incentives and penalties.

(5) A comprehensive public information and education
program covering the importance and benefits of recycling, as
well as the specific features and requirements of the recycling
program. As part of the education program, each municipality
shall, at a minimum, notify all persons occupying residential,
commercial, institutional or other premises within its bound-
aries of the requirements of the program, including how the
system will operate, the dates of collection, the responsibilities
of persons within the municipality and incentives and penalties.
(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to section seventeen of this article shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

(d) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bimetallic cans, aluminum, glass, paper and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.
(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or special election to determine whether it is the will of the voters of the county that a policy of comprehensive recycling of solid waste be established in the county: Provided, That the petition bearing the necessary signatures has been filed with the county commission at least one hundred days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:
“Shall the County Commission be required to establish a comprehensive recycling program for solid waste in ________ County, West Virginia?

☐ For Recycling

☐ Against Recycling

(Place a cross mark in the square opposite your choice.)”

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within one hundred eighty days of certification, establishing a comprehensive recycling program for solid waste in the county: Provided, That such program shall be implemented and operational no later than twelve months following certification.

If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, the policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in ________ County, West Virginia? 
(Place a cross mark in the square opposite your choice.)"

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than thirty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.


(a) Imposition. -- A recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid
waste disposal facilities in this state, to be collected at the rate of two dollars per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner:

1. The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

2. The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner as prescribed by the Tax Commissioner;

3. The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

4. If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount that he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code;

5. Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in
trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

(c) Regulated motor carriers. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public
Service Commission shall, within fourteen days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the Commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition.* — For purposes of this section, "Solid waste Disposal Facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section.

Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste; and

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the Secretary by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) *Procedure and administration.* — Notwithstanding section three, article ten, chapter eleven of this code, each and
every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if the sections were the only fee imposed by this section and were set forth in extenso in this section.

(h) Dedication of proceeds. — The proceeds of the fee collected pursuant to this section shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account designated as the Recycling Assistance Fund which is hereby continued and transferred to the Department of Environmental Protection. The Secretary shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The Secretary shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters considered appropriate: Provided, That persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, shall not be eligible to receive grants under the provisions of this article;
(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried conservation officers;

(3) Twelve and one-half percent of the total proceeds shall be directly allocated to the solid waste planning fund;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the solid waste reclamation and environmental response fund, established pursuant to section eleven, article fifteen, chapter twenty-two of this code, to be expended by the Department of Environmental Protection to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the hazardous waste emergency response fund established in article nineteen of this chapter.


(a) In the absence of either a municipal or a comprehensive county recycling plan pursuant to section eighteen of this article, all agencies and instrumentalities of the state, all primary and secondary schools, where practicable, and private colleges and universities shall implement programs to recycle solid waste. To carry out the purposes of this section, any affected party may be eligible to receive grants pursuant to subdivision (1), subsection (h), section nineteen of this article. Such programs shall include, but not be limited to, the following:

(1) Source separation of at least two recyclable materials; and
(2) In the absence of either a municipal program or a comprehensive county recycling plan pursuant to section eighteen of this article, collection and transportation of source separated recycled materials to an appropriate location.

(b) For purposes of this section, the Department shall be designated the lead agency to ensure proper compliance and coordination of any such recycling program.


(a) It is the policy of the State of West Virginia that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products. The goal of the state is to achieve a recycled product mix on future purchases.

(b) In furtherance of the aforesaid goal, the Secretary of the Department of Administration in consultation with the Secretary shall develop a comprehensive procurement program for recycled products. The program shall include, but not be limited to:

(1) A review, and subsequent revision, of existing procurement procedures and bid specifications to remove language that discriminates against recycled products;

(2) A review, and subsequent revision, of existing procurement procedures and bid specifications to ensure that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products: Provided, That recycled paper products shall be given a price preference of ten percent: Provided, however, That priority shall be given to paper products with the highest postconsumer content;

(3) A plan to eliminate, to the maximum extent possible, the use of disposable and single-use products; and
(4) A requirement that all agencies and instrumentalities of the state use compost in all land maintenance and landscaping activities: Provided, That the use of composted or deep stacked poultry litter products, certified by the Commissioner of Agriculture as being free from organisms that are not found in poultry litter produced in this state, have priority unless determined to be economically unfeasible by the agency or instrumentality.

(c) The Secretary shall prepare and submit an annual report on the thirty-first day of January of each year summarizing the program's accomplishments, prospects for the future, and any recommendations. The report shall be submitted to the Governor, Speaker of the House of Delegates and President of the Senate.

§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia; effective the first day of June, one thousand nine hundred ninety-six, it shall be unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the Department's waste tire remediation projects or other collection efforts in accordance with the provisions of this article or the pollution prevention program and open dump program or other state-authorized remediation or clean up programs: Provided, That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or clean up program has determined there is no reasonable alternative available.

(b) Effective the first day of January, one thousand nine hundred ninety-seven, it shall be unlawful to dispose of yard
waste, including grass clippings and leaves, in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (d) of this section.

(c) No later than the first day of May, one thousand nine hundred ninety-five, the Solid Waste Management Board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May, one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

(d) No later than the first day of August, one thousand nine hundred ninety-five, the Department shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (c) of this section. No later than the first day of August, two thousand, the Department shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (c) of this section.

(e) For the purposes of this section, "yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste: Provided, That the same or similar waste generated by commercial agricultural enterprises is excluded.
(f) In promulgating the rules required by subsections (c) and (d) of this section, yard waste, as described in subsection (e) of this section, the Department shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

1. Disposal in a publicly or privately operated commercial or noncommercial composting facility.

2. Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property.

3. Disposal by open burning where such activity is not prohibited by this code, rules promulgated hereunder or municipal or county codes or ordinances.

4. Disposal in a publicly or privately operated landfill, only where none of the foregoing options are available. Such manner of disposal will involve only small quantities of domestic yard waste generated only from the property of the participating resident or tenant.


Recycling facilities, as defined in section two, article fifteen of this chapter, whose only function is to accept free-of-charge, buy or transfer source-separated material or recycled material for resale or transfer for further processing are exempt from the provisions of said article and article four of chapter twenty-two-c and sections one-c and one-f, article two, chapter twenty-four of this code.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.
Article

3. Solid Waste Management Board.

4. County and Regional Solid Waste Authorities.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-7. Development of state solid waste management plan.

§22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

§22C-3-7. Development of state solid waste management plan.

On or before the first day of January, one thousand nine hundred ninety-three, the solid waste management board shall prepare an overall state plan for the proper management of solid waste: Provided, That such plan shall be consistent with the findings and purposes of article four of this chapter and articles fifteen and fifteen-a, chapter twenty-two of this code: Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections eight and twenty-four, article four of this chapter, as amended: Provided further, That such plan shall be updated every two years following its initial preparation.

§22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

The provisions of this article are complementary to those contained in article twenty-four, chapter fifteen-a of this code and do not alter or diminish the authority of any enforcement agency, as defined in section two thereof, to collect and dispose of abandoned household appliances and motor vehicles, inoperative household appliances and junked motor vehicles and parts thereof, including tires. The board and such enforcement agencies shall cooperate fully with each other in collecting and disposing of such solid waste.
ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the Solid Waste Management Board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.
(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the rules promulgated by the Solid Waste Management Board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the Solid Waste Management Board.
(d) The siting plan takes effect upon approval by the Solid Waste Management Board pursuant to the rules promulgated for this purpose. Upon approval of the plan, the Solid Waste Management Board shall transmit a copy thereof to the Secretary of the Department of Environmental Protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the Solid Waste Management Board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: Provided, that an existing commercial solid waste facility which, on the eighth day of April, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the Division of Natural Resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate, but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the Solid Waste Management Board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a presiting notice pursuant to section thirteen, article fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may
amend the siting plan by redesignating a zone that has been
designated as an area where a commercial solid waste facility
is tentatively prohibited to an area where one is authorized. In
such case, the person seeking the change has the burden to
affirmatively and clearly demonstrate, based on the criteria set
forth in subsection (b) of this section, that a solid waste facility
could be appropriately operated in the public interest at such
location. The Solid Waste Management Board shall provide,
within available resources, technical support to a county or
regional solid waste authority, or county commission as
appropriate, when requested by such authority or commission
to assist it in reviewing an application for any such amendment.

(h) The Solid Waste Management Board shall prepare and
adopt a siting plan for any county or regional solid waste
authority which does not complete and file with the said state
authority a siting plan in compliance with the provisions of this
section and the rules promulgated thereunder. Any siting plan
adopted by the Solid Waste Management Board pursuant to this
subsection shall comply with the provisions of this section, and
the rules promulgated thereunder, and has the same effect as a
siting plan prepared by a county or regional solid waste
authority and approved by the Solid Waste Management Board.

(i) The siting plan adopted pursuant to this section shall
incorporate the provisions of the litter and solid waste control
plan, as approved by the Solid Waste Management Board
pursuant to section eight of this article, regarding collection and
disposal of solid waste and the requirements, if any, for
additional commercial solid waste facility capacity.

(j) The solid waste management board is authorized and
directed to promulgate rules specifying the public participation
process, content, format, amendment, review and approval of
siting plans for the purposes of this section.
(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: Provided, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section seventeen, article fifteen-a, chapter twenty-two of this code are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section twenty-three, article fifteen-a, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment of this code, and facilities which were otherwise exempted from local site approval under any prior enactment of this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.
(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) of this section which support its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund.

Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure revenue bonds payable from the A. James Manchin Fund created by section nine, article fifteen-a, chapter
twenty-two of this code and such other sources as may be
legally pledged for such purposes other than the West Virginia
Infrastructure Revenue Debt Service Fund created by section
seventeen of this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges
and restitution.


(a) In aid of disposition of juvenile delinquents, the juvenile
probation officer assigned to the court shall, upon request of the
court, make an investigation of the environment of the juvenile
and the alternative dispositions possible. The court, upon its
own motion, or upon request of counsel, may order a psycho-
logical examination of the juvenile. The report of such exami-
nation and other investigative and social reports shall not be
made available to the court until after the adjudicatory hearing.
Unless waived, copies of the report shall be provided to counsel
for the petitioner and counsel for the juvenile no later than
seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the
dispositional proceeding, giving all parties an opportunity to be
heard. In disposition the court shall not be limited to the relief
sought in the petition and shall, in electing from the following
alternatives, consider the best interests of the juvenile and the
welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian
to a community agency for needed assistance and dismiss the
petition;
(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile’s activities under terms which are reasonable and within the child’s ability to perform, including participation in the litter control program established pursuant to section three, article fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the Supreme Court of Appeals;

(5) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the juvenile to the custody of the Director of the Division of Juvenile Services for placement in a juvenile services facility for the treatment,
instruction and rehabilitation of juveniles: Provided, That the
court maintains discretion to consider alternative sentencing
arrangements. Notwithstanding any provision of this code to
the contrary, in the event that the court determines that it is in
the juvenile's best interests or required by the public welfare to
place the juvenile in the custody of the Division of Juvenile
Services, the court shall provide the Division of Juvenile
Services with access to all relevant court orders and records
involving the underlying offense or offenses for which the
juvenile was adjudicated delinquent, including sentencing and
presentencing reports and evaluations, and provide the Division
with access to school records, psychological reports and
evaluations, medical reports and evaluations or any other such
records as may be in the court's possession as would enable the
Division of Juvenile Services to better assess and determine the
appropriate counseling, education and placement needs for the
juvenile offender. Commitments shall not exceed the maxi-
mum term for which an adult could have been sentenced for the
same offense and any such maximum allowable sentence to be
served in a juvenile correctional facility may take into account
any time served by the juvenile in a detention center pending
adjudication, disposition or transfer. The order shall state that
continuation in the home is contrary to the best interests of the
juvenile and why; and whether or not the state department made
a reasonable effort to prevent the placement or that the emer-
gency situation made such efforts unreasonable or impossible;
or

After a hearing conducted under the procedures set out
in subsections (c) and (d), section four, article five, chapter
twenty-seven of this code, commit the juvenile to a mental
health facility in accordance with the juvenile's treatment plan;
the Director of the mental health facility may release a juvenile
and return him or her to the court for further disposition. The
order shall state that continuation in the home is contrary to the
best interests of the juvenile and why; and whether or not the
state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme Court of Appeals.

(d) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(e) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.

§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.

(a) In addition to the methods of disposition provided in section thirteen of this article, the court may enter an order imposing one or more of the following penalties, conditions and limitations:

(1) Impose a fine not to exceed one hundred dollars upon such child;

(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent, or
if the child does not make full restitution, require the custodial
parent or parents, as defined in section two, article seven-a,
chapter fifty-five, of the child to make partial or full restitution
to the victim to the extent the child fails to make full restitution;

(3) Require the child to participate in a public service
project under such conditions as the court prescribes, including
participation in the litter control program established pursuant
to the authority of section three, article fifteen-a, chapter
twenty-two of this code;

(4) When the child is fifteen years of age or younger and
has been adjudged delinquent, the court may order that the child
is not eligible to be issued a junior probationary operator’s
license or when the child is between the ages of sixteen and
eighteen years and has been adjudged delinquent, the court may
order that the child is not eligible to operate a motor vehicle in
this state, and any junior or probationary operator’s license
shall be surrendered to the court. Such child’s driving privi-
leges shall be suspended for a period not to exceed two years,
and the clerk of the court shall notify the Commissioner of the
Division of Motor Vehicles of such order.

(b) Nothing herein stated shall limit the discretion of the
court in disposing of a juvenile case: Provided, That the
juvenile shall not be denied probation or any other disposition
pursuant to this article because the juvenile is financially unable
to pay a fine or make restitution or reparation: Provided,
however, That all penalties, conditions and limitations imposed
under this section shall be based upon a consideration by the
court of the seriousness of the offense, the child’s ability to pay
and a program of rehabilitation consistent with the best interests
of the child.

(c) Notwithstanding any other provisions of this code to the
contrary, in the event a child charged with delinquency under
this chapter is transferred to adult jurisdiction and there convicted, the court may nevertheless, in lieu of sentencing such person as an adult, make its disposition in accordance with this section.

CHAPTER 200

(H. B. 2891 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; to amend and reenact §5A-7-4 of said code; to amend and reenact §5A-8-15 of said code; to amend and reenact §5B-1-2 of said code; to amend and reenact §5B-3-4 and §5B-3-5 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §10-5-2 of said code; to amend said code by adding thereto a new section, designated §10-5-5a; to amend and reenact §11-10A-6 and §11-10A-7 of said code; to amend and reenact §17-16A-3 and §17-16A-10 of said code; and to amend and reenact §49-9-15 of said code, all relating to the reorganization of the executive branch of state government; transferring the Office of Technology from the Office of the Governor to the Department of Administration; providing that the Director of Information Services and Communications Division shall report to the Chief Technology Officer; providing that the Director of Information Services and Communications Division shall develop and maintain an information systems disaster
recovery system; modifying membership of the Records Management and Preservation Board to include a county sheriff and a county assessor; limiting the time period for department secretaries to transfer funds within their respective departments; requiring secretaries of departments to cooperate with the Office of the Pharmaceutical Advocate in purchasing prescription drugs; transferring the Bureau of Employment Programs to the Department of Commerce; providing that the Governor will chair the Educational Broadcasting Authority for a limited term; providing that the Governor will appoint an Executive Director of the Educational Broadcasting Authority to serve for a limited term; modifying the term of the chief administrative law judge of the Office of Tax Appeals; providing that the Governor has the authority to appoint two administrative law judges to the Office of Tax Appeals; providing for Governor to chair the West Virginia Parkways, Economic Development and Tourism Authority; authorizing the Governor to appoint an Executive Director of the Virginia Parkways, Economic Development and Tourism Authority and set salary annually; modifying membership of the Missing Children Information Clearinghouse; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; that §5A-7-4 of said code be amended and reenacted; that §5A-8-15 of said code be amended and reenacted; that §5B-1-2 of said code be amended and reenacted; that §5B-3-4 and §5B-3-5 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §10-5-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §10-5-5a; that §11-10A-6 and §11-10A-7 of said code be amended and reenacted;
that §17-16A-3 and §17-16A-10 of said code be amended and reenacted; and that §49-9-15 of said code be amended and reenacted, all to read as follows:

Chapter

5A. Department of Administration.
5F. Reorganization of the Executive Branch of State Government.
10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.
11. Taxation.
17. Roads and Highways.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article

6. Office Technology.
7. Information Services and Communications division.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-1. Findings and purposes.
§5A-6-2. Definitions.
§5A-6-3. Office of Technology; Chief Technology Officer; appointment and qualifications.
§5A-6-4. Powers and duties; professional staff.
§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.
§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.
§5A-6-8. Exemptions.

§5A-6-1. Findings and purposes.

The Legislature finds and declares that information technology is essential to finding practical solutions to the everyday problems of government, and that the management goals and purposes of government are furthered by the development of compatible, linked information systems across government. Therefore, it is the purpose of this article to create, as an integral part of the Department of Administration, the Office of
Technology with the authority to advise and make recommendations to all state spending units on their information systems.

§5A-6-2. Definitions.

As used in this article:

(a) "Information systems" means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;

(b) "Information technology" means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training, and includes the programs and routines used to employ and control the capabilities of data processing hardware;

(c) "Information equipment" includes central processing units, front-end processing units, minicomputers, microprocessors and related peripheral equipment, including data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters;

(d) "Related services" include feasibility studies, systems design, software development and time-sharing services whether provided by state employees or others;

(e) "Telecommunications" means any transmission, emission or reception of signs, signals, writings, images or sounds of intelligence of any nature by wire, radio or other electromagnetic or optical systems. The term includes all facilities and equipment performing those functions that are owned, leased or used by the executive agencies of state government;
(f) "Chief Technology Officer" means the person holding the position created in section three of this article and vested with authority to assist state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the individual state spending units, and further the overall management goals and purposes of government; and

(g) "Experimental program to stimulate competitive research" (EPSCoR) means the West Virginia component of the national EPSCoR program which is designed to improve the competitive research and development position of selected states through investments in academic research laboratories and laboratory equipment. The recognized West Virginia EPSCoR, which is part of the Office of Technology, is the responsible organization for the coordination and submission of proposals to all federal agencies participating in the EPSCoR program.

§5A-6-3. Office of Technology; Chief Technology Officer; appointment and qualifications.

The Office of Technology is created within the Department of Administration. A Chief Technology Officer shall be appointed by and shall serve at the will and pleasure of the Governor. The Chief Technology Officer shall have knowledge in the field of information technology, experience in the design and management of information systems and an understanding of the special demands upon government with respect to budgetary constraints, the protection of privacy interests and federal and state standards of accountability.

§5A-6-4. Powers and duties; professional staff.

(a) With respect to all state spending units the Chief Technology Officer may:

(1) Develop an organized approach to information resource management for this state;
(2) Provide, with the assistance of the Information Services and Communications Division of the Department of Administration, technical assistance to the administrators of the various state spending units in the design and management of information systems;

(3) Evaluate, in conjunction with the information services and communications division, the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units;

(4) Develop a mechanism for identifying those instances where systems of paper forms should be replaced by direct use of information equipment and those instances where applicable state or federal standards of accountability demand retention of some paper processes;

(5) Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of information;

(6) Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

(7) Engage in any other activities as directed by the Governor; and

(8) Charge a fee to the state spending units for evaluations performed and technical assistance provided under the provisions of this section. All fees collected by the Chief Technology Officer shall be deposited in a special account in the State Treasury to be known as the "Chief Technology Officer Administration Fund". Expenditures from the fund shall be
made by the Chief Technology Officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Amounts collected which are found 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.

(b) With respect to executive agencies, the Chief Technology Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and time lines for addressing the information technology requirements of the various executive agencies of state government;

(3) Exercise the authority inherent to the chief executive of the state as the Governor may, by executive order, delegate, to overrule and supersede decisions made by the administrators of the various executive agencies of government with respect to the design and management of information systems and the purchase, lease or acquisition of information equipment and contracts for related services;

(4) Draw upon staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies; and

(5) Recommend to the Governor transfers of equipment and human resources from any executive agency and the most effective and efficient uses of the fiscal resources of executive agencies, to consolidate or centralize information-processing operations.
(c) The Chief Technology Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.

Any state spending unit that is required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall notify the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information and telecommunication systems. The notice shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the notice to the Chief Technology Officer at the same time it submits its request for proposal to the State Purchasing Division.

§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.

(a) Any state spending unit that is not required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall notify the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information or telecommunication systems. The notice shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the notice to the Chief Technology Officer a minimum of ten days prior to the time it requests bids on the provision of the goods or services.

(b) If the Chief Technology Officer evaluates the suitability of the information and telecommunication equipment and related services under the provisions of subdivision (3),
subsection (a), section four of this article and determines that the goods or services to be purchased are not suitable, he or she shall, within ten days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the Chief Technology Officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than fifteen days following receipt of the notice from the Chief Technology Officer.


The Chief Technology Officer shall report biannually to the Legislative Joint Committee on Government and Finance on the activities of his or her office.

§5A-6-8. Exemptions.

The provisions of this article do not apply to the Legislature or the Judiciary.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

(a) The Division is responsible for providing technical services and assistance to the various state spending units with respect to developing and improving data processing and telecommunications functions. The Division may provide training and direct data processing services to the various state agencies. The Division shall, upon request of the Chief Technology Officer, provide technical assistance in evaluating the economic justification, system design and suitability of
equipment and systems used in state government. The Director shall report to the Chief Technology Officer.

(b) The Director is responsible for the development of personnel to carry out the technical work of the Division and may approve reimbursement of costs incurred by employees to obtain education and training.

(c) The Director may assess each state spending unit for the cost of any evaluation of the economic justification, system design and suitability of equipment and systems used by the state spending unit or any other technical assistance that is provided or performed by the Chief Technology Officer and the Division under the provisions of section four, article six of this chapter.

(d) The Director shall transfer any moneys received as a result of the assessments that he or she makes under subsection (c) of this section to the Office of Technology. The Director shall report quarterly to the Joint Committee on Government and Finance on all assessments made pursuant to subsection (c) of this section.

(e) The Director shall maintain an accounting system for all telephone service to the state.

(f) The provisions of this article do not apply to the Legislature or the Judiciary.

(g) In consultation with the Adjutant General, Chairman of the Public Service Commission, the Superintendent of the State Police and the Director of the Division of Homeland Security and Emergency Management, the Director is responsible for the development and maintenance of an information systems disaster recovery system for the State of West Virginia with sites in one or more locations isolated from reasonably perceived threats to the primary operation of state government. The
Director shall develop specifications, funding mechanisms and participation requirements for all executive branch agencies to protect the state's essential data, information systems and critical government services in times of emergency, inoperativeness, or disaster. Each executive branch agency shall assist the Director in planning for its specific needs and provide to the Director any information or access to information systems or equipment that may be required in carrying out this purpose. No state-wide or executive branch agency procurement of disaster recovery services may be initiated, let or extended without the expressed consent of the Director.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in a rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-
nine-a of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the Director of the Section of Archives and History of the Division of Culture and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the Board in which the image of the original record is preserved in a form, including CD-ROM and optical image storage media, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the Board in accordance with the provisions of chapter twenty-nine-a of this code. The Board may prohibit the use of any format, process or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be
retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of section seven-c, article one, chapter fifty-seven of this code.

(d) A Records Management and Preservation Board for county government entities is continued to be composed of nine members.

(1) Three members shall serve ex officio. One member shall be the Commissioner of the Division of Culture and History or designee who shall be the chair of the Board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the Board with the advice and consent of the Senate. Not more than five appointments to the Board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of fifteen names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the
Governor by the West Virginia Sheriff's Association. And the names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the Board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the Board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the Board shall consist of the Director of the Archives and History Section of the Division of Culture and History and any additional staff as needed.

(g) The Board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish a system of records management and preservation for county governments: Provided, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of
West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state. The Board is not authorized to propose or promulgate emergency rules under the provisions of this section.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one-dollar fee for every document containing less than ten pages filed for recording and an additional one-dollar fee for each additional ten pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Account as established in the State Treasury all fees collected: Provided, That the clerk may retain not more than ten percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the "Public Records and Preservation Revenue Account". The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants or contributions received by the Board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code.

(j) Subject to the above provision, the Board may expend the funds in the account to implement the provisions of this
article. In expending funds from the account, the Board shall allocate not more than fifty percent of the funds for grants to counties for records management, access and preservation purposes. The Board shall provide for applications, set guidelines and establish procedures for distributing grants to counties including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article
1. Department of Commerce.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

The Department of Commerce consists of the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety
and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors’ Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission, provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) The Bureau of Employment Programs provided in chapter twenty-one-a of this code.

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.

§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

§5B-3-5. Joint Commission on Economic Development Studies.
§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

(a) The Joint Commission on Economic Development may review any procedural rule, interpretive rule or existing legislative rule and make recommendations concerning the rules to the Legislature.

(b) The Development Office and the Tourism Commission established pursuant to article two of this chapter, the Economic Development Authority established pursuant to article fifteen, chapter thirty-one of this code, the Bureau of Employment Programs established pursuant to article four, chapter twenty-one-a of this code, the Workers' Compensation Commission established pursuant to article one, chapter twenty-three of this code, the Workforce Investment Commission established pursuant to article two-c of this chapter, West Virginia Jobs Investment Trust, regional planning and development councils, West Virginia Rural Development Council, Office of Technology and West Virginia Clearinghouse for Workforce Education shall each file a copy of its legislative rules with the Commission as provided for in this section. Each agency that proposes legislative rules in accordance to the provisions of article three, three-a or three-b, chapter twenty-nine-a of this code relating to economic development or workforce development shall file the rules with the Joint Commission at the time the rules are filed with the Secretary of State prior to the public comment period or public hearing required in said chapter.

§5B-3-5. Joint Commission on Economic Development Studies.

(a) The Joint Commission on Economic Development shall study the following:

(1) The feasibility of establishing common regional configurations for local workforce investment areas, regional educational service agencies and for all other purposes the
Commission considers feasible. The study should review the existing levels of cooperation between state and local economic developers, complete an analysis of possible regional configurations and outline examples of other successful regional systems or networks found throughout the world. If the study determines that the common regional configurations are feasible, the Commission shall recommend legislation establishing common regional designations for all feasible purposes. In making the designation of regional areas, the study shall take into consideration, but not be limited to, the following:

(A) Geographic areas served by local educational agencies and intermediate educational agencies;

(B) Geographic areas served by post-secondary educational institutions and area vocational education schools;

(C) The extent to which the local areas are consistent with labor market areas;

(D) The distance that individuals will need to travel to receive services provided in the local areas; and

(E) The resources of the local areas that are available to effectively administer the activities or programs;

(2) The effectiveness and fiscal impact of incentives for attracting and growing businesses, especially technology-intensive companies; and

(3) A comprehensive review of West Virginia’s existing economic and community development resources and the recommendation of an organizational structure, including, but not limited to, the reorganization of the Department of Commerce and the Development Office that would allow the state to successfully compete in the new global economy.
(b) In order to effectuate in the most cost-effective and efficient manner the studies required in this article, it is necessary for the Joint Commission to assemble and compile a tremendous amount of information. The Development Office will assist the Joint Commission in the collection and analysis of this information. The Tourism Commission established pursuant to article two of this chapter, the Economic Development Authority established pursuant to article fifteen, chapter thirty-one of this code, the Bureau of Employment Programs established pursuant to article four, chapter twenty-one-a of this code, the Workers’ Compensation Commission established pursuant to article one, chapter twenty-three of this code, the Workforce Investment Commission established pursuant to article two-c of this chapter, West Virginia Jobs Investment Trust, Regional Planning and Development Councils, West Virginia Rural Development Council, Office of Technology and West Virginia Clearinghouse for Workforce Education shall provide a copy of their annual reports as submitted to the Governor in accordance with the requirements set forth in section twenty, article one, chapter five of this code to the West Virginia Development Office. The Development Office shall review, analyze and summarize the data contained in the reports, including its own annual report, and annually submit its findings to the Joint Commission on or before the thirty-first day of December.

(c) The Legislative Auditor shall provide to the Joint Commission a copy of any and all reports on agencies listed in subsection (b) of this section, which are required under article ten, chapter four of this code.

(d) The Joint Commission shall complete the studies set forth in this section and any other studies the Joint Commission determines to undertake prior to the first day of December of each year and may make recommendations, including recommended legislation for introduction during the regular session of the Legislature.
CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.
§5F-2-2. Power and authority of secretary of each department.

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

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;

(3) Governor’s Mansion Advisory Committee provided for in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) Education and State Employees Grievance Board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;

(6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code; and

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

   (A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

   (B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners’ Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners’ Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

   (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

   (B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and
(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) The Bureau of Employment Programs provided in chapter twenty-one-a of this code.

(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) Workers' Compensation Commission provided in article one, chapter twenty-three of this code is continued as an independent agency within the executive branch.

(f) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:
(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.
(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;
(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:
(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.
The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

1. Division of Highways provided in article two-a, chapter seventeen of this code;

2. Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

3. Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

4. Driver’s Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

5. Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

6. State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

7. Port Authority provided in article sixteen-b, chapter seventeen of this code.

Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifica-
tions of members of the boards are not affected by the enact-
ment of this chapter. All boards that are appellate bodies or are
independent decision makers shall not have their appellate or
independent decision-making status affected by the enactment
of this chapter.

(n) Any department previously transferred to and incorpo-
rated in a department by prior enactment of this section means
a division of the appropriate department. Wherever reference is
made to any department transferred to and incorporated in a
department created in section two, article one of this chapter,
the reference means a division of the appropriate department
and any reference to a division of a department so transferred
and incorporated means a section of the appropriate division of
the department.

(o) When an agency, board or commission is transferred
under a bureau or agency other than a department headed by a
secretary pursuant to this section, that transfer is solely for
purposes of administrative support and liaison with the Office
of the Governor, a department secretary or a bureau. Nothing in
this section extends the powers of department secretaries under
section two of this article to any person other than a department
secretary and nothing limits or abridges the statutory powers
and duties of statutory commissioners or officers pursuant to
this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the
contrary, the secretary of each department shall have plenary
power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary
employees as may be necessary to carry out the functions of the
secretary, which employees shall serve at the will and pleasure
of the secretary;
(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members, and name a person to fill more than one position;

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

(5) Reorganize internal functions or operations;

(6) Formulate comprehensive budgets for consideration by the Governor, and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the State Road Fund transferred to the Office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to the agency, board or function in order to implement consolidation. The authority to transfer
funds under this section shall expire on the thirtieth day of June, two thousand five;

(7) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(8) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(9) Conduct internal audits;

(10) Supervise internal management;

(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter twenty-nine-a of this code;
(12) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(13) Delegate to administrators the duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary; and

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

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction and restriction of the state’s vehicle or other transportation fleet;

(2) The elimination, reduction and restriction of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including
consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any program.

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board’s transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code, or the right of classified employees of the Board of Regents to the procedures and protections set forth in article twenty-six-b, chapter eighteen of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over
programs which are payors for prescription drugs, including but not limited to, the Public Employees Insurance Agency, the Children’s Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the Workers’ Compensation Fund, state colleges and universities, public hospitals, state or local institutions including nursing homes and veteran’s homes, the Division of Rehabilitation, public health departments, the Bureau of Medical Services and other programs that are payors for prescription drugs, shall cooperate with the Office of the Pharmaceutical Advocate established pursuant to section four, article sixteen-d, chapter five of this code for the purpose of purchasing prescription drugs for any program over which they have authority.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia Educational Broadcasting Authority; members; organization; officers; employees; meetings; expenses.
§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.

§10-5-2. West Virginia Educational Broadcasting Authority; members; organization; officers; employees; meetings; expenses.

(a) The West Virginia Educational Broadcasting Authority is hereby continued as a public benefit corporation. The Authority shall consist of eleven voting members, who shall be residents of the state, including the Governor or designee, the State Superintendent of Schools, one member of the West Virginia Board of Education to be selected by it annually, and one member of the West Virginia Higher Education Policy
Commission to be selected by it annually. The other seven members shall be appointed by the Governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year. Not less than one appointive member shall come from each congressional district. Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the Authority. Any vacancy among the appointive members shall be filled by the Governor by appointment for the unexpired term.

(b) As of the effective date of the reenactment of this section during the Regular Session of 2005, the Governor or designee serves as chair, for a term not to exceed four years unless extended by act of the Legislature. Thereafter, the Authority shall select the chair. The Authority shall annually select one of its public members as vice chair and shall appoint a secretary who need not be a member of the Authority and who shall keep records of its proceedings.

(c) As of the effective date of the reenactment of this section during the Regular Session of 2005, the Governor shall appoint an Executive Director, at a salary fixed by the Governor, to serve for a term not to exceed four years unless extended by act of the Legislature. Thereafter the Authority shall appoint the Executive Director and fix his or her salary. The Executive Director is responsible for managing and administering the daily functions of the Authority and for performing all other functions necessary to the effective operation of the Authority. The Authority is authorized to establish offices for the proper performance of its duties.

(d) The Authority shall hold at least one annual meeting. The time and place of the meetings shall be established upon its own resolution or at the call of the chairperson of the Authority. The members shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually
incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.

(a) The Authority shall appoint an Advisory Committee on Journalistic and Editorial Integrity, which shall consist of five qualified members to serve staggered terms of three years. The Advisory Committee shall annually elect a chair, vice chair and secretary.

(b) The Advisory Committee shall advise the Authority on issues related to the journalistic independence and editorial integrity of public education and public broadcasting stations, which have the same constitutional protections as other journalistic enterprises in West Virginia.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-6. Chief Administrative Law Judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except Chief Administrative Law Judge, members of classified service; qualifications of administrative law judges.

§11-10A-6. Chief Administrative Law Judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.

(a) The Governor, with the advice and consent of the Senate, shall appoint the Chief Administrative Law Judge from a list of three qualified nominees submitted to the Governor by the Board of Governors of the West Virginia State Bar for a four-year term. An appointment to fill a vacancy in the position shall be for the unexpired term.
(b) Prior to appointment, the Chief Administrative Law Judge shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state and who has five years of full-time or equivalent part-time experience as an attorney with federal or state tax law expertise or as a judge of a court of record.

(c) The salary of the Chief Administrative Law Judge shall be set by the Secretary of the Department of Revenue created in section two, article one, chapter five-f of this code. The salary shall be within the salary range for comparable chief administrative law judges as determined by the State Personnel Board created by section six, article six, chapter twenty-nine of this code.

(d) The Chief Administrative Law Judge during his or her term shall:

(1) Devote his or her full time to the duties of the position;

(2) Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law: Provided, That nothing in this paragraph may be construed to prohibit the Chief Administrative Law Judge from being a member of a national, state or local bar association or committee, or of any other similar group or organization, or to prohibit the Chief Administrative Law Judge from engaging in the practice of law by representing himself, herself or his or her immediate family in their personal affairs in matters not subject to this article.

(3) Not engage directly or indirectly in any activity, occupation or business interfering or inconsistent with his or her duties as Chief Administrative Law Judge;

(4) Not hold any other appointed public office or any elected public office or any other position of public trust; and
(5) Not be a candidate for any elected public office, or serve on or under any committee of any political party.

(e) The Governor may remove the Chief Administrative Law Judge only for incompetence, neglect of duty, official misconduct or violation of subsection (d) of this section, and removal shall be in the same manner as that specified for removal of elected state officials in section six, article six, chapter six of this code.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except Chief Administrative Law Judge, members of classified service; qualifications of administrative law judges.

(a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax Appeals and he or she may employ one person to serve as executive director, one staff attorney and other clerical personnel as necessary for the proper administration of this article. The Chief Administrative Law Judge may delegate administrative duties to other employees, but the Chief Administrative Law Judge shall be responsible for all official delegated acts.

(1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up to two administrative law judges as necessary for the proper administration of this article.

(2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge, shall be in the classified service and shall be governed by the provisions of the statutes, rules and policies of the classified service in accordance with the provisions of article six, chapter twenty-nine of this code.

(3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall be admitted to the practice of law in this state and have at least two years of full-time or
equivalent part-time experience as an attorney with federal or state tax law expertise.

(4) The Chief Administrative Law Judge and all administrative law judges shall be members of the public employees retirement system and do not qualify as participants in the judicial retirement system during their tenure with the Office of Tax Appeals.

(b) The Chief Administrative Law Judge shall:

(1) Direct and supervise the work of the legal staff;

(2) Make hearing assignments;

(3) Maintain the records of the Office of Tax Appeals;

(4) Review and approve decisions of administrative law judges as to legal accuracy, clarity and other requirements;

(5) Publish decisions in accordance with the provisions of section sixteen of this article;

(6) Submit to the Legislature, on or before the fifteenth day of February, an annual report summarizing the Office of Tax Appeals' activities since the end of the last report period, including a statement of the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal year and the number of matters pending at the end of the year; and

(7) Perform the other duties necessary and proper to carry out the purposes of this article.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.


(a) The West Virginia Parkways, Economic Development and Tourism Authority is continued as an agency of the state, and the exercise by the Parkways Authority of the powers conferred by this article in the construction, reconstruction, improvement, operation and maintenance of parkway, economic development and tourism projects shall be deemed an essential governmental function of the state.

(b) The West Virginia Parkways, Economic Development and Tourism Authority shall consist of seven members, including the Governor or designee, the Transportation Secretary and five public members appointed by the Governor, by and with the advice and consent of the Senate. The appointed members shall be residents of the state and shall have been qualified electors for a period of at least one year next preceding their appointment. Public members are appointed for eight-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. 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 shall be eligible for reappointment. Each appointed member of the Parkways Authority before entering upon his or her duties shall take an oath as provided by section five, article IV of the Constitution of West Virginia.

(c) The Governor or designee shall serve as chair and the Authority shall annually elect one of the appointed members as vice chair, and shall also elect a secretary and treasurer who need not be members of the Parkways Authority.
(d) The Governor appoints an Executive Director of the Authority with the advice and consent of the Senate. The Executive Director serves at the Governor's will and pleasure. The Executive Director is responsible for managing and administering the daily functions of the Authority and for performing all other functions necessary to the effective operation of the Authority. The compensation of the Executive Director is annually fixed by the Governor.

(e) Four members of the Parkways Authority shall constitute a quorum and the vote of a majority of members present shall be necessary for any action taken by the Parkways Authority. No vacancy in the membership of the Parkways Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Parkways Authority. The Parkways Authority shall meet at least monthly and either the chair or any four members shall be empowered to call special meetings for any purpose: Provided, That notice of any meeting shall be given to all members of the Parkways Authority not less than ten days prior to said special meetings.

(f) Before the issuance of any parkway revenue bonds or revenue refunding bonds under the provisions of this article, each appointed member of the Parkways Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars and the secretary and treasurer shall execute a surety bond in the penal sum of fifty thousand dollars, each surety bond to be conditioned upon the faithful performance of the duties of his or her office, to be executed by a surety company authorized to transact business in West Virginia as surety and to be approved by the Governor and filed in the Office of the Secretary of State.

(g) The members of the Parkways Authority shall not be entitled to compensation for their services, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consis-
tent with guidelines of the Travel Management Office of the
Department of Administration.

(h) All expenses incurred in carrying out the provisions of
this article shall be payable solely from funds provided under
the authority of this article and no liability or obligation shall be
incurred by the Parkways Authority beyond the extent to which
moneys shall have been provided under the authority of this
article.

(i) Pursuant to the provisions of article ten, chapter four of
this code, the West Virginia Parkways, Economic Development
and Tourism Authority shall continue to exist until the first day
of July, two thousand seven.


(a) The Parkways Authority is authorized to provide by
resolution for the issuance of parkway revenue bonds of the
state for the purpose of paying all or any part of the cost of one
or more projects: Provided, That this section shall not be
construed as authorizing the issuance of parkway revenue bonds
for the purpose of paying the cost of the West Virginia Turn-
pike, which parkway revenue bonds may be issued only as
authorized under section eleven of this article. The principal of
and the interest on bonds shall be payable solely from the funds
provided for payment.

(b) The bonds of each issue shall be dated, shall bear
interest at a rate as may be determined by the Parkways
Authority in its sole discretion, shall mature at a time not
exceeding forty years from their date or of issue as may be
determined by the Parkways Authority, and may be made
redeemable before maturity, at the option of the Parkways
Authority at a price and under the terms and conditions as may
be fixed by the Parkways Authority prior to the issuance of the
bonds.
(c) The Parkways Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the state.

(d) The bonds shall be executed by manual or facsimile signature by the chair of the Parkways Authority, and the official seal of the Parkways Authority shall be affixed to or printed on each bond, and attested, manually or by facsimile signature, by the secretary and treasurer of the Parkways Authority. Any coupons attached to any bond shall bear the manual or facsimile signature of the chair of the Parkways Authority.

(e) In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. In case the seal of the Parkways Authority has been changed after a facsimile has been imprinted on the bonds, then the facsimile seal will continue to be sufficient for all purposes.

(f) All bonds issued under the provisions of this article shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or in registered form, or both, as the Parkways Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the recorders into coupon bonds of any bonds registered as to both principal and interest.

(g) The Parkways Authority may sell the bonds at a public or private sale at a price it determines to be in the best interests of the state.
(h) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the parkway project or projects for which the bonds were issued, and shall be disbursed in a manner consistent with the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(i) If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, then additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued.

(j) If the proceeds of the bonds of any issue exceed the cost of the project or projects for which the bonds were issued, then the surplus shall be deposited to the credit of the sinking fund for the bonds.

(k) Prior to the preparation of definitive bonds, the Parkways Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Parkways Authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(l) Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state in accordance with this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.
§49-9-15. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The Council shall consist of eleven members, who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the Council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway or exploitation of children or locating missing children;

(2) The Secretary of the Department of Health and Human Resources or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Criminal Justice and Highway Safety Division or his or her designee; and

(6) The Executive Director of the Governor's Cabinet on Children and Families.

(b) The Governor shall appoint the six Council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as
designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the Council 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 in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the Council shall be designated by the Governor from among the appointed Council members who represent nonprofit organizations involved with preventing the abduction, runaway or exploitation of children or locating missing children. The term of the chair shall run concurrently with his or her term of office as a member of the Council. The Council shall conduct all meetings in accordance with the open governmental meetings law pursuant to article nine-a, chapter six of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by section three of this article shall serve as the Executive Director of the Council. He or she shall receive no additional compensation for service as the Executive Director of the Council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as Executive Director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.
(f) The expenses of Council members and the Executive Director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section seventeen of this article.

(g) The Executive Director shall provide or obtain information necessary to support the administrative work of the Council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(h) The Executive Director of the Council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(i) The Council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and to the Joint Committee on Government and Finance on or before the fifteenth day of December of each year.

CHAPTER 201

(H. B. 2984 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §5-5-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10-2, §5-10-15, §5-
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10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code; to amend said code by adding thereto a new section, designated §5-10-22h; to amend and reenact §5-10A-2 and §5-10A-3 of said code; to amend said code by adding thereto a new section, designated §5-10A-11; to amend and reenact §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code; to amend and reenact §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code; to amend said code by adding thereto a new section designated §12-8-15; to amend and reenact §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code; to amend said code by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; to amend and reenact §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code; to amend said code by adding thereto four new sections, designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-18, §18-7A-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code; to amend said code by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; to amend and reenact §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code; to amend and reenact said code by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; to amend said code by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and to amend said code by adding thereto a new section, designated §51-9-6c, all relating to state pensions and retirement generally; providing comprehensive changes to certain plans administered by the Consolidated Public Retirement Board; enacting the Governor's Pension Reform Act of 2005; rights of members' unused, accrued leave in final average salary in the Public Employees Retirement System; limitations on benefit increases; bond pledges and
covenants regarding unfunded liabilities; limiting time for amortization; amending and adding definitions in the Public Employees Retirement System; clarifying use of restricted qualified military service credit to one retirement system; vesting of retirement benefits for those members of the armed forces accumulating nine or more years of credited service who are called from participating employment to compulsory military service or armed conflict and who die during, or as a result of, compulsory active service and prior to resumption of participating employment; setting time limit on application; restricting certain rights of members to select a plan beneficiary; establishing a cap on the amount certain persons may receive from the Public Employees Retirement System where that person is also receiving a pension from another pension or retirement system administered by the Consolidated Public Retirement Board; authorizing annual physician review and requiring an annual statement of earnings from certain persons receiving disability retirement payments; providing for suspension of benefits upon failure of disability retiree to furnish certain information; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; addressing the correction of employer errors; clarifying use of members' unused, accrued leave in final average salary; making technical corrections to the Public Employees Retirement System; amending the definitions of less than honorable service and retirement plan; increasing the time to issue notice to terminate benefits; requiring prosecuting attorneys to notify retirement board of any convictions or pleas to less than honorable service; declaring policy and making legislative findings regarding pension liability redemption; setting forth definitions; providing for issuance of bonds; method of bond issuance and sale of bonds; use of bond proceeds; continuation of Pension Liability Redemption Fund and disbursements therefrom; setting forth state pledges and covenants; operation of article; relating to the Deputy Sheriff Retirement System; concurrent contributions by members and employers; credit for nondeputy sheriff service in the Public Employees Retirement System prior
to transfer; treatment of withdrawals not repaid prior to transfer; providing that any person becoming a member of the Deputy Sheriff Retirement System after the first day of July, two thousand five, may not borrow from that plan; relating to the West Virginia State Police Death, Disability and Retirement Fund generally; adding general definitions to the West Virginia State Police Death, Disability and Retirement Fund; adding definitions of "law-enforcement officer", "partially disabled", "totally disabled" and "physical or mental impairment" to the West Virginia State Police Death, Disability and Retirement Fund; making technical changes in to the West Virginia State Police Death, Disability and Retirement Fund; providing for probable permanent disability status; specifying that total disability now is inability to perform any substantial gainful employment and that partial disability is inability to perform law enforcement duties; specifying limitation on compensation rendered to health care providers; providing that member receiving annuity for partial disability incurred in performance of duty may be employed as an elected sheriff or appointed chief of police if it is shown to the Board that such employment is not inconsistent with the partial disability; allowing application for disability to be made by person acting on member's behalf; allowing Superintendent to petition Board for member's disability when he or she deems the member disabled; authorizing rules; judicial review; allowing Board to withhold payment pending judicial review; requiring disability recipient to file annual statement of earnings and setting forth penalty for refusal or failure to do so; annual report of employer's disability retirement experience in to the West Virginia State Police Death, Disability and Retirement Fund; limitation on benefit increases; relating to amending definitions in the West Virginia State Police Retirement System; determination of contributions; acquiring retirement credited service through member's use of accrued annual or sick leave days in the West Virginia State Police Retirement System; establishing starting date for payment of annuity in the West Virginia State Police Retirement System; clarifying disability provisions and
technical corrections in the West Virginia State Police Retirement System; annual report of employer’s disability retirement experience in to the West Virginia State Police Retirement System; limitation on benefit increases; amending provisions relating to the State Teachers Retirement System; amending, adding and alphabetizing the definitions; providing for the use of qualified military service in the State Teachers Retirement System; providing that in the case of deceased retired participants that interest is to be included in the calculation of terminal benefits payable and making other technical modifications in the State Teachers Retirement System; clarifying provisions for loan repayment in the State Teachers Retirement System; replacing earnable compensation with gross salary in the State Teachers Retirement System; clarifying maximum loan amount and making technical corrections in the State Teachers Retirement System; making technical corrections to the Teachers Retirement System; creating the Teachers Employers Contribution Collection Account; monies to be deposited and transfer of monies in account; continuing the Teachers Retirement System Fund; monies to be deposited and use of monies in fund; discontinuing the loan program participation of teachers and nonteachers who become members of the Teachers Retirement System on or after the first day of July, two thousand five; limitation on benefits; creating Employee Pension and Health Care Benefits Fund; moneys to be deposited; use of moneys in fund; amending certain definitions in the Teachers’ Defined Contribution System; clarifying participation requirement in the Teachers’ Defined Contribution System; providing employer deadlines for deposit of contributions in the Teachers Defined Contribution System; establishing when payments are to be made into and out of the suspension account in the Teachers Defined Contribution System; adding the Internal Revenue Service provisions concerning incidental death benefits in the Teachers Defined Contribution System; clarifying that all years of employee service will be counted for vesting purposes in the Teachers Defined Contribution System; prohibiting involuntary cash-outs effective the
thirtieth day of June, two thousand five; making technical corrections in the Teachers Defined Contribution System; requiring River Valley Child Development Services to offer pension plan for employees; allowing employees to withdraw from PERS; requiring notice; relating to the merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System generally; closing the Teachers Defined Contribution Retirement System to newly hired personnel; providing legislative findings and purpose; providing definitions; providing for merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System upon election; providing responsibilities of the Consolidated Public Retirement Board; setting forth dates and time periods for transition and election; requiring that increase of or new benefits to the Teachers Retirement System be amortized over a ten-year time period; providing for education about election and merger for members; requiring legal notice to members; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon favorable vote for consolidation and merger; providing that the Teachers Defined Contribution Retirement System shall not exist upon favorable vote for consolidation and merger; setting forth terms of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; providing for service credit in the State Teachers Retirement; requiring members of Teachers Defined Contribution Plan to pay additional amount to receive credit upon merger; providing options and loans for members moving to the remaining plan; providing service credit for transferring member; addressing withdrawals and cash outs; providing for election on the question of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; setting forth requirements of election; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the merger.
and consolidation and conducting the election; permitting only one election; addressing qualified domestic relations orders; providing for vesting of members and minimum guarantees of benefits for them; providing for due process and right to appeal; providing for nonseverability of the new article; and limitation on benefit increases in Judges’ Retirement System.

Be it enacted by the Legislature of West Virginia:

new sections, designated §18-7B-7a and §18-7B-20; that said code be amended by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and that said code be amended by adding thereto a new section, designated §51-9-6c, all to read as follows:

Chapter

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

7. County Commissions and Officers.


15. Public Safety.

18. Education.

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

Article

5. Salary Increase for State Employees.

10. West Virginia Public Employees Retirement Act.

10A. Disqualification for Public Retirement Plan Benefits.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused leave at termination of employment; no withholding of any employee contribution deduction; exception.

1 Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at the time.
The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his or her employment continued. In determining the amount of leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued leave of any kind or character, since no period of service credit is granted in relation thereto; however, lump sum payment for unused, accrued leave of any kind or character may not be a part of final average salary computation; and where any deduction of employee contribution may have been made previously, a refund of the amount deducted shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the Superintendent of the West Virginia State Police shall make deductions for retirement contributions of members of the State Police Death, Disability and Retirement Fund created and continued in section twenty-six, article two, chapter fifteen of this code since retirement benefits are based on cumulative earnings rather than period of service.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
§5-10-15. Military service credit; qualified military service.
§5-10-17. Retirement system membership.
§5-10-21. Deferred retirement and early retirement.
§5-10-22. Retirement annuity.
§5-10-22h. Limitations on benefit increases.
§5-10-23. Terminal payment following retirement.
§5-10-26. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.
§5-10-27. Preretirement death annuities.
§5-10-31. Employers accumulation fund; employers contributions.
§5-10-44. Correction of errors.

§5-10-2. Definitions.
Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the Board of Trustees from time to time;

(6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "Board" means the Board of Trustees of the West Virginia Consolidated Public Retirement System;

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal
services rendered by the member to the participating public employer. In the event a member’s remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money;

(9) “Contributing service” means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) “Credited service” means the sum of a member’s prior service credit, military service credit, workers’ compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) “Employee” means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: Provided, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the Clerk of the House in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, article ten,
chapter five of this code, and: Provided however, That members
of the legislative body of any political subdivision and judges
of the State Court of Claims are employees receiving one year
of service credit for each one year term served and pro rated
service credit for any partial term served, anything contained in
this article to the contrary notwithstanding. In any case of doubt
as to who is an employee within the meaning of this article, the
board of trustees shall decide the question;

(12) "Employer error" means an omission, misrepresentation,
or violation of relevant provisions of the West Virginia
Code or of the West Virginia Code of State Regulations or the
relevant provisions of both the West Virginia Code and of the
West Virginia Code of State Regulations by the participating
public employer that has resulted in an underpayment or
overpayment of contributions required. A deliberate act
contrary to the provisions of this section by a participating
public employer does not constitute employer error.

(13) "Final average salary" means either:

(A) The average of the highest annual compensation
received by a member, (including a member of the Legislature
who participates in the retirement system in the year one
thousand nine hundred seventy-one or thereafter), during any
period of three consecutive years of credited service contained
within the member’s ten years of credited service immediately
preceding the date his or her employment with a participating
public employer last terminated; or

(B) If the member has less than five years of credited
service, the average of the annual rate of compensation received
by the member during his or her total years of credited service;
and in determining the annual compensation, under either
paragraph (A) or (B) of this subdivision, of a member of the
Legislature who participates in the retirement system as a
member of the Legislature in the year one thousand nine hundred seventy-one, or in any year thereafter, his or her actual legislative compensation, (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code), in the year one thousand nine hundred seventy-one, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one, who, in either event, was a member of the Legislature on the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) “final average salary” determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the
member produces the higher annual compensation);

(14) "Internal Revenue Code" means the Internal Revenue
Code of 1986, as amended, codified at Title 26 of the United
States Code;

(15) "Limited credited service" means service by employ-
ees of the West Virginia Educational Broadcasting Authority,
in the employment of West Virginia University, during a period
when the employee made contributions to another retirement
system, as required by West Virginia University, and did not
make contributions to the Public Employees Retirement
System: Provided, That while limited credited service can be
used for the formula set forth in subsection (e), section twenty-
one of this article, it may not be used to increase benefits
calculated under section twenty-two of this article;

(16) "Member" means any person who has accumulated
c contributions standing to his or her credit in the members'
deposit fund;

(17) "Participating public employer" means the State of
West Virginia, any board, commission, department, institution
or spending unit, and includes any agency created by rule of the
Supreme Court of Appeals having full-time employees, which
for the purposes of this article is considered a department of
state government; and any political subdivision in the state
which has elected to cover its employees, as defined in this
article, under the West Virginia Public Employees Retirement
System;

(18) "Plan year" means the same as referenced in section
forty-two of this article;

(19) "Political subdivision" means the State of West
Virginia, a county, city or town in the state; a school corpora-
tion or corporate unit; any separate corporation or instrumental-
ity established by one or more counties, cities or towns, as
permitted by law; any corporation or instrumentality supported
in most part by counties, cities or towns; and any public
corporation charged by law with the performance of a govern-
mental function and whose jurisdiction is coextensive with one
or more counties, cities or towns: Provided, That any mental
health agency participating in the Public Employees Retirement
System before the first day of July, one thousand nine hundred
ninety-seven, is considered a political subdivision solely for the
purpose of permitting those employees who are members of the
Public Employees Retirement System to remain members and
continue to participate in the retirement system at their option
after the first day of July, one thousand nine hundred ninety-
seven: Provided, however, That the Regional Community
Policing Institute which participated in the Public Employees
Retirement System before the first day of July, two thousand,
is considered a political subdivision solely for the purpose of
permitting those employees who are members of the Public
Employees Retirement System to remain members and continue
to participate in the Public Employees Retirement System after
the first day of July, two thousand;

(20) "Prior service" means service rendered prior to the first
day of July, one thousand nine hundred sixty-one, to the extent
credited a member as provided in this article;

(21) "Regular interest" means the rate or rates of interest
per annum, compounded annually, as the board of trustees
adopts from time to time;

(22) "Required beginning date" means the first day of April
of the calendar year following the later of: (A) The calendar
year in which the member attains age seventy and one-half
years of age; or (B) the calendar year in which a member who
has attained the age seventy and one-half years of age and who
ceases providing service covered under this system to a participating employer;

(23) "Retirant" means any member who commences an annuity payable by the retirement system;

(24) "Retirement" means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(26) "Retroactive service" means: (1) Service between the first day of July, one thousand nine hundred sixty-one, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to the first day of July, one thousand nine hundred sixty-one, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer; and

(28) "State" means the State of West Virginia.

§5-10-15. Military service credit; qualified military service.

(a) (1) The Legislature recognizes the men and women of this state who have served in the Armed Forces of the United States during times of war, conflict and danger. It is the intent
of this section to confer military service credit upon persons
who are eligible at any time for public employees retirement
benefits for any time served in active duty in the Armed Forces
of the United States when the duty was during any period of
compulsory military service or during a period of armed
conflict, as defined in this section.

(2) In addition to any benefit provided by federal law, any
member of the retirement system who has previously served in
or enters the active service of the Armed Forces of the United
States during any period of compulsory military service or
during a period of armed conflict shall receive credited service
for the time spent in the Armed Forces of the United States, not
to exceed five years if the member:

(A) Has been honorably discharged from the Armed Forces;
and

(B) Substantiates by appropriate documentation or evidence
his or her active military service and entry into military service
during any period of compulsory military service or during
periods of armed conflict.

(3) Any member of the retirement system who enters the
active service of the Armed Forces of the United States during
any period of compulsory military service or during a period of
armed conflict shall receive the credit provided by this section
regardless of whether he or she was a public employee at the
time of entering the military service.

(4) If a member of the Public Employees Retirement
System enters the active service of the United States and serves
during any period of compulsory military service or during any
period of armed conflict, during the period of the armed service
and until the member's return to the employ of a participating
public employer, the member's contributions to the retirement
system is suspended and any credit balance remaining in the
member's deposit fund shall be accumulated at regular interest:  

Provided, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving in the military service during any period of compulsory military service or armed conflict has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a total of five years, is considered to be credited service and death benefits are vested in the member: Provided, however, That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

(5) No member may receive duplicate credit for service for a period of compulsory military service which falls under a period of armed conflict.

(6) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees have final power to determine the period.

(7) The Board may consider a petition by any member whose tour of duty, in a territory that would reasonably be considered hostile and dangerous, was extended beyond the period in which an armed conflict was officially recognized, if that tour of duty commenced during a period of armed conflict, and the member was assigned to duty stations within the hostile territory throughout the period for which service credit is being sought. The Board has the authority to evaluate the facts and circumstances peculiar to the petition, and rule on whether
granting service credit for the extended tour of duty is consistent with the objectives of this article. In that determination, the Board may grant full credit for the period under petition subject to the limitations otherwise applicable, or to grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.

(8) The Board of Trustees may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

(b) For purposes of this section, the following definitions apply:

(1) "Period of armed conflict" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and any other period of armed conflict by the United States, including, but not limited to, those periods sanctioned by a declaration of war by the United States Congress or by executive or other order of the President.

(2) "Spanish-American War" means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fifteenth day of July, one thousand nine hundred three.

(3) "The Mexican border period" means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine
hundred seventeen, in the case of a veteran who during the
period served in Mexico, on its borders or in the waters adjacent
to it.

(4) “World War I” means the period beginning on the sixth
day of April, one thousand nine hundred seventeen, and ending
on the eleventh day of November, one thousand nine hundred
eighteen, and in the case of a veteran who served with the
United States military forces in Russia, means the period
beginning on the sixth day of April, one thousand nine hundred
seventeen, and ending on the first day of April, one thousand
nine hundred twenty.

(5) “World War II” means the period beginning on the
seventh day of December, one thousand nine hundred forty-one,
and ending on the thirty-first day of December, one thousand
nine hundred forty-six.

(6) “Korean conflict” means the period beginning on the
twenty-seventh day of June, one thousand nine hundred fifty,
and ending on the thirty-first day of January, one thousand nine
hundred fifty-five.

(7) “The Vietnam era” means the period beginning on the
twenty-eighth day of February, one thousand nine hundred
sixty-one, and ending on the seventh day of May, one thousand
nine hundred seventy-five, in the case of a veteran who served
in the Republic of Vietnam during that period; and the fifth day
of August, one thousand nine hundred sixty-four, and ending on
the seventh day of May, one thousand nine hundred seventy-
five, in all other cases.

(8) “Persian Gulf War” means the period beginning on the
second day of August, one thousand nine hundred ninety, and
ending on the eleventh day of April, one thousand nine hundred
ninety-one.
(c) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board and once used in any system, may not be used again in any other system. The Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Board in section one, article ten-d of this chapter, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the Public Employees Retirement System shall not include any person who is an active contributing member of, or who has been retired by, any of the State Teachers retirement systems, the Judges Retirement System, any Retirement System of the West Virginia State Police, the
Deputy Sheriff Retirement System or any municipal retirement system for either, or both, police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership do not apply to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighter may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal police officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the Deputy Sheriff Retirement System: Provided further, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighters, who begins participation in the retirement system established in this article on or after the first day of July, two thousand five, may not receive a combined retirement benefit in excess of one hundred five percent of the member's highest annual salary earned while either a member of the retirement system established in this article or while a member of the other retirement system or systems from which he or she previously retired when adding the retirement benefit from the retirement system created in this article to the retirement benefit received by that member from the other retirement system or systems set forth
herein from which he or she previously retired: *And provided further*, That the membership of the retirement system does not include any person who becomes employed by the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services or Eastern Panhandle Mental Health Center on or after the first day of July, one thousand nine hundred ninety-seven: *And provided further*, That membership of the retirement system does not include any person who becomes a member of the federal railroad retirement act on or after the first day of July, two thousand.

(c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate and any employee of the State Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between sessions in seven consecutive calendar years, as certified by the Clerk of the House in which the employee served, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he or she notifies the retirement system in writing of his or her intention to be a member of the system and files a membership enrollment form as prescribed by the Board of Trustees, and each person, upon filing his or her written notice to participate in the retirement system, shall by that act authorize the Clerk of the House of Delegates or the Clerk of the State Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct the member’s contribution, as provided in subsection (b), section twenty-nine of this article, and after the deductions have been made from the member’s compensation, the deductions shall be forwarded to the retirement system.
(d) If question arises regarding the membership status of any employee, the Board of Trustees has the final power to decide the question.

(e) Any individual who is a leased employee is not eligible to participate in the system. For the purposes of this article, the term "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the Board has final authority to decide the question.

§5-10-21. Deferred retirement and early retirement.

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That on and after the first day of July, two thousand two, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the Board of Trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and
has ten or more years of credited service in force and who has
attained age fifty-five as of the date of his or her separation,
may, prior to the effective date of his or her retirement, but not
thereafter, elect to receive the actuarial equivalent of his or her
defered retirement annuity as a reduced annuity commencing
on the first day of any calendar month between his or her date
of separation and his or her attainment of age sixty-two years
and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement
benefits in accordance with subsection (a) of this section and
has twenty or more years of credited service in force may elect
to receive the actuarial equivalent of his or her deferred
retirement annuity as a reduced annuity commencing on the
first day of any calendar month between his or her fifty-fifth
birthday and his or her attainment of age sixty-two years and
payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, and pursuant to rules promul-
gated by the Board, any member who has thirty or more years
of credited service in force, at least three of which are contrib-
uting service, and who elects to take early retirement, which for
the purposes of this subsection means retirement prior to age
sixty, whether an active employee or a separated employee at
the time of application, is entitled to the full computation of
annuity according to section twenty-two of this article, as that
section was in force as of the date of retirement application, but
with the reduced actuarial equivalent of the annuity the member
would have received if his or her benefit had commenced at age
sixty when he or she would have been entitled to full computa-
tion of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty. The member’s annuity shall begin the first day of the calendar month immediately following the calendar month in which his or her application for the annuity is filed with the Board.

§5-10-22. Retirement annuity.

(a) Upon a member’s retirement, as provided in this article, he or she shall receive a straight life annuity equal to one and five-tenths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service in force at the time of his or her retirement: Provided, That the final average salary used in this calculation does not include any lump sum payment for unused, accrued leave of any kind or character. The credited service used for this calculation may not include any period of limited credited service: Provided, however, That after March 1, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement. In either event, upon his or her retirement he or she has the right to elect an option provided in section twenty-four of this article. All annuity payments shall commence effective the first day of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which the retirant or beneficiary dies, and the annuity payments may not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies. Any
member receiving an annuity based in part upon limited
credited service is not eligible for the supplements provided in
sections twenty-two-a through twenty-two-d, inclusive, of this
article.

(b) The annuity of any member of the Legislature who
participates in the retirement system as a member of the
Legislature and who retires under this article or of any former
member of the Legislature who has retired under this article
(including any former member of the Legislature who has
retired under this article and whose annuity was readjusted as
of the first day of March, one thousand nine hundred seventy,
under the former provisions of this section) shall be increased
from time to time during the period of his or her retirement
when and if the legislative compensation paid under section
two, article two-a, chapter four of this code, to a member of the
Legislature shall be increased to the point where a higher
annuity would be payable to the retirant if he or she were
retiring as of the effective date of the latest increase in legisla-
tive compensation, but on the basis of his or her years of
credited service to the date of his or her actual retirement.

§5-10-22h. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or
create any new benefits for any retirees or beneficiaries
currently receiving monthly benefit payments from the system,
other than an increase in benefits or new benefits effected by
operation of law in effect on the effective date of this article, in
an amount that would exceed more than one percent of the
accrued actuarial liability of the system as of the last day of the
preceding fiscal year as determined in the annual actuarial
valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year
as of the date the improvement is adopted by the Legislature.
(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

§5-10-23. Terminal payment following retirement.

(a) This section provides for the payment of the balance in a retired member’s account in the event that all claims to
benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the occasion of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member, whichever occurs later.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member’s account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member’s estate.

§5-10-26. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.

(a) At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the Board may require a disability retirant, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retirant’s physician certifying continued disability, or both, and a copy of the disability retirants’s annual statement of earnings. If the retirant refuses to submit to the medical examination or provide the certification or statement in any period, his or her disability annuity may be discontinued by the Board until the retirant complies. If
the refusal continues for one year, all the retirant’s rights in and
to the annuity may be revoked by the board. If, upon medical
examination of a disability retirant, the physician reports to the
board that the retirant is physically able and capable of resum-
ing employment with a participating public employer, the
retirant shall be returned to the employ of the participating
public employer from whose employment he or she retired and
his or her disability annuity shall terminate: Provided, That the
Board concurs in the physician’s report.

(b) A disability retirant who is returned to the employ of a
participating public employer shall again become a member of
the retirement system and the retirant’s credited service in force
at the time of his or her retirement shall be restored.

(c) If a review of the disability retirant’s annual statement
of earnings or other financial information as required by the
Board determines that the disability retirant’s earned income for
the preceding year exceeds the substantial gainful activity
amount as defined by the United States Social Security Admin-
istration, the disability retirant’s annuity shall be terminated by
the Board, upon recommendation of the Board’s disability
review committee, on the first day of the month following the
Board’s action. Any person who wishes to reapply for disability
retirement and whose disability retirement annuity has been
terminated by the Board may do so within ninety days of the
effective date of termination by requesting an examination at
the applicant’s expense by an appropriate medical professional
chosen by the Board.

§5-10-27. Preretirement death annuities.

(a) In the event any member who has ten or more years of
credited service or any former member with ten or more years
of credited service and who is entitled to a deferred annuity,
pursuant to section twenty-one of this article: (1) Dies without
leaving a surviving spouse; but (2) leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the Board; and (3) has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (1) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (2) elected option A provided for in section twenty-four of this article; and (3) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies; and (2) leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (1) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (2) elected option A provided in section twenty-four of this article; and (3) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the Board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the Board, the member or former member, may nominate a beneficiary who has an insurable interest in the member’s or
former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the Board.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly installments to the member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than two hundred fifty dollars per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section.

§5-10-31. Employers accumulation fund; employers contributions.
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(a) The employers accumulation fund is hereby continued. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers’ contributions to the retirement system, as determined by the Consolidated Public Retirement Board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members’ total annual compensation related to benefits under this retirement system. In determining the amount, the Board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the Board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, if the inability of the board to increase employer contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State’s determination of whether an emergency rule should be approved.
§5-10-44. Correction of errors.

1 If any change or employer error in the records of any participating public employer or the retirement system results in any person receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the Board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the employee remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement and loan interest factors, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

§5-10A-11. Notification from prosecuting attorneys.

§5-10A-2. Definitions.

1 As used in this article:

2 (a) “Retirement plan” or “plan” means the Public Employees Retirement Act, pursuant to article ten, chapter five of this code; each municipal employees retirement plan, pursuant to article twenty-two, chapter eight of this code; each policemen’s
and firemen's pension and relief fund, pursuant to article twenty-two, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund, pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System, pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System, pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System, pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System, pursuant to article fourteen-d, chapter seven of this code; supplemental and additional retirement plans, pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges' Retirement System, pursuant to article nine, chapter fifty-one of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported in whole or in part by public funds.

(b) "Beneficiary" means any person eligible for or receiving benefits on account of the service for a public employer by a participant in a retirement plan.

(c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere, and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) "Less than honorable service" means:
(1) Impeachment and conviction of a participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant which constitutes all of the elements of a crime described in either of the foregoing subdivisions (1) or (2) but for which the participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivisions (1) or (2) of this subsection; or

(ii) Having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(f) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(g) "Public employer" means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(h) "Supervisory board" or "Board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any
§5-10A·3. Notice of intention to terminate benefits; waiver; failure to reply.

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant or beneficiary that it believes that the participant rendered less than honorable service and that the participant or beneficiary is thereby ineligible to receive benefits. No supervisory board may issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or

(2) In cases described in paragraph (3), subsection (e), section two of this article, if more than two years have elapsed since, as the case may be: the plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the Board believes that the participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant or beneficiary maintains for purposes of corresponding with the Board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitute proofs of the receipt of the notice. The notice shall inform the participant or benefici-
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26 ciary that he or she has the right to demand that the Board seek
27 a determination in circuit court of his or her eligibility for
28 benefits and membership in the retirement plan by notifying the
29 Board of the demand within forty days. The notice shall also
30 inform the participant or beneficiary that the Board will
31 terminate the benefits in accordance with section four of this
32 article and refund the participant's contributions with interest
33 less benefits previously paid as provided in section six thereof
34 if the participant or beneficiary either waives the right to
35 demand that the Board take the matter before the circuit court
36 or fails to respond to the Board's notice within forty days after
37 service.

§5-10A-11. Notification from prosecuting attorneys.

1 The prosecuting attorneys of the counties of this state shall,
2 within sixty days of a conviction or a plea agreement meeting
3 the definition of less than honorable service, report the convic-
4 tion or plea agreement to the executive director of the Board,
5 including with the report the indictment, plea agreement and
6 any order finding the defendant guilty.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.
§7-14D-7. Members' contributions; employer contributions.
§7-14D-13. Refunds to certain members upon discharge or resignation; deferred
retirement; forfeitures.
§7-14D-23. Loans to members.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article shall
3 be a member of this retirement system and does not qualify for
4 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 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.

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the deputy sheriff's service credit in 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 the credited service standing to the transferring deputy sheriff's credit in the Public Employees Retirement Fund System at the time of transfer into this plan 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 service transferred from the Public Employees Retirement System as that transferring deputy sheriff would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring deputy sheriff receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in section eight of this article: Provided, That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employ-
ees Retirement System prior to his or her elective transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of this article, 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 subsection, the member’s years of service and credited service in the Public Employees Retirement System prior to the effective date of this article 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 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.

(e) Once made, the election provided for in 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.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not 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.

(a) 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. 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 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 fifteen days following the end of the calendar month.

(b) 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 make an additional contribution to the Fund of eight and one-half percent of his or her monthly salary earned from any additional employment which 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 concurrent employer for which the member is employed in an amount determined by the Board: Provided, That in no year may the total of the contributions provided in this section, to be paid by the concurrent employer, exceed ten and one-half percent of the monthly salary of the employee. If the Board finds that the benefits provided by this article can be
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 fifteen days following the end of the calendar month.

§7-14D-13. Refunds to certain members upon discharge or resign-
ation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and
is not eligible to receive disability benefits under this article is,
by written request filed with the Board, entitled to receive from
the Fund the member's accumulated contributions. Except as
provided in subsection (b) of this section, upon withdrawal the
member shall forfeit his or her accrued benefit and cease to be
a member.

(b) Any member of this plan who ceases employment in
covered employment and active participation in this plan, and
who thereafter becomes reemployed in covered employment
may not receive any credited service for any prior withdrawn
accumulated contributions from either this plan or the Public
Employees Retirement System relating to the prior covered
employment unless following his or her return to covered
employment and active participation in this plan, the member
redeposits in this plan the amount of the withdrawn accumu-
lated contributions submitted on salary earned while a deputy
sheriff, together with interest on the accumulated contributions
at the rate determined by the Board from the date of withdrawal
to the date of redeposit. Upon repayment he or she shall receive
the same credit on account of his or her former service in
covered employment as if no refund had been made. The
repayment authorized by this subsection shall be made in a
lump sum within sixty months of the deputy sheriff's
reemployment in covered employment or if later, within sixty
months of the effective date of this article.
(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of section five of this article may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(e) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.

§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 determines 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 thereun-
der. 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 declining 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 Board become due and
payable without further notice or demand upon the occurrence
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 they become due and payable under the terms of the loan or after the grace period 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 Board may determine.

(e) Notwithstanding anything in this section 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 Board may: (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 any actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The 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.
(f) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any deputy sheriff who becomes a member of the Deputy Sheriff Retirement System on or after the first day of July, two thousand five.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

§ 12-8-2. Declaration of policy; legislative findings; legislative intent.
§ 12-8-3. Definitions.
§ 12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.
§ 12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.
§ 12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.
§ 12-8-7. Proceeds from the sale of bonds.
§ 12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.
§ 12-8-10. State pledges and covenants.
§ 12-8-15. Operation of article.

§ 12-8-2. Declaration of policy; legislative findings; legislative intent.

1 The Legislature finds and declares that:

2 (a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the West Virginia State Police established in article two, chapter fifteen of this code; the Judges’ Retirement System established in article nine, chapter fifty-one of this code; and the Teachers Retirement System established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

3 (b) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system through the
issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) realizing savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

§12-8-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) “Bonds” means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the Governor pursuant to this article.

(2) “Consolidated Public Retirement Board” means the Board created to administer all public retirement plans in this state under article ten-d, chapter five of this code and any board or agency that succeeds to the powers and duties of the Consolidated Public Retirement Board.

(3) “Costs” include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.

(4) “Death, Disability and Retirement Fund” means the Death, Disability and Retirement Fund of the West Virginia State Police created by article two, chapter fifteen of this code.

(5) “Department of administration” means the Department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the Department of Administration.
(6) "Executive order" means an executive order issued by the Governor to authorize the issuance of bonds as provided in this article.

(7) "Investment management board" means the Board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the Investment Management Board.

(8) "Judges' Retirement System" means the Judicial Retirement System created under article nine, chapter fifty-one of this code.

(9) "Obligation holders" means any holder or owner of any bond, any trustee or other fiduciary for any holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.

(10) "Pension Liability Redemption Fund" means the special account in the State Treasury created pursuant to subsection (a), section eight of this article.

(11) "Pension Liability Redemption Payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the Governor and any obligation holder.

(12) "Pension systems" means the Judges' Retirement System, the Death, Disability and Retirement Fund and the Teachers Retirement System.

(13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for
the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(15) "Teachers Retirement System" means the retirement system established in article seven-a, chapter eighteen of this code.

(16) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.

(17) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which the benefits are earned.

(18) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each pension system being calculated in an actuarial valuation report provided by the Consolidated Public Retirement Board to the Department of Administration pursuant to section four of this article.

(19) "West Virginia State Police Retirement System" means the retirement system established in article two-a, chapter fifteen of this code.

(20) "West Virginia Public Employees Retirement System" means the retirement system established in article ten, chapter five of this code.

(21) "West Virginia State Sponsored Pension Systems" means the pension systems as defined in subdivision twelve of
this subsection, the West Virginia Public Employees Retirement
System and the West Virginia State Police Retirement System.

§12-8-4. Issuance of bonds; determination of unfunded actuarial
accrued liability.

(a) The Governor may, as provided by this article, issue the
bonds authorized in this section at a time or times as provided
by a resolution adopted by the Legislature to fund all or a
portion of the unfunded actuarial accrued liability, the bonds to
be payable from and secured by moneys deposited in the
Pension Liability Redemption Fund. Any bonds issued pursuant
to this article, other than refunding bonds, shall be issued no
later than five years after the date of adoption of the resolution
of the Legislature authorizing the issuance of the bonds referred
to in this section.

(b) The aggregate principal amount of bonds issued
pursuant to the provisions of this article is limited to no more
than the lesser of the following: (1) The principal amount
necessary, after deduction of costs, underwriter's discount and
original issue discount, if any, to fund not in excess of one
hundred percent of the unfunded actuarial accrued liability of
the Death, Disability and Retirement Fund of the West Virginia
State Police established in article two, chapter fifteen of this
code, one hundred percent of the unfunded actuarial accrued
liability of the Judges’ Retirement System established in article
nine, chapter fifty-one of this code, and ninety-five percent of
the unfunded actuarial accrued liability of the Teachers Retire-
ment System established in article seven-a, chapter eighteen of
this code, as certified by the Consolidated Public Retirement
Board to the Department of Administration pursuant to subsec-
tion (e) of this section; or (2) five billion five hundred million
dollars; but in no event shall the aggregate principal amount of
bonds issued exceed the principal amount necessary, after
deduction of costs, underwriter's discount and original issue
discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for ratings, bond insurance, credit enhancements and liquidity facilities, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the Department of Administration, the Consolidated Public Retirement Board shall provide the Department of Administration with a certified statement of the amount of each pension system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the Department of Administration, based upon each pension system's most recent actuarial valuation as completed by the Consolidated Public Retirement Board.

(f) No later than fifteen days after receipt of a request from the Governor, the Department of Administration shall provide the Governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this section.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

(a) Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon
the terms specified in the resolution, the bonds shall be autho-
ized by an executive order issued by the Governor. The
executive order shall be received by the Secretary of State and
filed in the State Register pursuant to section three, article two,
chapter twenty-nine-a of this code. The Governor, either in the
executive order authorizing the issuance of the bonds or by the
execution and delivery by the Governor of a trust indenture or
agreement authorized in the executive order, shall stipulate the
form of the bonds, whether the bonds are to be issued in one or
more series, the date or dates of issue, the time or times of
maturity, the rate or rates of interest payable on the bonds,
which may be at fixed rates or variable rates and which interest
may be current interest or may accrue, the denomination or
denominations in which the bonds are issued, the conversion or
registration privileges applicable to some or all of the bonds,
the sources and medium of payment and place or places of
payment, the terms of redemption, any privileges of
exchangeability or interchangeability applicable to the bonds,
and the entitlement of obligation holders to priorities of
payment or security in the amounts deposited in the pension
liability redemption fund. Bonds shall be signed by the Gover-
nor and attested by the Secretary of State, by either manual or
facsimile signatures.

(b) The bonds may be sold at public or private sale at a
price or prices determined by the Governor. The Governor may
enter into any agreements necessary or desirable to effectuate
the purposes of this section, including agreements to sell bonds
to any person and to comply with the laws of any jurisdiction
relating thereto.

(c) The Governor, in the executive order authorizing the
issuance of bonds or by the execution and delivery by the
Governor of a trust indenture or agreement authorized in the
executive order, may covenant as to the use and disposition of
or pledge of funds made available for pension liability redemp-
tion payments or any reserve funds established pursuant to the executive order or established pursuant to any indenture authorized by the executive order. All costs may be paid by or upon the order of the Governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the Governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the Governor, the Secretary of State, nor any other person executing or attesting the bonds or any agreement authorized in this article are personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, the Department of Administration, in the Department's discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and any other advisors, consultants and agents necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the Governor or the Department of Administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.
§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

(a) The Governor may enter into contracts with obligation holders and the Governor shall comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the Governor may enter into: (i) commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the Governor.

(c) The Governor may covenant as to the bonds to be issued and as to the issuance of the bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest on the bonds and covenant for the redemption of bonds and provide the terms and conditions of the redemption.

(d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the Governor in the executive
order, any indenture of trust or trust agreement authorized by
the executive order, any bond or any other contract entered into
pursuant to this article with any obligation holder shall be a
representation, warranty or covenant made by the state.

(e) The Governor may vest in the obligation holders, or any
portion of them, the right to enforce the payment of the bonds
or agreements authorized in this article or any covenants
securing or relating to the bonds or the agreements. The
Governor may prescribe the procedure, if any, by which the
terms of any contract with obligation holders may be supple-
mented, amended or abrogated, prescribe which supplements or
amendments will require the consent of obligation holders and
the portion of obligation holders required to effect the consent
and prescribe the manner in which the consent may be given.

§12-8-7. Proceeds from the sale of bonds.

(a) The proceeds from the sale of bonds, other than refund-
ing bonds, issued pursuant to this article, after payment of any
costs payable at time of issuance of the bonds, shall be paid to
the Consolidated Public Retirement Board to fund the amount
of the unfunded actuarial accrued liability for the pension
systems provided for by the bonds.

(b) Prior to the time of issuance, when requested by the
Department of Administration, the Investment Management
Board shall prepare and submit to the Governor, the Speaker of
the House of Delegates, the President of the Senate and the
Department of Administration the short-term and long-term
investment strategies that the Investment Management Board
intends to follow for investment of the plan assets of the
pension systems, as adjusted by the deposit of the proceeds of
bonds issued pursuant to this article, which bond proceeds shall
be invested pursuant to section six of article ten of the Constitu-
tion of West Virginia and otherwise as provided by law.
§12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.

(a) There is hereby continued a special account in the State Treasury to be administered by the State Treasurer, which is designated and known as the "Pension Liability Redemption Fund," into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability redemption payments. All funds deposited to the credit of the Pension Liability Redemption Fund shall be held in a separate account and all money belonging to the Fund shall be deposited in the State Treasury to the credit of the Pension Liability Redemption Fund.

(b) On or before the first day of November of each year, the Department of Administration shall certify to the Governor and the State Treasurer and deliver to the Speaker of the House of Delegates and the President of the Senate a certification as to the amount of pension liability redemption payments to be appropriated for the next fiscal year in order to pay in full when due all pension liability redemption payments that will become due during the next fiscal year. The certification shall include the amount and due date of each pension liability redemption payment. All moneys appropriated by the Legislature in accordance with a certification made pursuant to this subsection shall be deposited into the Pension Liability Redemption Fund.

(c) The State Treasurer shall pay to the trustee under the trust indenture or agreement executed by the Governor all pension liability redemption payments as and when due. The payments shall be transferred by electronic funds transfer, unless some other manner of funds transfer is specified by the Governor. No payments shall be required for bonds that are defeased or bonds for which a deposit sufficient to provide for all payments on the bonds has been made.
§12-8-10. State pledges and covenants.

(a) The state of West Virginia covenants and agrees with the obligation holders, and the indenture shall so state, that the bonds issued pursuant to this article are a direct and general obligation of the state of West Virginia; that the pension liability redemption payments will be included in each budget along with all other amounts for payment and discharge of the principal of and interest on state debt; that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on the bonds; and that annual state taxes shall be collected in an amount sufficient to pay the pension liability redemption payments as they become due and payable from the Pension Liability Redemption Fund.

(b) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that the state will not limit or alter the rights, powers or duties vested in any state official, or that state official’s successors or assigns, and the obligation holders in a way that will inhibit any state official, or that state official’s successors or assigns, from carrying out the state official’s rights, powers or duties under this article, nor limit or alter the rights, powers or duties of any state official, or that state official’s successors or assigns, in any manner which would jeopardize the interest of any obligation holder, or inhibit or prevent performance or fulfillment by any state official, or that state official’s successors or assigns, with respect to the terms of any agreement made with any obligation holder pursuant to section six of this article.

(c) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, any changes in unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems resulting from the actual experience for that system occurring during any fiscal year due to net differences
between the expected and actual experience for that year will be
fully amortized over no more than the ten consecutive fiscal
years following the date the Consolidated Public Retirement
Board certifies the net actuarial gain or loss to the Governor.
The certification shall be made on or before the thirty-first day
of January of each year. The net actuarial gain or loss for the
fiscal year shall be determined from the actuarial valuation
authorized by the Consolidated Public Retirement Board for
each plan completed at as of the first day of the following fiscal
year. Following the receipt of the certification of net actuarial
gain or loss, the Governor shall submit the amount of the
amortization payment or credit each year for the pension
systems as part of the annual budget submission or in an
executive message to the Legislature. The Consolidated Public
Retirement Board shall include the ten year amortization in the
determination of the adequacy of the employer contribution
percentage for the West Virginia Public Employees Retirement
System and West Virginia State Police Retirement System.

(d) The state hereby pledges and covenants with the
obligation holders, and the indenture shall state, that, while any
of the bonds are outstanding, if the unfunded actuarial accrued
liability of any of the West Virginia state sponsored pension
systems increases or decreases due to changes in actuarial
assumptions adopted by the Consolidated Public Retirement
Board for completion of the annual actuarial valuation for any
plan, the change shall be fully amortized over no more than the
ten consecutive fiscal years following the date the Consolidated
Public Retirement Board certifies the net change due to changes
in assumptions to the Governor. The certification shall be made
on or before the thirty-first day of January of each year.
Following the receipt of the certification of change due to
changes in actuarial assumptions, the Governor shall submit the
amount of the amortization payment each year for the pension
systems as part of the annual budget submission or in an
executive message to the Legislature. The Consolidated Public
Retirement Board shall include the ten year amortization in the
determination of the adequacy of the employer contribution
percentage for the Public Employees Retirement System and
West Virginia State Police Retirement System.

(e) The state hereby pledges and covenants with the
obligation holders, and the indenture shall state, that, while any
of the bonds are outstanding (1) the state will not increase any
existing benefits or create any new benefits for any retirees or
beneficiaries currently receiving monthly benefit payments
from any of the West Virginia state sponsored pension systems,
other than an increase in benefits or new benefits effected by
operation of law in effect on the effective date of this article, in
an amount that would exceed more than one percent of the
accrued actuarial liability of the system as of the last day of the
preceding fiscal year as determined in the annual actuarial
valuation for each plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year
as of the date the improvement is adopted by the Legislature;
and (2) if any increase of existing benefits or creation of new
benefits for any retirees or beneficiaries currently receiving
monthly benefit payments under any of the West Virginia state
sponsored pension systems, other than an increase in benefits
or new benefits effected by operation of law in effect on the
effective date of this article, causes any additional unfunded
actuarial accrued liability in any of the West Virginia state
sponsored pension systems as calculated in the annual actuarial
valuation for each plan during any fiscal year, the additional
unfunded actuarial accrued liability of that pension system will
be fully amortized over no more than the six consecutive fiscal
years following the date the increase in benefits or new benefits
become effective as certified by the Consolidated Public
Retirement Board. Following the receipt of the certification of
additional actuarial accrued liability, the Governor shall submit
the amount of the amortization payment each year for the
pension systems as part of the annual budget submission or in
an executive message to the Legislature. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

(f) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding that the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the pension systems shall not be amended in any manner that increases any existing benefits or provides for new benefits.

(g) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, the state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the West Virginia Public Employees Retirement System or the West Virginia State Police Retirement System unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.
§12-8-15. Operation of article.

1 Notwithstanding the effective date of this act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the constitution of this state authorizing pension obligation bonds.

CHAPTER 15. PUBLIC SAFETY.

Article

2. West Virginia State Police.
2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-26. Continuation of death, disability and retirement fund; designating the Consolidated Public Retirement Board as administrator of fund.
§15-2-27. Retirement; awards and benefits; leased employees.
§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
§15-2-30. Same - Due to other causes.
§15-2-31. Same – Physical examinations; termination.
§15-2-31a. Application for disability benefit; determinations.
§15-2-31b. Annual report on each employer's disability retirement experience.
§15-2-32. Retired member not to exercise police authority; retention of group insurance.
§15-2-33. Awards and benefits to dependents of member -- When member dies in performance of duty, etc.; dependent child scholarship and amount.
§15-2-34. Same - When member dies from nonservice-connected causes.
§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.


1 As used in this article, unless the context clearly requires a different meaning:
(a) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(b) "Department" means the West Virginia State Police.

(c) "Fund," "plan," or "system," means the West Virginia Death, Disability and Retirement Fund.

(d) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are determined by the Board to be purely administrative in nature.

(e) "Member" means an employee of the West Virginia State Police who is an active participant in the fund.

(f) "Partially disabled" means a member’s inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the member from engaging in other types of nonlaw-enforcement employment.

(g) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.
(h) "Totally disabled" means a member’s probable permanent 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 subsection, a member is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as a member of the Department 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: (1) The work exists in the immediate area in which the member lives; (2) a specific job vacancy exists; or (3) the member would be hired if he or she applied for work.

§15-2-26. Continuation of death, disability and retirement fund; designating the Consolidated Public Retirement Board as administrator of fund.

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members of the Department and any dependent of a retired or deceased member of the Department.

(b) There shall be deducted from the monthly payroll of each member of the Department and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the Fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the Fund nine percent of the amount of his or her salary. An additional twelve percent of
the monthly salary of each member of the Department shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the Department: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the State shall pay thirteen percent of the monthly salary of each member into the Fund: And provided further, That beginning on the first day of July, one thousand nine hundred ninety-six, the State shall pay fourteen percent of the monthly salary of each member into the Fund: And provided further, That beginning on the first day of July, one thousand nine hundred ninety-six, the State shall pay fourteen percent of the monthly salary of each member into the Fund: And provided further, That on and after the first day of July, one thousand nine hundred ninety-seven, the State shall pay fifteen percent of the monthly salary of each member into the Retirement Fund. There shall also be paid into the Fund amounts that have previously been collected by the Superintendent of the Department on account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the Superintendent. All moneys payable into the Fund shall be deposited in the State Treasury and the Treasurer and Auditor shall keep a separate account thereof on their respective books.

(c) Notwithstanding any other provisions of this article, forfeitures under the Fund shall not be applied to increase the benefits any member would otherwise receive under the Fund.

(d) The moneys in this Fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever, with the exception that the benefits or contributions under the Fund shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code
section twenty-eight of this article).

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the Department (excluding military service credit granted under section twenty-eight of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the Depart-
(c) When the Retirement Board retires any member under any of the provisions of this section, the Board shall, by order in writing, make an award directing that the member is entitled to receive annually and that there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member while in status of retirement, one or the other of two amounts, whichever is the greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the Department; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the Department and is retired under any of the provisions of this section before he or she has attained the age of fifty years, payment of monthly installments of the amount of retirement award to the member shall commence on the date he or she attains the age of fifty years. Beginning on the fifteenth day of July, one thousand nine hundred ninety-four, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

(d) Any individual who is a leased employee is not eligible to participate in the Fund. For purposes of this Fund, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other 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.


(a) Every member of the Department who is fifty-five years of age or older and who is retired by the Retirement Board under the provisions of section twenty-seven of this article; every member of the Department who is retired by the Retirement Board under the provisions of section twenty-nine or thirty of this article; and every surviving spouse or other beneficiary receiving a benefit pursuant to section thirty-three or thirty-four of this article, is eligible to receive an annual retirement annuity adjustment equal to three and seventy-five hundredths percent of his or her retirement award or surviving spouse award: Provided, That for any person retiring on and after the fifteenth day of September, one thousand nine hundred ninety-four, the annual retirement annuity adjustment shall be equal to two percent of his or her retirement award or award paid to a surviving spouse or other beneficiary. The adjustments may not be retroactive. Yearly adjustments shall begin upon the first day of July of each year. The annuity adjustments shall be awarded and paid to the members from the Death, Disability and Retirement Fund in equal monthly installments while the member is in status of retirement. The annuity adjustments shall supplement the retirement awards and benefits as provided in this article.

(b) Any member or beneficiary who receives a benefit pursuant to the provisions of section twenty-nine, thirty, thirty-three or thirty-four of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year’s annuity adjustment.
§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the Armed Forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of such Armed Forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the Armed Forces.

(b) Any member of the Department who has previously served on active military duty is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the Department for twenty years exclusive of his or her active military duty.
(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the Department equal to the average monthly salary which he or she actually received from the Department for his or her total service with the Department exclusive of the active military duty. The Superintendent shall transfer and pay into the Death, Disability and Retirement Fund from moneys appropriated for the Department, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while a member of the Department was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers’ corps, was called to active duty in the Armed Forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;
59  (2) That within ninety days after honorable discharge from
60  the Armed Forces he or she has presented himself or herself to
61  the Superintendent and offered to resume service as an active
62  member of the Department; and

63  (3) That he or she has made no voluntary act, whether by
64  reenlistment, waiver of discharge, acceptance of commission or
65  otherwise, to extend or participate in extension of the period of
66  service with the Armed Forces beyond the period of service for
67  which he or she was originally commissioned, enlisted,
68  inducted or called.

69  (d) That amount of retirement pay to which any member is
70  entitled shall be calculated and determined as if the member has
71  continued in the active service of the Department at the rank or
72  grade to him or her appertaining at the time of the commission,
73  induction, enlistment or call, during a period coextensive with
74  the time the member served with the Armed Forces pursuant to
75  the commission, induction, enlistment or call. The Superintendent
76  of the Department shall transfer and pay each month into
77  the Death, Disability and Retirement Fund from moneys
78  appropriated for the Department a sum equal to eighteen
79  percent of the aggregate of salary which all members would
80  have been entitled to receive had they continued in the active
81  service of the Department during a period coextensive with the
82  time the members served with the Armed Forces pursuant to the
83  commission, induction, enlistment or call: Provided, That the
84  total amount of military service credit allowable under this
85  section shall not exceed five years.

86  (e) Notwithstanding any of the preceding provisions of this
87  section, contributions, benefits and service credit with respect
88  to qualified military service shall be provided in accordance
89  with Section 414(u) of the Internal Revenue Code. For purposes
90  of this section, “qualified military service” has the same
91  meaning as in Section 414(u) of the Internal Revenue Code.
The Retirement Board may determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Retirement Board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.


(a) Any member of the Department who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the Department and incurred pursuant to or while the member was engaged in the performance of his or her duties as a member of the Department shall, if, in the opinion of the Retirement Board, he or she is by reason of that cause probably permanently unable to perform adequately the duties required of him or her as a member of the Department, but is able to engage in any other gainful employment in a field other than law enforcement, be retired from active service by the Retirement Board. The member thereafter is entitled to receive annually and there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member; or until the member attains the age of fifty; or until the disability sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to two thirds of the salary received in the preceding twelve-month employment period; Provided. That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or
(2) The sum of six thousand dollars.

(b) Upon attaining age fifty, the member shall receive the benefit provided in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the Department through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be considered to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: Provided, That a member who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: Provided, however, That a member retired on partial disability under this article may serve as an elected sheriff or appointed chief of police in the state without a loss of disability retirement benefits so long as the elected or appointed position is shown, to the satisfaction of the Board, to require the performance of administrative duties and functions only, as opposed to the full range of duties of a law-enforcement officer.

(c) If any member not yet in retirement status on the basis of age and service is found by the Board to be permanently and totally disabled as the result of a physical or mental impairment resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the Department and incurred pursuant to or while the member was engaged in the performance of his or her duties as a member of the Department, the member is entitled to receive annually and there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member or until the disability sooner terminates, an amount equal to the amount of the salary received by the member in the preceding twelve-month employment period: Provided, That in no event may the amount be less than fifteen
thousand dollars per annum, unless required by section forty of this article: Provided, however, That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

(d) The Superintendent may expend moneys from funds appropriated for the Department in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the Department who has or becomes temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of the Department and incurred pursuant to or while such member was or shall be engaged in the performance of duties as a member of the Department. Whenever the Superintendent determines that any disabled member is ineligible to receive any of the aforesaid benefits at public expense, the Superintendent shall, at the request of the disabled member, refer the matter to the Consolidated Public Retirement Board for hearing and final decision. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule in use by the Workers’ Compensation Commission.

(e) For the purposes of this section, the term “salary” does not include any compensation paid for overtime service.

§15-2-30. Same — Due to other causes.

If any member while in active service of the Department has, in the opinion of the Retirement Board, become permanently partially or totally disabled to the extent that the member cannot adequately perform the duties required of a member of
the Department from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the member shall be retired by the Retirement Board. The member is entitled to receive annually and there shall be paid to the member while in status of retirement, from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of such member or until the disability sooner terminates, a sum equal to one-half the salary received in the preceding twelve-month period: Provided, That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit. If the member, at the time of retirement under the terms of this section, has served twenty years or longer as a member of the Department, the member is entitled to receive annually and there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments, commencing on the date the member is retired and continuing during the lifetime of the member, until the member attains the age of fifty, while in status of retirement, an amount equal to one-half the salary received by the member in the preceding twelve-month period: Provided, however, That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

Upon attaining age fifty, the member shall receive the benefit provided in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the Department through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be considered to be a retire-
ment under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

§15-2-31. Same – Physical examinations; termination.

The Consolidated Public Retirement Board may require any member who has been retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the Board and cause all costs incident to the examination including hospital, laboratory, X ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expense of the Department, and a report of the findings of the physician or physicians shall be submitted in writing to the Consolidated Public Retirement Board for its consideration. If, from the report or from the report and hearing on the report, the Retirement Board is of opinion and finds that the disabled member has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the Board shall order that all payments from the Death, Disability and Retirement Fund be terminated. If, from the report or the report and hearing on the report, the Board is of the opinion and finds that the disabled member has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the Board shall order the payment, in monthly installments of an amount equal to two thirds of the salary, in the case of a member retired under the provisions of section twenty-nine of this article, or equal to one half of the salary, in the case of a member retired under the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period preceding the disability: Provided, That if the member had not been employed with the Department for
twelve months prior to the disability, the amount of monthly
salary shall be annualized for the purpose of determining the
benefit.

§15-2-31a. Application for disability benefit; determinations.

(a) Application for a disability benefit may be made by a
member or, if the member is under an incapacity, by a person
acting with legal authority on the member’s behalf. After
receiving an application for a disability benefit from a member
or a person acting with legal authority on behalf of the member,
the Board shall notify the Superintendent of the Department
that an application has been filed: Provided, That when, in the
judgment of the Superintendent, a member is no longer physi-
cally or mentally fit for continued duty as a member of the
West Virginia State Police and the member has failed or refused
to make application for disability benefits under this article, the
Superintendent may petition the Board to retire the member on
the basis of disability pursuant to rules which may be estab-
lished by the Board. Within thirty days of the Superintendent’s
receipt of the notice from the Board or the filing of the Superin-
tendent’s petition with the Board, the Superintendent shall
forward to the Board a statement certifying the duties of the
member’s employment, information relating to the Superinten-
dent’s position on the work relatedness of the member’s alleged
disability, complete copies of the member’s medical file and
any other information requested by the Board in its processing
of the application, if this information is requested timely.

(b) The Board shall propose legislative rules in accordance
with the provisions of article three, chapter twenty-nine-a of
this code relating to the processing of applications and petitions
for disability retirement under this article.

(c) The Board shall notify a member and the Superintendent
of its final action on the disability application or petition within
ten days of the Board’s final action. The notice shall be sent by
certified mail, return receipt requested. If either the member or
the Superintendent is aggrieved by the decision of the Board
and intends to pursue judicial review of the Board’s decision as
provided in section four, article five, chapter twenty-nine-a of
this code, the party so aggrieved shall notify the Board within
twenty days of the member’s or Superintendent’s receipt of the
Board’s notice that they intend to pursue judicial review of the
Board’s decision.

(d) The Board may require a disability benefit recipient to
file an annual statement of earnings and any other information
required in rules which may be adopted by the Board. The
Board may waive the requirement that a disability benefit
recipient file the annual statement of earnings if the Board’s
physician certifies that the recipient’s disability is ongoing. The
Board shall annually examine the information submitted by the
recipient. If a disability retirant refuses to file a statement and
information, the disability benefit shall be suspended until the
statement and information are filed.

§15-2-31b. Annual report on each employer’s disability retire-
ment experience.

Not later than the first day of January, two thousand six,
and each first day of January thereafter, the Board shall prepare
a report for the preceding fiscal year of the disability retirement
experience of the State Police. The report shall specify the total
number of disability applications submitted, the status of each
application as of the last day of the fiscal year, total applica-
tions granted or denied, and the percentage of disability benefit
recipients to the total number of State Police employees who
are members of the Fund. The report shall be submitted to the
Governor and the chairpersons of the standing committees of
the Senate and House of Delegates with primary responsibility
for retirement legislation.
§15-2-32. Retired member not to exercise police authority; retention of group insurance.

A member who is retired may not, while in retirement status, exercise any of the powers conferred upon active members by section twelve of this article; but is entitled to receive free of cost to the member and retain as his or her separate property one complete standard uniform prescribed by section nine of this article: Provided, That the uniform may be worn by a member in retirement status only on occasions prescribed by the Superintendent. The Superintendent shall maintain at public expense for the benefit of all members in retirement status that group life insurance mentioned in section ten of this article. The Superintendent, when he or she is of opinion that the public safety shall require, may recall to active duty during any period determined by the Superintendent, any member who is retired under the provisions of section twenty-seven of this article, provided the consent of the member to reassume duties of active membership shall first be had and obtained. When any member in retirement resumes status of active membership the member, during the period the member remains in active status, is not entitled to receive retirement pay or benefits, but in lieu thereof, is entitled to receive that rate of salary and allowance pertinent to the rank or grade held by the member when retired. When the member is released from active duty he or she shall reassume the status of retirement and shall thereupon be entitled to receive appropriate benefits as provided by this article: Provided, That the amount of the benefits shall in no event be less than the amount determined by the order of the Retirement Board previously made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
(a) The surviving spouse or the dependent child or children
or dependent parent or parents of any member who has lost or
loses his or her life by reason of injury, illness or disease
resulting from an occupational risk or hazard inherent in or
peculiar to the service required of members while the member
was or is engaged in the performance of his or her duties as a
member of the Department, or if the member dies from any
cause after having been retired pursuant to the provisions of
section twenty-nine of this article, the surviving spouse or other
dependent is entitled to receive and shall be paid from the
Death, Disability and Retirement Fund benefits as follows: To
the surviving spouse annually, in equal monthly installments
during his or her lifetime one or the other of two amounts,
which shall become immediately available and which shall be
the greater of:

(1) An amount equal to seven tenths of the salary received
in the preceding twelve-month employment period by the
deceased member: Provided, That if the member had not been
employed with the Department for twelve months prior to the
disability, the amount of monthly salary shall be annualized for
the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

(b) In addition thereto the surviving spouse is entitled to
receive and there shall be paid to the surviving spouse one
hundred dollars monthly for each dependent child or children.
If the surviving spouse dies or if there is no surviving spouse,
there shall be paid monthly to each dependent child or children
from the Death, Disability and Retirement Fund a sum equal to
twenty-five percent of the surviving spouse’s entitlement. If
there is no surviving spouse and no dependent child or children,
there shall be paid annually in equal monthly installments from
the Death, Disability and Retirement Fund 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 but
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.

(c) Any person qualified as a surviving dependent child
under this section, 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 seven thousand
five hundred dollars shall be paid from the Death, Disability
and Retirement 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 those institutions so long as the recipient makes
application to the Board on an approved form and under rules
as provided by the Board, and maintains scholastic eligibility as
defined by the institution or the Board. The Board may by
appropriate rules define age requirements, physical and mental
requirements, scholastic eligibility, disbursement methods,
institutional qualifications and other requirements as necessary
and not inconsistent with this section.

(d) Awards and benefits for a member's surviving spouse
or dependents received under any section or any of the provi-
sions of this retirement system shall be in lieu of receipt of any
benefits for those persons under the provisions of any other
state retirement system. Receipt of benefits under any other
state retirement system shall be in lieu of any right to receive
any benefits under this retirement system, so that only a single
receipt of retirement benefits occurs.

(e) For the purposes of this section, the term “salary” does
not include any compensation paid for overtime service.
§15-2-34. Same — When member dies from nonservice-connected causes.

(a) In any case where a member while in active service of the Department, before having completed twenty years of service as a member of the Department, dies from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his or her part, there shall be paid annually in equal monthly installments from the Death, Disability and Retirement Fund to the surviving spouse of the member during his or her lifetime, or until such time as the surviving spouse remarries, a sum equal to one half of the salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the Department for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit. The benefit shall become immediately available upon the death of the member. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each dependent child or children, from the Death, Disability and Retirement Fund, a sum equal to twenty-five percent of the surviving spouse’s entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund to the dependent parents of the deceased member during their joint lifetimes, a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, however, That when there is but 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.

(b) For the purposes of this section, the term “salary” does not include compensation paid for overtime service.
§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department, at the written request of the member to the Retirement Board, is entitled to receive from the Retirement Fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the Death, Disability and Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member who has ten or more years of service with the Department and who withdraws his or her contributions may thereafter be reenlisted as a member of the Department, but may not receive any prior service credit on account of former service, unless following reenlistment the member redeposits in the Fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made. He or she shall become a member of the Retirement System established in article two-a of this chapter.

(c) Every member who completes ten years of service with the Department is eligible, upon separation of employment with the Department, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive
the annual annuity adjustment provided in section twenty-seven-a of this article. When the Retirement Board retires any member under any of the provisions of this section, the Board shall, by order in writing, make an award directing that the member is entitled to receive annually and that there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member while in status of retirement one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the Department; or

(2) The sum of six thousand dollars.

The annuity shall be payable during the lifetime of the member. The retiring member may choose, in lieu of a life annuity, an annuity in reduced amount payable during the member's lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse if any, for the spouse's remaining lifetime after the death of the member. Reduction of this monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen.


(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the consolidated public retirement board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective the first day of July, two thousand twenty-five: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-5. Members' contributions; employer contributions; forfeitures.
§15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.
§15-2A-10. Same - Due to other causes.
§15-2A-11. Same - Physical examinations; termination.
§15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.
§15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.
§15-2A-19. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
§15-2A-21. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.


1 As used in this article, unless the context clearly requires a different meaning:

3 (1) "Active military duty" means full-time active duty with the Armed Forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the Armed Forces when the member has been called to active full-time duty and has received no compensation during the period of duty from any person other than the Armed Forces.

11 (2) "Base salary" means compensation paid to a member without regard to any overtime pay.

13 (3) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.
(4) "Department" means the West Virginia State Police.

(5) "Final average salary" means the average of the highest annual compensation received for employment with the Department, including compensation paid for overtime service, received by the member during any five calendar years within the member's last ten years of service.

(6) "Fund" means the West Virginia State Police Retirement Fund created pursuant to section four of this article.

(7) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(8) "Law-enforcement officer" means individuals employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(9) "Member" or "employee" means a person regularly employed in the service of the Department as a law-enforcement officer after the effective date of this article.

(10) "Month of service" means each month for which a member is paid or entitled to payment for at least one hour of service for which contributions were remitted to the Fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(11) "Partially disabled" means a member's inability, on a probable permanent basis, to perform the essential duties of a
law enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the member from engaging in other types of nonlaw-enforcement employment.

(12) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(13) "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.

(14) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one half years; or (b) the calendar year in which he or she retires or otherwise separates from service with the Department after having attained the age of seventy and one half years.

(15) "Retirement system," "plan" or "system" means the West Virginia State Police Retirement System created and established by this article.

(16) "Salary" means the compensation of a member, excluding any overtime payments.

(17) "Totally disabled" means a member's probable permanent 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, a member is totally disabled only if his or her physical or mental impair-
ments are so severe that he or she is not only unable to perform his or her previous work as a member of the Department, 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.

(18) "Years of service" means the months of service acquired by a member while in active employment with the Department divided by twelve. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the Department through the date of termination of employment or retirement from the Department. If a member returns to active employment with the Department following a previous termination of employment with the Department, and the member has not received a refund of contributions plus interest for the previous employment under section eight of this article, service shall be calculated separately for each period of continuous employment, and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the Department for which a refund of contributions plus interest has been paid to the member, unless the member repays the previous withdrawal, as provided in section eight of this article, to reinstate the years of service.

§15-2A-5. Members' contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each member and paid into the Fund created pursuant to section four of this article, twelve percent of the amount of his or her salary.
(b) The state of West Virginia’s contributions to the retirement system, as determined by the Consolidated Public Retirement Board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members’ total annual compensation related to benefits under this retirement system. In determining the amount, the Board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, if the inability of the Board to increase state contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State’s determination of whether an emergency rule should be approved. The state’s contributions shall be paid monthly into the fund created pursuant to section four of this article out of the annual appropriation for the Department.

(c) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

(a) A member may retire with full benefits upon attaining the age of fifty-five and completing twenty or more years of service, by lodging with the Consolidated Public Retirement Board his or her voluntary petition in writing for retirement. A member who is less than age fifty-five may retire upon completing twenty years or more of service: Provided, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of fifty-five.

(b) When the Retirement Board retires a member with full benefits under the provisions of this section, the Board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service in the Department at the time of retirement. The member’s annuity shall begin the first day of the calendar month following the month in which the member’s application for the annuity is filed with the Board on or after his or her attaining age and service requirements, and termination of employment.

(c) In no event may the provisions of section thirteen, article sixteen, chapter five be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.


(a) Every member of the Department who is sixty-three years of age or older and who is retired by the Retirement Board under the provisions of section six of this article; every member who is retired under the provisions of section nine or ten of this article; and every surviving spouse receiving a benefit pursuant to section twelve, thirteen or fourteen of this
article is eligible to receive an annual retirement annuity
adjustment equal to one percent of his or her retirement award
or surviving spouse award. The adjustments may not be
retroactive. Yearly adjustments shall begin upon the first day of
July of each year. The annuity adjustments shall be awarded
and paid to a member from the Fund in equal monthly install-
ments while the member is in status of retirement. The annuity
adjustments shall supplement the retirement awards and
benefits provided in this article.

(b) Any member or beneficiary who receives a benefit
pursuant to the provisions of section nine, ten, twelve, thirteen
or fourteen of this article shall begin to receive the annual
annuity adjustment one year after the commencement of the
benefit on the next July first: Provided, That if the member has
been retired for less than one year when the first annuity
adjustment is given on that July first, that first annuity adjust-
ment will be a pro rata share of the full year’s annuity adjust-
ment.

§15-2A-8. Refunds to certain members upon discharge or resig-
nation; deferred retirement.

(a) Any member who is discharged by order of the Superin-
tendent or otherwise terminates employment with the Depart-
ment is, at the written request of the member to the Retirement
Board, entitled to receive from the Retirement Fund a sum
equal to the aggregate of the principal amount of moneys
deducted from the salary of the member and paid into the
Retirement Fund plus four percent interest compounded thereon
calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may
thereafter be reenlisted as a member of the Department shall not
receive any prior service credit on account of the former
service, unless following his or her reenlistment the member
redeposits in the Fund the amount of the refund, together with
interest thereon at the rate of seven and one-half percent per
annum from the date of withdrawal to the date of redeposit, in
which case he or she shall receive the same credit on account of
his or her former service as if no refund had been made.

(c) Every member who completes ten years of service with
the Department is eligible, upon separation of employment with
the Department, to either withdraw his or her contributions in
accordance with subsection (a) of this section, or to choose not
to withdraw his or her accumulated contributions with interest.
Upon attainment of age sixty-two, a member who chooses not
to withdraw his or her contributions is eligible to receive a
retirement annuity. The annuity shall be payable during the
lifetime of the member, and shall be in the amount of his or her
accrued retirement benefit as determined under section six of
this article. The retiring member may choose, in lieu of a life
annuity, an annuity in reduced amount payable during the
member’s lifetime, with one half of the reduced monthly
amount paid to his or her surviving spouse if any, for the
spouse’s remaining lifetime after the death of the member.
Reduction of the monthly benefit amount shall be calculated to
be of equal actuarial value to the life annuity the member could
otherwise have chosen. Any member choosing to receive the
defered annuity under this subsection is not eligible to receive
the annual annuity adjustment provided in section seven of this
article.

§15-2A-9. Awards and benefits for disability — Incurred in
performance of duty.

(a) Except as otherwise provided in this section, a member
of the Department who has not yet entered retirement status on
the basis of age and service and who becomes partially disabled
by injury, illness or disease resulting from any occupational risk
or hazard inherent in or peculiar to the services required of
members of the Department and incurred pursuant to or while
the member was engaged in the performance of his or her duties
as a member of the Department shall, if, in the opinion of the
Retirement Board, he or she is, by reason of such cause, unable
to perform adequately the duties required of him or her as a
member of the Department, but is able to engage in other
gainful employment in a field other than law enforcement, be
retired from active service by the Board. The member thereafter
is entitled to receive annually and there shall be paid to the
member from the Fund in equal monthly installments during the
lifetime of the member, or until the member attains the age of
fifty-five or until the disability sooner terminates, one or the
other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary
received in the preceding twelve-month employment period:
Provided, That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit; or

(2) The sum of six thousand dollars.

Upon attaining age fifty-five, the member shall receive the
benefit provided in section six of this article as it would apply
to his or her final average salary based on earnings from the
Department through the day immediately preceding his or her
disability. The recalculation of benefit upon a member attaining
age fifty-five shall be considered to be a retirement under the
provisions of section six of this article, for purposes of deter-
mining the amount of annual annuity adjustment and for all
other purposes of this article: Provided, That a member who is
partially disabled under this article may not, while in receipt of
benefits for partial disability, be employed as a law-enforce-
ment officer: Provided, however, That a member retired on a
partial disability under this article may serve as an elected
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39 sheriff or appointed chief of police in the state without a loss of
disability retirement benefits so long as the elected or appointed
position is shown, to the satisfaction of the Board, to require the
performance of administrative duties and functions only, as
opposed to the full range of duties of a law-enforcement officer.

(b) Any member who has not yet entered retirement status
on the basis of age and service and who becomes physically or
mentally disabled by injury, illness or disease on a probable
permanent basis resulting from any occupational risk or hazard
inherent in or peculiar to the services required of members of
the Department and incurred pursuant to or while the member
was or is engaged in the performance of his or her duties as a
member of the Department to the extent that the member is
incapacitated ever to engage in any gainful employment, the
member is entitled to receive annually, and there shall be paid
to the member from the Fund in equal monthly installments
during the lifetime of the member or until the disability sooner
terminates, an amount equal to the amount of the base salary
received by the member in the preceding twelve-month
employment period.

(c) The Superintendent of the Department may expend
moneys from funds appropriated for the Department in payment
of medical, surgical, laboratory, X-ray, hospital, ambulance and
dental expenses and fees, and reasonable costs and expenses
incurred in the purchase of artificial limbs and other approved
appliances which may be reasonably necessary for any member
of the Department who is temporarily, permanently or totally
disabled by injury, illness or disease resulting from any
occupational risk or hazard inherent in or peculiar to the service
required of members of the Department and incurred pursuant
to or while the member was or shall be engaged in the perform-
ance of duties as a member of the Department. Whenever the
Superintendent determines that any disabled member is
ineligible to receive any of the aforesaid benefits at public
expense, the Superintendent shall, at the request of the disabled
member, refer the matter to the Board for hearing and final
decision. In no case will the compensation rendered to health
care providers for medical and hospital services exceed the then
current rate schedule in use by the Bureau of Employment
Programs, Workers' Compensation Division.

§15-2A-10. Same — Due to other causes.

(a) If any member while in active service of the State Police
becomes partially or totally disabled on a probable permanent
basis to the extent that the member cannot adequately perform
the duties required of a member of the Department from any
cause other than those set forth in the preceding section and not
due to vicious habits, intemperance or willful misconduct on his
or her part, the member shall be retired by the Board. There
shall be paid annually to the member from the Fund in equal
monthly installments, commencing on the date the member is
retired and continuing during the lifetime of the member; or
until the member attains the age of fifty-five; while in status of
retirement an amount equal to one half the base salary received
by the member in the preceding twelve-month period: Provided,
That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit.

(b) Upon attaining age fifty-five, the member shall receive
the benefit provided in section six of this article as it would
apply to his or her final average salary based on earnings from
the Department through the day immediately preceding his or
her disability. The recalculation of benefit upon a member
attaining age fifty-five shall be considered to be a retirement
under the provisions of section six of this article, for purposes
of determining the amount of annual annuity adjustment and for
all other purposes of this article.

The Board may require any member retired with compensation on account of disability to submit to a physical or mental examination or both a physical and mental examination by a physician or physicians selected or approved by the Board and cause all costs incident to the examination including hospital, laboratory, X-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expenses of the Department, and a report of the findings of the physician or physicians shall be submitted in writing to the Board for its consideration. If from the report or from the report and hearing on the report, the Board is of opinion and finds that the disabled member has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the Board shall order that all payments from the Fund be terminated. If from the report or the report and hearing on the report, the Board is of the opinion and find that the disabled member has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in any gainful employment but unable to adequately perform the duties of a law-enforcement officer, the Board shall order, in the case of a member retired under the provisions of section nine of this article, that the disabled member be paid annually from the Fund an amount equal to six tenths of the base salary paid to the member in the last twelve-month employment period. The Board shall order, in the case of a member retired under the provisions of section ten of this article, that the disabled member be paid from the Fund an amount equal to one fourth of the base salary paid to the member in the last twelve-month employment period: Provided, That if the member had not been employed with the Department for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.
§15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.

(a) Not later than thirty days after an employee becomes a member of the Fund, the employer shall forward to the Board a copy of the physician's report of a physical examination which incorporates the standards or procedures described in section seven, article two, chapter fifteen of this code. A copy of the physician's report shall be placed in the employee's retirement system file maintained by the Board.

(b) Application for a disability benefit may be made by a member or, if the member is under an incapacity, by a person acting with legal authority on the member's behalf. After receiving an application for a disability benefit, the Board shall notify the Superintendent of the Department that an application has been filed: Provided, That when, in the judgment of the Superintendent, a member is no longer physically or mentally fit for continued duty as a member of the West Virginia State Police and the member has failed or refused to make application for disability benefits under this article, the Superintendent may petition the Board to retire the member on the basis of disability pursuant to legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. Within thirty days of the Superintendent's receipt of the notice from the Board or the filing of the Superintendent's petition with the Board, the Superintendent shall forward to the Board a statement certifying the duties of the member's employment, information relating to the Superintendent's position on the work relatedness of the member's alleged disability, complete copies of the member's medical file and any other information requested by the Board in its processing of the application.

(c) The Board shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code relating to
the processing of applications and petitions for disability retirement under this article.

(d) The Board shall notify a member and the Superintendent of its final action on the disability application or petition within ten days of the Board’s final action. The notice shall be sent by certified mail, return receipt requested. If either the member or the Superintendent is aggrieved by the decision of the Board and intends to pursue judicial review of the Board’s decision as provided in section four, article five, chapter twenty-nine-a of this code, the party aggrieved shall notify the Board within twenty days of the member’s or Superintendent’s receipt of the Board’s notice that they intend to pursue judicial review of the Board’s decision.

(e) The Board may require a disability benefit recipient to file an annual statement of earnings and any other information required in rules which may be adopted by the Board. The Board may waive the requirement that a disability benefit recipient file the annual statement of earnings if the Board’s physician certifies that the recipient’s disability is ongoing. The Board shall annually examine the information submitted by the recipient. If a disability recipient refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed.


Not later than the first day of January, two thousand six, and each first day of January thereafter, the Board shall prepare a report for the preceding fiscal year of the disability retirement experience of the State Police. The report shall specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit
recipients to the total number of the State Police employees
who are members of the Fund. The report shall be submitted to
the Governor and the chairpersons of the standing committees
of the Senate and House of Delegates with primary responsibil-
ity for retirement legislation.

§15-2A-12. Awards and benefits to dependents of member —
When member dies in performance of duty, etc.;
dependent child scholarship and amount.

The surviving spouse, the dependent child or children or
dependent parent or parents of any member who has lost or
shall lose his or her life by reason of injury, illness or disease
resulting from an occupational risk or hazard inherent in or
peculiar to the service required of members while the member
was engaged in the performance of his or her duties as a
member of the Department, or the survivor of a member who
dies from any cause after having been retired pursuant to the
provisions of section nine of this article, is entitled to receive
and shall be paid from the Fund benefits as follows: To the
surviving spouse annually, in equal monthly installments during
his or her lifetime, one or the other of two amounts, which shall
become immediately available and which shall be the greater
of:

(1) An amount equal to seven tenths of the base salary
received in the preceding twelve-month employment period by
the deceased member: Provided, That if the member had not
been employed with the Department for twelve months prior to
his or her death, the amount of monthly salary shall be annual-
ized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

In addition thereto, the surviving spouse is entitled to
receive and there shall be paid to the person one hundred
dollars monthly for each dependent child or children. If the
surviving spouse dies or if there is no surviving spouse, there
shall be paid monthly to each dependent child or children from
the Fund a sum equal to one fourth of the surviving spouse’s
entitlement. If there is no surviving spouse and no dependent
child or children, there shall be paid annually in equal monthly
installments from the Fund 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 but 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.

Any person qualifying as a surviving dependent child under
this section, 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 seven thousand five
hundred dollars, 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 rules provided by the Board, and maintains
scholastic eligibility as defined by the institution or the Board.
The Board may by appropriate rules define age requirements,
physical and mental requirements, scholastic eligibility,
disbursement methods, institutional qualifications and other
requirements as necessary and not inconsistent with this
section.

Awards and benefits for a surviving spouse or dependents
of a member received under any section or any of the provi-
sions of this retirement system are in lieu of receipt of any
benefits for these persons under the provisions of any other
state retirement system. Receipt of benefits under any other
state retirement system is in lieu of any right to receive any
benefits under this retirement system, so that only a single
receipt of state retirement benefits occurs.


In any case where a member while in active service of the
Department, before having completed twenty years of service
as a member of the Department, dies from any cause other than
those specified in this article and not due to vicious habits,
intemperance or willful misconduct on his or her part, there
shall be paid annually in equal monthly installments from the
Fund to the surviving spouse of the member during his or her
lifetime, or until such time as the surviving spouse remarries, a
sum equal to one half of the base salary received in the preced-
ing twelve-month employment period by the deceased member:
Provided, That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit. If there is no surviving spouse or the
surviving spouse dies or remarries, there shall be paid monthly
to each dependent child or children from the Fund a sum equal
to one fourth of the surviving spouse’s entitlement. If there is
no surviving spouse and no dependent child or children, there
shall be paid annually in equal monthly installments from the
Fund to the dependent parents of the deceased member during
their joint lifetimes a sum equal to the amount that a surviving
spouse would have been entitled to receive: Provided, however,
That when there is but one dependent parent surviving, then 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.
§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

(a) When any member of the Department has completed twenty years of service or longer as a member of the Department and dies from any cause or causes other than those specified in this article before having been retired by the Board, and when a member in retirement status has died after having been retired by the Board under the provisions of this article, there shall be paid annually in equal monthly installments from the Fund to the surviving spouse of the member, commencing on the date of the death of the member and continuing during the lifetime or until remarriage of the surviving spouse, an amount equal to two thirds of the retirement benefit which the deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if the member had been retired under the provisions of this article immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than five thousand dollars. In addition thereto, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the Fund the sum of one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or remarries, or if there is no surviving spouse, there shall be paid monthly from the Fund to each dependent child or children of the deceased member a sum equal to one fourth of the surviving spouse's entitlement. If there is no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund 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 been entitled to receive: Provided, That when there is but 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.

(b) The member may choose a higher percentage of surviving spouse benefits by taking an actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit would be actuarially equivalent to the normal spouse benefit and initial benefit. The Retirement Board shall design these benefit options and provide them as choices for the member to select. For the purposes of this subsection, “initial benefit” means the benefit received by the member upon retirement.

§15-2A-19. Credit toward retirement for member’s prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with
the Department for twenty years exclusive of his or her active military duty.

(b) In addition, any person who while a member of the Department was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the Department, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within ninety days after honorable discharge from the Armed Forces, he or she presented himself or herself to the Superintendent and offered to resume service as an active member of the Department; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the Armed Forces beyond the period of service for
which he or she was originally commissioned, enlisted, inducted or called.

(c) The total amount of military service credit allowable under this section may not exceed five years for any member of the Department.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414 (u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414 (u) of the Internal Revenue Code. The Retirement Board shall determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Retirement Board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414 (u) of the Internal Revenue Code.

§15-2A-21. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of two workdays’ credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than twelve months’ credited service in any year’s period.

(a) The state will not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system will be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan shall be at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated
Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

CHAPTER 18. EDUCATION.

Article

7A. State teachers retirement system.
7B. Teachers’ defined contribution retirement system.
7C. Merger of teachers’ defined contribution retirement system with state teachers retirement system.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.
§18-7A-14. Contributions by members; contributions by employers.
§18-7A-17. Statement and computation of teachers’ service; qualified military service.
§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.
§18-7A-18a. Calculation of allocation to Teachers Employers Contribution Collection Account.
§18-7A-23a. Terminal benefits.
§18-7A-25. Eligibility for retirement allowance.
§18-7A-28e. Limitations on benefit increases.
§18-7A-34. Loans to members.


(a) As used in this article, unless the context clearly require a different meaning:
(1) "Accumulated contributions" means all deposits and all
deductions from the gross salary of a contributor plus regular
interest.

(2) "Accumulated net benefit" means the aggregate amount
of all benefits paid to or on behalf of a retired member;

(3) "Annuities" means the annual retirement payments for
life granted beneficiaries in accordance with this article.

(4) "Average final salary" means the average of the five
highest fiscal year salaries earned as a member within the last
fifteen fiscal years of total service credit, including military
service as provided in this article, or if total service is less than
fifteen years, the average annual salary for the period on which
contributions were made.

(5) "Beneficiary" means the recipient of annuity payments
made under the retirement system.

(6) "Contributor" means a member of the retirement system
who has an account in the teachers accumulation fund.

(7) "Deposit" means a voluntary payment to his or her
account by a member.

(8) "Employer" means the agency of and within the state
which has employed or employs a member.

(9) "Employment term" means employment for at least ten
months, a month being defined as twenty employment days.

(10) "Gross salary" means the fixed annual or periodic cash
wages paid by a participating public employer to a member for
performing duties for the participating public employer for
which the member was hired. Gross salary shall also include
retroactive payments made to a member to correct a clerical
error, or pursuant to a court order or final order of an admin-
istrative agency charged with enforcing federal or state law
pertaining to the member’s rights to employment or wages, with
all such retroactive salary payments to be allocated to and
deed paid in the periods in which the work was or would
have been done. Gross salary shall not include lump sum
payments for bonuses, early retirement incentives, severance
pay, or any other fringe benefit of any kind including, but not
limited to, transportation allowances, automobiles or automo-
bile allowances, or lump sum payments for unused, accrued
leave of any type or character.

(11) “Internal Revenue Code” means the Internal Revenue
Code of 1986, as it has been amended.

(12) “Member” means a member of the retirement system.

(13) “Members of the administrative staff of the public
schools” means deans of instruction, deans of men, deans of
women, and financial and administrative secretaries.

(14) “Members of the extension staff of the public schools”
means every agricultural agent, boys’ and girls’ club agent and
every member of the agricultural extension staff whose work is
not primarily stenographic, clerical or secretarial.

(15) “New entrant” means a teacher who is not a present
teacher.

(16) “Nonteaching member” means any person, except a
teacher member, who is regularly employed for full-time
service by: (a) Any county board of education; (b) the State
Board of Education; (c) the West Virginia Board of Regents
abolished]; or (d) the Teachers Retirement Board.

(17) “Pick-up service” means service that a member was
entitled to, but which the employer has not withheld or paid for.
(18) "Plan year" means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

(19) "Present member" means a present teacher who is a member of the retirement system.

(20) "Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

(21) "Prior service" means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(22) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(26) "Regularly employed for full-time service" means employment in a regular position or job throughout the employ-
(27) "Required beginning date" means the first day of April
of the calendar year following the later of: (a) The calendar year
in which the member attains age seventy and one-half years; or
(b) the calendar year in which the member retires or ceases
covered employment under the system after having attained the
age of seventy and one half years.

(28) "Retirement system" means the State Teachers
Retirement System provided for in this article.

(29) "Teacher member" means the following persons, if
regularly employed for full-time service: (a) Any person
employed for instructional service in the public schools of West
Virginia; (b) principals; (c) public school librarians; (d)
superintendents of schools and assistant county superintendents
of schools; (e) any county school attendance director holding a
West Virginia teacher's certificate; (f) the Executive Secretary
of the Retirement Board; (g) members of the research, exten-
sion, administrative or library staffs of the public schools; (h)
the State Superintendent of Schools, heads and assistant heads
of the divisions under his or her supervision, or any other
employee under the State Superintendent performing services
of an educational nature; (i) employees of the State Board of
Education who are performing services of an educational
nature; (j) any person employed in a nonteaching capacity by
the State Board of Education, any county board of education,
the State Department of Education or the Teachers Retirement
Board, if that person was formerly employed as a teacher in the
public schools; (k) all classroom teachers, principals and
educational administrators in schools under the supervision of
the Division of Corrections, the Division of Health or the
Division of Human Services; and (l) employees of the State
Board of School Finance, if that person was formerly employed
as a teacher in the public schools.
(30) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be considered to be seventy years.

§18-7A-14. Contributions by members; contributions by employers.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the Retirement Board: Provided, That any member employed by the West Virginia Board of Directors of the State College System or the Board of Trustees of the University System at an institution of higher education under its control shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article.

(b) Annually, the contributions of each member shall be credited to the member's account in the Teachers' Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section, and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning the first day of July, one thousand nine hundred
ninety-four, the rate shall be seven and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent: Provided, that the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two-thousand five or any individual who becomes a member of the Teachers Retirement System as a result of the merger contemplated in article seven-c of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each contributor shall file with the Retirement Board or with the employer to be forwarded to the Retirement Board an enrollment form showing the contributor's date of birth and other data needed by the Retirement Board.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

(a) Under rules adopted by the Retirement Board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The Retirement Board shall determine what part of a year is the equivalent of a year of service. In computing the service,
however, it shall credit no period of more than a month’s
duration during which a member was absent without pay, nor
shall it credit for more than one year of service performed in
any calendar year.

(b) For the purpose of this article, the Retirement Board
shall grant prior service credit to new entrants and other
members of the retirement system for service in any of the
Armed Forces of the United States in any period of national
emergency within which a federal Selective Service Act was in
effect. For purposes of this section, “Armed Forces” includes
Women’s Army Corps, women’s appointed volunteers for
emergency service, Army Nurse Corps, SPARS, Women’s
Reserve and other similar units officially parts of the military
service of the United States. The military service is considered
equivalent to public school teaching, and the salary equivalent
for each year of that service is the actual salary of the member
as a teacher for his or her first year of teaching after discharge
from military service. Prior service credit for military service
shall not exceed ten years for any one member, nor shall it
exceed twenty-five percent of total service at the time of
retirement. Notwithstanding the preceding provisions of this
subsection, contributions, benefits and service credit with
respect to qualified military service shall be provided in
accordance with Section 414(u) of the Internal Revenue Code.
For purposes of this section, “qualified military service” has the
same meaning as in Section 414(u) of the Internal Revenue
Code. The Retirement Board is authorized to determine all
questions and make all decisions relating to this section and,
pursuant to the authority granted to the Retirement Board in
section one, article ten-d, chapter five of this code, may
promulgate rules relating to contributions, benefits and service
credit to comply with Section 414(u) of the Internal Revenue
Code. No military service credit may be used in more than one
retirement system administered by the Consolidated Public
Retirement Board.
(c) For service as a teacher in the employment of the federal
government, or a state or territory of the United States, or a
governmental subdivision of that state or territory, the Retirement
Board shall grant credit to the member: Provided. That the
member shall pay to the system double the amount he or she
contributed during the first full year of current employment,
times the number of years for which credit is granted, plus
interest at a rate to be determined by the Retirement Board. The
interest shall be deposited in the reserve fund and service credit
granted at the time of retirement shall not exceed the lesser of
ten years or fifty percent of the member’s total service as a
teacher in West Virginia. Any transfer of out-of-state service,
as provided in this article, shall not be used to establish eligibility for a retirement allowance and the Retirement Board shall
grant credit for the transferred service as additional service
only: Provided, however, That a transfer of out-of-state service
is prohibited if the service is used to obtain a retirement benefit
from another retirement system: Provided further, That salaries
paid to members for service prior to entrance into the retirement
system shall not be used to compute the average final salary of
the member under the retirement system.

(d) Service credit for members or retired members shall not
be denied on the basis of minimum income rules promulgated
by the teachers retirement board: Provided, That the member or
retired member shall pay to the system the amount he or she
would have contributed during the year or years of public
school service for which credit was denied as a result of the
minimum income rules of the Teachers Retirement Board.

(e) No members shall be considered absent from service
while serving as a member or employee of the Legislature of
the state of West Virginia during any duly constituted session
of that body or while serving as an elected member of a county
commission during any duly constituted session of that body.
(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement Board, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(g) The Teachers Retirement Board shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member for more than three years, for service previously credited by the Public Employees Retirement System and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System plus interest at a rate to be determined by the Board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the Retirement Board shall grant credit to the member: Provided, That the
member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the Retirement Board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the Board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the Board must receive evidence that establishes to a reasonable degree of certainty as determined by the Board that the member previously worked in CETA; and (3) the member shall pay to the Board an amount equal to the employer and employee contribution plus interest at the amount set by the Board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the
Board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(j) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(k) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(l) Subject to the provisions of subsections (a) through (l), inclusive, of this section, the Board shall verify as soon as practicable the statements of service submitted. The Retirement Board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(m) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the Board may not require any additional contributions from that member in order for the Board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall
commence as of the first day of June, two thousand: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the Board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(n) The Teachers Retirement Board shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years, for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member’s contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the Board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

(a) There is hereby created in the State Treasury a special revenue account designated the “Teachers Employers Contribu-
tion Collection Account” to be administered by the Consolidated Public Retirement Board. The Teachers Employers Contribution Collection Account shall be an interest-bearing account with interest credited to and deposited in the account and transferred in accordance with the provisions of this section.

(b) There shall be deposited into the Teachers Employers Contribution Collection Account the following:

(1) Contributions of employers, through state appropriations, and such amounts shall be included in the budget bill submitted annually by the Governor;

(2) Beginning on the first day of July, two-thousand five, contributions from each county in an amount equal to fifteen percent of all salary paid in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code and any salary equity authorized in section five of said article or any county supplement equal to the amount distributed for salary equity among the counties for each individual who was a member of the Teachers’ Retirement System before the first day of July, two-thousand five: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two-thousand five or any individual who becomes a member of the Teachers’ Retirement System as a result of the merger contemplated in article seven-c of this chapter;

(3) The amounts transferred pursuant to section eighteen-a of this article; and

(4) Any other moneys, available and not otherwise expended, which may be appropriated or transferred to this account.
(c) Moneys on deposit in the Teacher Employers Contribution Collection Account shall be transferred monthly in the following order:

(1) To the Teachers' Retirement System Fund the amount certified by the Consolidated Public Retirement Board as the actuarially required contribution;

(2) To the Pension Liability Redemption Fund the amount, if any, appropriated in accordance with section eight, article eight, chapter twelve of this code; and

(3) The balance, if any, to the Employee Pension and Health Care Benefits Fund established under section thirty-nine, article seven-a of this chapter.

(d) There is hereby continued in the State Treasury a separate irrevocable trust designated the Teachers' Retirement System Fund. The Teachers' Retirement System Fund shall be invested as provided in section nine-a, article six, chapter twelve of this code.

(e) There shall be deposited into the Teachers' Retirement System Fund, the following:

(1) Moneys transferred from the Teachers Employers Contribution Collection Account;

(2) Member contributions provided for in section fifteen of this article;

(3) Gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund;

(4) Specific appropriations to the fund made by the Legislature;
(5) Interest on the investment of any part or parts of the fund; and

(6) Any other moneys, available and not otherwise expended, which may be appropriated or transferred to the Teachers Retirement System or the Fund.

(f) The Teachers Retirement System Fund shall be the fund from which annuities shall be paid.

(g) The Consolidated Public Retirement Board has sole authority to direct and approve the making of any and all fund transfers as provided in this section, anything in this code to the contrary notwithstanding.

(h) References in the code to the Teachers Accumulation Fund, the Employers Accumulation Fund, the Benefit Fund, the Reserve Fund and the Expense Fund mean the Teachers Retirement System Fund.

§18-7A-18a. Calculation of allocation to Teachers Employers Contribution Collection Account.

(a) There shall be an annual allocation from the State General Revenue Fund to the Teachers Employers Contribution Collection Account, created by section eighteen of this article, equal to the actuarially required contribution, reduced by any employer contributions and other allocated amounts.

There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven, article seven-b of this chapter plus earnings thereon which have been certified to the several contributing employers as irrevocably forfeited in the prior fiscal year and subsequently used by the contributing employers to reduce their total aggregate contribu-
(b) The additional allocation provided in this section represents a funding method by which a part of a rational amortization plan will be established to amortize the current unfunded liability of the Teachers Retirement System created by this article. The additional allocations are not and shall not be construed to be moneys which are owed to, nor earned by any employee.

§18-7A-23a. Terminal benefits.

(a) This section provides for the payment of the balance in a retired member’s account to paid in the manner described in this section in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the later of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member’s account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of the claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member’s estate: Provided, That the provisions of this section are retroactive to all members who entered retirement status on or after the ninth day of June, two thousand.
§18-7A-25. Eligibility for retirement allowance.

(a) Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit.

(b) Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia is eligible for an annuity.

(c) Any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time such annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the Retirement Board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (a) or subdivision (b) of this section and meets the conditions of subdivision (c) of this section as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years, and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.
(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years, and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the Retirement Board must show that the member is at the time mentally or physically incapacitated for service as a teacher, that for that service the disability is total and likely to be permanent, and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the retired member shall be established by medical examination, as prescribed in subdivision three, subsection (1) of this section, annually for five years after retirement, and thereafter at such times required by the Retirement Board. Effective the first day of July, one thousand nine hundred ninety-eight, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article: Provided, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retiree receives or would receive if the options under section twenty-eight of this article were not available and that no beneficiary or beneficiaries of the disability annuitant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability retiree not made any election of the options available under said section twenty-eight. In determining the actuarial equivalence, the Board shall take into account the life expectancies of the member and the beneficiary: Provided, however,
That the life expectancies may at the discretion of the Board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the Retirement Board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.


(a) Annuitants whose annuities were approved by the Retirement Board effective before the first day of July, one thousand nine hundred eighty, shall be paid the annuities which were approved by the Retirement Board.

(b) Annuities approved by the Board effective after the thirtieth day of June, one thousand nine hundred eighty, shall be computed as provided in this section.

(c) Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(1) Two percent of the member's average salary multiplied by his or her total service credit as a teacher. In this subdivision "average salary" means the average of the highest annual salaries received by the member during any five years contained within his or her last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia Higher Education Policy Commission under its control shall be four thousand eight hundred dollars, as provided by section fourteen-a of this article;

(2) The actuarial equivalent of the voluntary deposits of the member in his or her individual account up to the time of his or her retirement, with regular interest.
(d) The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the Board.

(e) Upon the death of an annuitant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose shall be paid the difference, if any, between the member’s contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse who was named as the member’s survivor, a retirant may elect an annuity option approved by the Board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be considered a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the Board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on the eighteenth day of December. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

(g) In case the Retirement Board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the Board received the new data.
(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to the first day of July, one thousand nine hundred forty-one, is eligible for prior service credit and for prior service pensions as prescribed in this section.

§18-7A-28e. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the retirement system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the retirement system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for each plan during any fiscal year, additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the retirement system as part of the annual budget submission or in an executive message to the Legislature.
(c) Notwithstanding the provisions of subsections (a) and 
(b) of this section, the computation of annuities or benefits for 
active members due to retirement, death or disability as 
provided for in the retirement system shall not be amended in 
such a manner as to increase any existing benefits or to provide 
for new benefits.

(d) The provisions of this section terminate effective the 
first day of July, two thousand thirty-four: Provided, however, 
that if bonds are issued pursuant to article eight, chapter twelve 
of this code, the provisions of this section shall not terminate 
while any of the bonds are outstanding.

§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement 
system upon written application may borrow from his or her 
individual account in the Teachers Accumulation Fund, subject 
to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the 
minimal loan being one hundred dollars and the maximum 
being eight thousand dollars: Provided, That the maximum 
amount of any loan when added to the outstanding balance of 
all other loans shall not exceed the lesser of the following: (A) 
Eight thousand dollars reduced by the excess (if any) of the 
highest outstanding balance of loans during the one-year period 
ending on the day before the date on which the loan is made, 
over the outstanding balance of loans to the member on the date 
on which the loan is made; or (B) fifty percent of the member’s 
contributions to his or her individual account in the Teachers 
Accumulations Fund: Provided, however, That if the total 
amount of loaned money outstanding exceeds forty million 
dollars, the maximum shall not exceed three thousand dollars 
until the Retirement Board determines that loans outstanding 
have been reduced to an extent that additional loan amounts are 
again authorized.
(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the Board: Provided, That interest charged shall be commercially reason-
able in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time.

(4) If a refund is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund.

(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the Retirement Board. At the option of the Board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the Board must accept the payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the Board, become due and
payable without further notice or demand upon the occurrence
with respect to the borrowing member of any of the following
events of default: (A) Any payment of principal and accrued
interest on a loan remains unpaid after it becomes due and
payable under the terms of the loan or after the grace period
established in the discretion of the Board; (B) the borrowing
member attempts to make an assignment for the benefit of
creditors of his or her refund or benefit under the retirement
system; or (C) any other event of default set forth in rules
promulgated by the Board in accordance with the authority
granted pursuant to section one, article ten-d, chapter five of
this code: Provided, That any refund or offset of an unpaid loan
balance shall be made only at the time the member is entitled to
receive a distribution under the retirement system.

(7) 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.

(8) 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,
and accordingly, the Retirement Board is authorized to: (A)
Apply and construe the provisions of this section and adminis-
ter the plan loan program in such a manner as to comply with
the provisions of Section 72(p)(2) and Section 401 of the
Internal Revenue Code and the federal regulations issued
thereunder; (B) adopt plan loan policies or procedures consis-
tent 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
provisions. 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, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after the first day of July, two thousand five: Provided, That a member is eligible for loan under subsection (c), section six, article seven-c of this chapter to pay all or part of the one and one-half percent contribution for service in the Defined Contribution Plan.


(a) There is hereby created in the State Treasury a special revenue account designated as the “Employee Pension and Health Care Benefits Fund” to be administered by the Department of Administration. Funds in this account may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with all interest income credited to this Fund.

(b) Effective the first day of July, two thousand five, any savings realized from the reduction in employer contributions for current retirement benefits, being the difference between the required employer contributions that would have been required into the Teachers Defined Contribution System as in effect immediately prior to the first day of July, two thousand five and the required employer contribution for normal cost into the State Teachers Retirement System on and after the first day of July, two thousand five, shall be deposited into the Employee Pension and Health Care Benefits Fund. The Consolidated Public Retirement Board shall determine the annual amount of the savings based on the annual actuarial valuation for the plan.
prepared as of the first day of July following the end of each fiscal year and certify the amount to the Governor by the thirty-first day of January of that fiscal year. The Governor shall submit the amount of the savings as part of the annual budget submission or in an executive message to the Legislature.

(c) Moneys in the Employee Pension and Health Care Benefits Fund are to be used and expended to pay for the cost of unfunded health care benefits or unfunded pension benefits, or to be transferred into the Pension Liability Redemption Fund created in section eight, article eight, chapter twelve of this code as appropriated by the Legislature.


Nothing in this article or article seven-b of this chapter shall be construed:

(1) To be in conflict with section four-a, article twenty-three, chapter eighteen of this code; or

(2) To affect the membership of higher education employees who are currently members of either the State Teachers Retirement System created in this article or the Teachers’ Defined Contribution Retirement System created in article seven-b of this chapter: Provided, That if the merger contemplated by article seven-c of this chapter occurs, any higher education employees who are currently members of the Teachers’ Defined Contribution Retirement System shall become members of the Teachers Retirement System.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

§18-7B-7. Participation in Teachers’ Defined Contribution Retirement System; limiting participation in existing teachers retirement system.
§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.
§18-7B-9. Members’ contributions; annuity account established.
§18-7B-11. Termination of membership.
§18-7B-12a. Federal minimum required distributions.
§18-7B-16. Years of employment service.
§18-7B-20. Prohibition of involuntary cash-outs.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

(1) “Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article:

(2) “Existing retirement system” means the State Teachers Retirement System established in article seven-a of this chapter;

(3) “Existing employer” means any employer who employed or employs a member of the existing retirement system;

(4) “Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing
services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education and (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries;

(6) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) "Year of employment service" means employment for at least ten months, a month being defined as twenty employment days: Provided, That no more than one year of service may be accumulated in any twelve-month period;

(8) "Employer" means the agency of and within the State of West Virginia which has employed or employs a member;

(9) "Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;

(10) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;
(11) “Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Defined Contribution Retirement System;

(12) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(13) “Annuity account” or “annuity” means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(14) “Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(15) “Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the Board: Provided, however, That for employees hired on or after the first day of July, two thousand five, permanent, total disability means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

(16) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;
(17) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and

(18) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing teachers retirement system.

(a) Beginning the first day of July, one thousand nine hundred ninety-one, and except as provided in this section, the Teachers' Defined Contribution Retirement System shall be the single retirement program for all new employees whose employment commences on or after that date and all new employees shall be required to participate. No additional new employees except as may be provided in this section may be admitted to the existing Teachers Retirement System.

(b) Members of the existing Teachers Retirement System whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing Teachers Retirement System without a change in plan provisions or benefits.

(c) Any person who was previously a member of the Teachers Retirement System and who left participating employment before the creation of the Defined Contribution System on the first day of July, one thousand nine hundred ninety-one, and
who later returned to participating employment after the effective date of this section has the right to elect to return to the existing Teachers Retirement System or to elect to participate in the Defined Contribution System. The election shall be made at the time of his or her reemployment, is irrevocable and shall be made upon forms approved by and filed with the West Virginia Consolidated Public Retirement Board.

(d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-one, a member of the existing Teachers Retirement System who left participating employment before the creation of the Teachers’ Defined Contribution Retirement System on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after that date and who was precluded from returning to the existing Teachers Retirement System as a result of prior provisions of this section, may elect, pursuant to the provisions of this section, readmission to the existing Teachers Retirement System: Provided, That persons who are eligible to, and who make the election to, terminate their participation in the Defined Contribution System and to return to participation in the existing Teachers Retirement System as provided in this section shall make the election, on a form approved by and filed with the West Virginia Consolidated Public Retirement Board on or before the thirtieth day of June, two thousand two: Provided, however, That as a condition of the right of readmission to the existing Teachers Retirement System, a person making the election provided in this section whose Defined Contribution Account had not, prior to election, been divided by a qualified domestic relations order, shall pay an additional contribution to the existing Teachers Retirement System equal to one and one-half percent of his or her annual gross compensation earned for each year during which he or she participated in the Defined Contribution System and shall consent and agree to the transfer of his or her total account balance in the Defined Contribution System as of the most recent plan valuation
immediately preceding his or her transfer to the existing Teachers Retirement System. For a person making the election provided in this section whose defined contribution account had, prior to the election, previously been divided by a qualified domestic relations order, the cost to transfer to the existing Teachers Retirement System shall be actuarially determined by the Consolidated Public Retirement Board. Upon verification of that person's eligibility to return to participation in the existing Teachers Retirement System and the tender and transfer of funds as provided in this subsection, a person making this election shall receive service credit for the time the member participated in the Defined Contribution System as if his or her participation had been in the existing Teachers Retirement System: Provided further, That the right to terminate participation in the Defined Contribution System and to resume participation in the existing Teachers Retirement System as provided in this section is irrevocable and shall not apply to any person who, while a member of the Teachers Retirement System, voluntarily elected to terminate his or her membership in the Teachers Retirement System and to become a participant in the Defined Contribution System pursuant to section eight of this article.

(e) Any employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association, is eligible for readmission to the existing retirement system in which he or she was a member.

(f) An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service or any other approved break in service authorized by the Board is eligible for readmission to the existing retirement system in which he or she was a member.
(g) In all cases in which a question exists as to the right of an employee to readmission to membership in the existing Teachers Retirement System, the Consolidated Public Retirement Board shall decide the question.

(h) Any individual who is not a "member" or "employee" as defined by section two of this article and any individual who is a leased employee is not eligible to participate in the Teachers Defined Contribution System. For purposes of this section, a "leased" employee means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. In all cases in which a question exists as to whether an individual is eligible for membership in this system, the Consolidated Public Retirement Board shall decide the question.

(i) Effective the first day of July, two thousand five and continuing through the first day of two thousand six, any employee of River Valley Child Development Services, Inc., who is a member of the teachers' defined contribution retirement system may elect to withdraw from membership and join the private pension plan provided by River Valley Child Development Services, Inc.

(j) River Valley Child Development Services, Inc., and its successors in interest shall provide for their employees a pension plan in lieu of the teachers' defined contribution retirement system on or before the first day of July, two thousand five, and continuing thereafter during the existence of the River Valley Child Development Services, Inc., and its successors in interest. All new employees hired after the thirtieth day of June, two thousand five, shall participate in the pension plan in lieu of the teachers' defined contribution retirement system.
(k) The administrative body of River Valley Child Development Services, Inc., shall, on or before the first day of June, two thousand five, give written notice to each employee who is a member of the teachers’ defined contribution retirement system of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures, prepared by an independent actuary, in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the teacher’s defined contribution retirement system until retirement, disability or death, in comparison with the projected return upon withdrawing from the teachers’ defined contribution retirement system and joining a private pension plan provided by River Valley Child Development Center, Inc., and remaining therein until retirement, disability or death. The administrative body shall keep in its records a permanent record of each employee’s signature confirming receipt of the notice.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

The Retirement System created and established in this article shall be closed and no new members accepted in the system after the thirtieth day of June, two thousand five. Notwithstanding the provisions of sections seven and eight of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after the thirtieth day of June, two thousand five, shall become a member of the State Teachers’ Retirement System created and established in article seven-a of this chapter: Provided, That any person rehired after the thirtieth day of June, two thousand five, shall become a member of the Teachers’ Defined Contribution Retirement System created and
established in this article, or of the Teachers Retirement System
created and established in article seven-a of this chapter,
depending upon which system he or she last contributed to
while he or she was employed with an employer mandating
membership and contributions to one of those plans: *Provided,*
*however,* That if, and only if, the Teachers' Defined Contribu-
tion Retirement System is merged and consolidated with the
Teachers Retirement System pursuant to the provisions of
article seven-c of this chapter, then all employees shall be a
member of the Teachers Retirement System as of the first day
of July, two thousand six, as provided in article seven-c of this
chapter.

§18-7B-9. Members' contributions; annuity account established.

(a) Each employee who is a member of the Defined
Contribution System shall contribute four and one-half percent
of his or her gross compensation by salary deduction. The
salary deductions shall be made by the employer and shall be
paid to the Teachers' Defined Contribution Retirement System
within fifteen days of the end of the pay period: *Provided,* That
the Board may require any employer to make the payments
within such shorter period as it may determine, upon at least
sixty days notice to the employer, if the Board determines the
employer has the technological capacity to transfer the funds
within the shorter period. The employer payments shall be
remitted by the Board within five working days to the private
pension, insurance, annuity, mutual fund, or other qualified
company or companies designated by the Board to administer
the day-to-day operations of the system.

(b) All member contributions shall be immediately depos-
ited to an account or accounts established in the name of the
member and held in trust for the benefit of the member. An
account agreement shall be issued to each member setting forth
the terms and conditions under which contributions are re-
received, and the investment and retirement options available to the member. The Board shall propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code, pursuant to section six of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

(c) The legislative rules proposed by the Board, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

1. Lump sum or periodic payment distributions;
2. Joint and survivor annuities;
3. Other annuity forms in the discretion of the Board;
4. Variable annuities which gradually increase monthly retirement payments: Provided, That said increased payments are funded solely by the existing current value of the member’s account at the time the member’s retirement payments commence and not, to any extent, in a manner which would require additional employer or employee contributions to any member’s account after retirement or after the cessation of employment; and
5. The instances in which, if any, distributions or loans can be made to members from their annuity account balances prior to having attained the age of fifty-five.

§18-7B-11. Termination of membership.

(a) Any member whose employment with a participating employer terminates after the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member’s annuity
account, in an amount equal to the member's contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus two thirds of the employer's contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service is eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus any earnings thereon: Provided, That on the death or permanent, total disability of any member, that member is eligible to terminate his or her annuity account and receive all funds contributed to or accumulated in his or her annuity account.

(b) (1) Upon termination of employment, regardless of whether the member has taken a distribution of all or a portion of his or her vested account, the remaining balance, if any, in the member's employer account that is not vested shall be remitted and paid into a suspension account to be administered by the Board. The Board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code regarding the distribution of any balance in the special account created by this section: Provided, That any funds in the account shall be used solely for the purpose of reducing employer contributions in future years.
(2) Any account balances remitted to the suspension account herein shall be maintained by the Board in the suspension account in the name of the terminated employee for a period of five years following the member’s termination of employment. For each terminated employee at the culmination of the five-year period, the Board shall certify in writing to each contributing employer the amount of the account balance plus earnings thereon attributable to each separate contributing employer’s previously terminated employee’s account which has been irrevocably forfeited due to the elapse of a five-year period since termination pursuant to section sixteen of this article.

(c) Upon certification to the several contributing employers of the aggregate account balances plus earnings thereon which have been irrevocably forfeited pursuant to this section, the several contributing employers shall be permitted in the next succeeding fiscal year or years to reduce their total aggregate contribution requirements pursuant to section seventeen of this article, for the then current fiscal year by an amount equal to the aggregate amounts irrevocably forfeited and certified as such to each contributing employer: Provided, That should the participating employer no longer be contributing to the Defined Contribution System, any funds in the account shall be paid directly to the employer.

(d) Upon the use of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the Board of their intention to use irrevocably forfeited amounts, the Board shall direct the distribution of the irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article: Provided, That notwithstanding any provision of this article to
the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office requires that member to be absent from his or her teaching, nonteaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit, regardless when this time was served: Provided, however, That the Board may not require any additional contributions from that member in order for the Board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided further, That nothing herein may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of July, two thousand three: And provided further, That any member to which the provisions of this subsection apply may elect to pay to the Board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this Defined Contribution System. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401 (a) (9) of the Internal Revenue Code and the regulations thereunder, including without limitation the incidental death benefit provisions of Section 401 (a) (9)(G) of the Internal Revenue Code and the
regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the Defined Contribution System to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:
(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half years; or

(B) The earlier of (i) The thirty-first day of December of the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

(d) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

§18-7B-16. Years of employment service.

(a) A member of the Defined Contribution System who terminates employment with a participating employer and does not remove any funds from his or her vested employee and employer account, or who removes the funds and repays them within five years after termination, and becomes reemployed with a participating employer within five years does not forfeit any amounts placed into the suspension account pursuant to section eleven of this article and they shall be returned to his or her employer account.

(b) All years of employment service shall be counted for vesting purposes under section eleven of this article.

§18-7B-20. Prohibition of involuntary cash-outs.

Notwithstanding any provision of this section or of any legislative rule contained in series three, involuntary cash-outs to members may not be made after the thirtieth day of June, two thousand five.
ARTICLE 7C. MERGER OF TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM WITH STATE TEACHERS RETIREMENT SYSTEM.

§18-7C-1. Short title.
§18-7C-2. Legislative findings and purpose.
§18-7C-3. Definitions.
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§18-7C-7. Service credit in State Teachers Retirement System following merger.
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§18-7C-9. Election considered final.
§18-7C-10. Qualified domestic relations orders.
§18-7C-11. Vesting.
§18-7C-12. Minimum guarantees.
§18-7C-13. Due process and right to appeal.
§18-7C-14. Nonseverability.

§18-7C-1. Short title.

This article may be cited as the "Teachers' Retirement Equity Act".

§18-7C-2. Legislative findings and purpose.

(a) The Legislature declares that the State of West Virginia and its citizens have always believed in a strong public education system. The Constitution of this State mandates a thorough and efficient public education system. The Legislature notes that the quality of our state's education system is dependent, inter alia, upon the motivation and quality of its teachers and educational service personnel.

(b) The Legislature finds and declares that the State of West Virginia is privileged to be the home of some of the best teachers and education service personnel in this nation, and that our teachers and education service personnel are dedicated and hard working individuals. The Legislature further finds and
declares that our teachers and education service personnel deserve a retirement program whereby they know in advance what their retirement benefit will be, a defined benefit retirement program where our teachers and service personnel will not have to bear the risk of investment performance to receive their full retirement benefit. The Legislature notes that uncertainty exists in the investment markets, especially in the post September eleventh era, and that placing this risk and uncertainty upon the state in the form of a defined benefit plan will protect and ensure a meaningful retirement benefit for our teachers and educational service personnel.

(c) The Legislature declares that it is in the best interests of the teachers and public education in this state and conducive to the fiscal solvency of the Teachers Retirement System that the Teachers' Defined Contribution Retirement System be merged with the State Teachers Retirement System.

(d) The Legislature also finds that a fiscally sound retirement program with an ascertainable benefit aids in the retention and recruitment of teachers and school service personnel, and that the provisions of this article are designed to accomplish the goals set forth in this section.

(e) The Legislature has studied this matter diligently and in making the determination to merge the two plans has availed itself of an actuarial study of the proposed merger by the actuary of the Consolidated Public Retirement Board as well as engaging the service of two independent actuaries.

(f) The Legislature further finds and declares that members of a defined contribution system who must bear the attendant market risk and performance of their investments are truly being provided a significant and greater benefit where the defined contribution system is replaced with a defined benefit system in which the employer bears the risk of market fluctuations and investment performance, especially where those
members decide through an election process whether to trade the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

1. “Defined Contribution System” means the Teachers Defined Contribution System created and established in article seven-b of this chapter.

2. “Existing retirement system” or “State Teachers Retirement System” means the State Teachers Retirement System created and established in article seven-a of this chapter.

3. “Board” means the Consolidated Public Retirement Board created and established in article ten-d, chapter five of this code and its employees.

4. “Member” means and includes any person who has at least one dollar in the Defined Contribution System.

5. “Assets” or “all assets” means all member contributions, employer contributions and interest or asset appreciation in a member’s Defined Contribution Account, less any applicable fees as approved by the Board.

6. “Salary” or “annual salary” means the annual contract salary for those persons working in accordance with an employment contract and in any other event as an annualized amount determined by multiplying a person’s hourly rate of pay by two thousand eighty hours.

7. “Date of merger” means, in the event of a positive vote on the merger, the first day of July, two thousand six.
§18-7C-4. Merger.

On the first day of July, two thousand six, the Teachers' Defined Contribution Retirement System created and established in this article shall be merged and consolidated with the Teachers Retirement System created and established in article seven-a of this chapter, pursuant to the provisions of this article:

Provided, That if the majority of the voting members of the Teachers' Defined Contribution Retirement System do not elect in favor of the merger, then all of the provisions of this article are void and of no force and effect, and the Defined Contribution System created and established in article seven-b of this chapter shall continue as the retirement system for all members in that system as of the thirtieth day of June, two thousand six:

Provided, however, that prior to the merger and consolidation the State shall deposit into the Teachers Retirement System the amount necessary to cover any additional unfunded actuarial accrued liability which results to the system on the date that the assets and liabilities of the Teachers Defined Contribution Retirement System are merged into the Teachers Retirement System as certified by the Consolidated Public Retirement Board.

§18-7C-5. Notice, education, record keeping requirements.

(a) Commencing not later than the first day of August, two thousand five, the Consolidated Public Retirement Board shall begin an educational program with respect to the merger of the Defined Contribution Plan with the State Teachers Retirement System. This education program shall address, at a minimum, the law providing for the merger, the mechanics of the merger, the election process, relevant dates and time periods, the benefits, potential advantages and potential disadvantages if members fail or refuse to approve the merger and thereby elect to remain in the Defined Contribution System, the benefits, potential advantages and potential disadvantages of becoming
a member of the Teachers Retirement System, potential state
and federal tax implications in general attendant to the various
options available to the members and any other pertinent
information considered relevant by the Board. The Board shall
provide this information through its website, by written
materials, electronic materials or both written and electronic
materials delivered to each member and by classes or seminars,
if, in the best judgment of the Board, the classes and seminars
are required to provide the necessary education for members to
make an informed decision with respect to the election. The
Board shall also provide this information through computer
programs, or, at the discretion of the Board, through a program
of individual counseling which is optional on the part of the
member, and by any other educational program or programs
considered necessary by the Board.

(b) The Board shall provide each member with a copy of
the written or electronic educational materials and with a copy
of the notice of the election. The notice shall provide full and
appropriate disclosure regarding the merger and of the election
process, including the date of the election. The Board shall also
cause notice of the election to be published in at least ten
newspapers of general circulation in this state. This notice shall
be by Class III legal advertisement published in accordance
with the provisions of article three, chapter fifty-nine of this
code. The Board shall cause this notice to be published not later
than thirty days prior to the beginning of the election period and
not sooner than sixty days prior to the beginning of the election
period.

(c) It is the responsibility of each member of the Defined
Contribution Plan to keep the Board informed of his or her
current address. If a member does not keep the Board informed
of his or her current address, he or she is considered to have
waived his or her right to receive any information from the
Board with respect to the purposes of this article.
Once the Board has complied with the provisions of this section, every member of the Defined Contribution Plan is considered to have actual notice of the election and all matters pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution System to State Teachers Retirement System.

(a) If a majority of members voting elect to merge the Defined Contribution System into the State Teachers Retirement System, the consolidation and merger shall be governed by the provisions of this article, the Defined Contribution Retirement System shall not exist after the thirtieth day of June, two thousand six, and all members of that system shall become members of the State Teachers Retirement System as provided in this article.

(b) Following the election, if the vote is in favor of the merger, the Board shall transfer all assets in the defined contribution account into the State Teachers Retirement System and members have the option to pay into the State Teachers Retirement System a one and one-half of one percent contribution for service in the Defined Contribution Plan being recognized in the State Teachers Retirement System. This contribution shall be calculated based on the member’s salary as of the thirtieth day of June, two thousand five, and the members attained age on that date, applying both an annual backward salary scale projection from that date for prior years based upon the salary scale assumption applied in the actuarial valuation dated the first day of July, two thousand four, for the Teachers Retirement System and a one year forward salary scale projection for the year ending on the thirtieth day of June, two thousand six.

(c) The Board shall make available to the members a loan in accordance with the provisions of section thirty-four, article seven-a of this chapter to be used by the members to pay all or
a part of the one and one-half percent amount established in this
section. Notwithstanding any provision of this code, any rule or
any policy of the Board to the contrary, the interest rate on any
loan used to pay the one and one-half percent amount may not
exceed seven and one-half percent per annum and the amount
total borrowed for this section may not exceed twelve thousand
dollars. In the event a plan loan is used to pay the one and one-
half percent, the Board shall make any necessary actuarial
adjustments at the time the loan is made. The Board shall make
this plan loan available for members until the thirtieth day of
June, two thousand seven.

(d) The Board shall develop and institute a payroll deduc-
tion program for the repayment of the plan loan established in
this section.

(e) If the merger and consolidation is elected by a majority
of those persons voting, as of the first day of July, two thousand
six, the members' contribution rate shall become six percent of
his or her salary or wages and all members who make a
contribution into the State Teachers Retirement System on or
after the first day of July, two thousand six, shall be governed
by the provisions of article seven-a of this chapter, subject to
the provisions of this article.

(f) In the event a member has withdrawn or cashed out part
of his or her defined contribution plan, that member will not be
given credit for those moneys cashed out or withdrawn. The
Board shall make an actuarial determination as to the amount
of credit a member loses on the amounts he or she has with-
drawn or cashed out, which shall be expressed as a loss of
service credit: Provided, That a member may repay those
amounts he or she previously cashed out or withdrew, along
with interest determined by the Board and receive the same
credit as if the withdrawal or cash out never occurred. If the
repayment is five or more years following the cash out or
withdrawal, then he or she must repay any forfeited employer
collection account balance along with interest determined by
the Board in addition to repaying the cash out or withdrawn
amount.

(g) Where the member has cashed out of his or her teacher
defined contribution plan account balance after the last day of
June, two thousand one, and that member wishes to repurchase
defined contribution plan service after the thirtieth day of June,
two thousand six, then the member shall repay the teachers
retirement plan.

(h) Any prior service in the State Teachers Retirement
System a member may have is not affected by the provisions of
this article.

§18-7C-7. Service credit in State Teachers Retirement System
following merger.

Any member transferring all of his or her assets from the
Defined Contribution System to the State Teachers Retirement
System pursuant to the provisions of this article, and who has
not made any withdrawals from his or her defined contribution
plan, is entitled to service credit in the State Teachers Retire-
ment System for each year, or part of a year, as governed by the
provisions of article seven-a of this chapter, the member
worked and contributed to the Defined Contribution Plan. Any
member who has made withdrawals or cash outs will receive
service credit based upon the amounts transferred and the Board
shall make the appropriate actuarial determination of and the
appropriate actuarial adjustment to the service credit the
member will receive.

§18-7C-8. Election; Board may contract for professional services.

(a) The Board shall arrange for and hold an election for the
members of the defined contribution plan on the issue of
merging and consolidating the Defined Contribution Plan into the State Teachers Retirement Plan with the result being that, if a majority of the members casting ballots vote in the positive on the issue, all members of the Defined Contribution Plan will transfer, or have transferred, all assets held by them or on their behalf in the Defined Contribution Plan to, and they shall become members of and be entitled to the benefits of, the State Teachers Retirement System and be governed by the provisions of the State Teachers Retirement System subject to the provisions of this article: Provided, That at least one-half of the members of the Defined Contribution Plan must vote on the question in order for the election to be valid and binding.

(b) Any person who has one dollar or more in a defined contribution account created and established pursuant to article seven-b of this chapter, may vote on the question of the merger.

(c) The Board may retain the services of the professionals it considers necessary to: (1) Assist in the preparation of educational materials for members of the Defined Contribution Plan to inform these members of their options in the election; (2) assist in the educational process of the members; (3) assist in the election process and the election; and (4) ensure compliance with all relevant state and federal laws.

(d) Due to the time constraints inherent in the merger process set forth in this article in specific, and due to the nature of the professional services required by the Consolidated Public Retirement Board in general, the provisions of article three, chapter five-a of this code, relating to the Division of Purchasing of the Department of Administration do not apply to any contracts for any actuarial services, investment services, legal services or other professional services authorized under the provisions of this article.

(e) The election provided for in this section may be held through certified mail or in any other way the Board determines
is in the best interest of the members. Each ballot shall contain
the following language, in bold fifteen point type: “By casting
this ballot I am making an educated, informed and voluntary
choice as to my retirement and the retirement system of which
I wish to be a member. I am also certifying that I understand the
consequences of my vote in this election.” Each ballot shall be
signed by the member voting. The Board shall retain the ballots
in a permanent file. Any unsigned ballot is void.

(f) The election period shall begin not later than the first
day of March, two thousand six, and the Board shall ascertain
the results of the election not later than the last day of March,
two thousand six. The Board shall certify the results of the
election to the Governor, to the Legislature and to the members
not later than the fifth day of April, two thousand six.

(g) The election period shall terminate and no votes may be
cast or counted after the twelfth day of March, two thousand
six, except that if the election is conducted through the United
States mails, the ballot shall be postmarked not later than the
twelfth day of March, two thousand six, in order to be counted.

(h) The Board shall take all necessary steps to see that the
merger does not affect the qualified status with the Internal
Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

(a) The election is considered final and each member,
whether he or she votes, or fails to vote, shall thereafter be
bound by the results of the election. Every member is consid-
ered to have made an informed, educated, knowing and
voluntary decision and choice with respect to the election.
Those members who fail or refuse to vote are also considered
to have made an informed, educated, knowing and voluntary
decision and choice with respect to the election and with respect
9 to voting and shall be bound by the results of the election as if
10 he or she voted in the election.

11 (b) Only one election may be held pursuant to the provi-
12 sions of this article on the issue of merging and consolidating
13 the Defined Contribution Plan with the State Teachers Retire-
14 ment Plan.

§18-7C-10. Qualified domestic relations orders.

1 Any member having a qualified domestic relations order
2 against his or her defined contribution account is allowed to
3 repurchase service in the State Teachers Retirement System by
4 repaying any moneys previously distributed to the alternate
5 payee along with the interest as set by the Board: Provided,
6 That a member shall repay any amounts under this section by
7 the last day of June, two thousand twelve. The provisions of this
8 section are void and of no effect if the members of the Defined
9 Contribution Plan fail to elect to merge and consolidate the
10 Defined Contribution Plan with the State Teachers Retirement
11 System.

§18-7C-11. Vesting.

1 Any member who works one hour or more after the date of
2 merger provided in this article occurs, is subject to the vesting
3 schedule set forth in article seven-a of this chapter: Provided,
4 That if a member is vested under the Defined Contribution Plan
5 and his or her last contribution was not made to the State
6 Teachers Retirement System, that member is subject to the
7 vesting schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

1 (a) Any member of the Defined Contribution Plan who has
2 made a contribution to the State Teachers Retirement System
3 after the date of merger is guaranteed a minimum benefit equal
to his or her contributions to the Defined Contribution Plan as of the thirtieth day of June, two thousand six, plus his or her vested employer account balance as of that date, as stated by the Board or the Board's professional contractor.

(b) A member of the Defined Contribution Plan who has made contributions to the State Teachers Retirement System after the thirtieth day of June, two thousand six, where the Defined Contribution Plan has been merged into the State Teachers Retirement System pursuant to the provisions of this article, shall have, upon eligibility to receive a distribution under article seven-a of this chapter, at a minimum, the following three options: (1) The right to receive an annuity from the State Teachers Retirement System created and established in article seven-a of this chapter, based upon the benefit and vesting provisions of that article; (2) the right to withdraw from the State Teachers Retirement Plan and receive his or her member accumulated contributions plus regular interest thereon as set forth in article seven-a of this chapter; or (3) the right to withdraw and receive his or her original vested defined contribution account balance as of the date of the merger as determined by the Board or its professional third party benefits administrator pursuant to the vesting provisions of section twelve of this article.

(c) Any member of the Teachers Defined Contribution System who makes no contribution to the State Teachers Retirement System following approval of the merger and following the date of merger is guaranteed the receipt of the amount in his or her total vested account in the Defined Contribution Plan on the date of merger plus interest thereon at four percent accruing from the date of merger.

§18-7C-13. Due process and right to appeal.

Any person aggrieved by any actuarial determination made by the Board following the election, if the result of the election
is in favor of merger and consolidation, may petition the Board
and receive an administrative hearing on the matter in dispute.
The administrative decision may be appealed to a circuit court.

§18-7C-14. Nonseverability.

If any provision of this article is held unconstitutional or
void, the remaining provisions of this article shall be void and
of no effect and, to this end, the provisions of this article are
hereby declared to be nonseverable.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF
RECORD.

§51-9-6c. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or
create any new benefits for any retirees or beneficiaries
currently receiving monthly benefit payments from the system,
other than an increase in benefits or new benefits effected by
operation of law in effect on the effective date of this article, in
an amount that would exceed more than one percent of the
accrued actuarial liability of the system as of the last day of the
preceding fiscal year as determined in the annual actuarial
valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year
as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new
benefits for any retirees or beneficiaries currently receiving
monthly benefit payments under the system, other than an
increase in benefits or new benefits effected by operation of law
in effect on the effective date of this article, causes any addi-
tional unfunded actuarial accrued liability in any of the West
Virginia state sponsored pension systems as calculated in the
annual actuarial valuation for the plan during any fiscal year,
the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the consolidated public retirement board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective the first day of July, two thousand nineteen: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

CHAPTER 202

(Com. Sub. for S. B. 717 — By Senators Edgell, Jenkins, Boley, Harrison and Kessler)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §5-10-18 of the Code of West Virginia, 1931, as amended, relating to permitting Wetzel County
Hospital and Jobs for West Virginia's Graduates respectively to provide an alternative retirement plan for new employees in lieu of participation in the Public Employees Retirement System; establishing date; and permitting emergency services personnel to purchase service credit for the years one thousand nine hundred ninety to one thousand nine hundred ninety-five; specifying the cost of the service credit; specifying interest rate; and setting forth a limited time period for emergency services personnel to make the purchase.

Be it enacted by the Legislature of West Virginia:

That §5-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment.
(b) The Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center, and their successors in interest, shall provide for their employees a pension plan in lieu of the Public Employees Retirement System during the existence of the named mental health centers and their successors in interest.

(c) The administrative bodies of the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center shall, on or before the first day of May, one thousand nine hundred ninety-seven, give written notice to each employee who is a member of the Public Employees Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the public employees retirement system until retirement, disability or death, in comparison with the projected return upon withdrawing from the Public Employees Retirement System and joining a private pension plan provided by the Community Mental Health Center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee's signature confirming receipt of the notice.

(d) Effective the first day of March, two thousand three, and ending the thirty-first day of December, two thousand four, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members'
deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the Board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the Board until all sums are fully repaid.

(e) Effective the first day of July, two thousand five, and ending the thirty-first day of December, two thousand six, any emergency services personnel may purchase service credit for the time period beginning the first day of January, one thousand nine hundred ninety, and ending the thirty-first day of December, one thousand nine hundred ninety-five: Provided, That person was employed as an emergency service person in this state for that time period: Provided, however, That any person obtaining service credit under this subsection is required to pay the employee’s share and the employer’s share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased.

(f) Jobs for West Virginia’s Graduates and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after the first day of July, two thousand five.

(g) Wetzel County Hospital and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after the first day of July, two thousand five.
AN ACT to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-3 of said code; to amend and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; and to amend and reenact §51-2A-6 of said code, all relating generally to the salaries of the Governor, Attorney General, State Treasurer, State Auditor, Commissioner of Agriculture, Secretary of State, Supreme Court Justices, judges of circuit courts, family court judges and magistrates; and effective dates.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §50-1-3 of said code be amended and reenacted; that §51-1-10a of said code be amended and reenacted; that §51-2-13 of said code be amended and reenacted; and that §51-2A-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

(a) Beginning in the calendar year two thousand five, and for each calendar year thereafter, salaries for each of the state constitutional officers shall be as follows:

1. The salary of the Governor shall be ninety-five thousand dollars per year;

2. The salary of the Attorney General shall be eighty thousand dollars per year;

3. The salary of the Auditor shall be seventy-five thousand dollars per year;

4. The salary of the Secretary of State shall be seventy thousand dollars per year;

5. The salary of the Commissioner of Agriculture shall be seventy-five thousand dollars per year; and

6. The salary of the State Treasurer shall be seventy-five thousand dollars per year.

(b) Notwithstanding the provisions of subsection (a) of this section, beginning in the calendar year two thousand nine, and for each calendar year thereafter, salaries for each of the state constitutional officers shall be as follows:

1. The salary of the Governor shall be one hundred fifty thousand dollars per year;

2. The salary of the Attorney General shall be one hundred five thousand dollars per year;

3. The salary of the Auditor shall be ninety-five thousand dollars per year.
(4) The salary of the Secretary of State shall be ninety-five thousand dollars per year;

(5) The salary of the Commissioner of Agriculture shall be ninety-five thousand dollars per year; and

(6) The salary of the State Treasurer shall be ninety-five thousand dollars per year.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.


(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: Provided, however, That on and after the first day of July, two thousand five, magistrates who serve fewer than eight thousand four hundred in population shall be paid annual salaries of forty-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 fifty 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.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.
2A. Family Courts.

ARTICLE 1. SUPREME COURT OF APPEALS.
§51-1-10a. Salary of justices.

1. The salary of each of the Justices of the Supreme Court of Appeals shall be ninety-five thousand dollars per year: Provided, That beginning the first day of July, two thousand five, the salary of each of the Justices of the Supreme Court shall be one hundred twenty-one thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.


1. The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

5. The annual salary of all circuit judges shall be ninety thousand dollars per year: Provided, That beginning the first day of July, two thousand five, the annual salary of all circuit judges shall be one hundred sixteen thousand dollars per year.

ARTICLE 2A. FAMILY COURTS.


1. (a) A family court judge is entitled to receive as compensation for his or her services an annual salary of sixty-two thousand five hundred dollars: Provided, That beginning the first day of July, two thousand five, a family court judge is entitled to receive as compensation for his or her services an annual salary of eighty-two thousand five hundred dollars.

7. (b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of twenty-five thousand
three hundred thirty-two dollars. In addition, any person employed as a secretary-clerk to a family court judge on the effective date of the enactment of this section during the sixth extraordinary session of the Legislature in the year two thousand one who is receiving an additional five hundred dollars per year up to ten years of a certain period of prior employment under the provisions of the prior enactment of section eight of this article during the second extraordinary session of the Legislature in the year one thousand nine hundred ninety-nine shall continue to receive such additional amount. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in article five, chapter five of this code.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed thirty-six thousand sixty dollars. The family case coordinator will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in article five, chapter five of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of
the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of article nine of this chapter.

CHAPTER 204

(S. B. 640 — By Senators Fanning, Weeks, Hunter and Minard)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2004.]

AN ACT to amend and reenact §29-4-15 of the Code of West Virginia, 1931, as amended, relating to commissioner seals; and providing for the use of a stamped imprint as an acceptable seal.

_Be it enacted by the Legislature of West Virginia:_

That §29-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.**
§29-4-15. Seal of such commissioner.

Every such commissioner shall provide an official seal on which shall be inscribed his or her name and residence and the words "Commissioner for West Virginia". An impression or stamped imprint of such seal, together with his or her signature, shall be forthwith transmitted to and filed in the office of the Secretary of State.

CHAPTER 205

(Com. Sub. for S. B. 154 — By Senator Bowman)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-23, relating to the beneficial use of water treatment plant sludge; requiring promulgation of legislative rules; and setting forth minimum requirements for the legislative rules.

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 §22-15-23, to read as follows:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


(a) Water treatment plant sludge determined by the Secretary to have beneficial properties may be beneficially used in
accordance with requirements determined necessary by the
Secretary to protect human health and the environment.
Persons seeking to beneficially use water treatment plant sludge
shall meet the requirements of this article and the rules promul-
gated under this article.

(b) In order to enhance the resource recovery and recycling
goals of this article and to encourage the beneficial use of water
treatment plant sludge, the Secretary shall propose, for promul-
gation, legislative rules to effectuate the purposes of this section
in accordance with the provisions of article three, chapter
twenty-nine-a of this code. The Secretary shall, at a minimum,
include the following in the proposed rules:

(1) A mechanism to determine beneficial use characteristics
of water treatment plant sludge;

(2) A method to determine pollutant content of water
treatment plant sludge proposed for beneficial use;

(3) A method to determine that the beneficial properties of
the water treatment plant sludge are derived from the raw
material rather than additives;

(4) Buffer zones or other criteria necessary to adequately
protect ground and surface water;

(5) Necessary restrictions of pollutant levels in the water
treatment plant sludge;

(6) Analytical methods and storage requirements for water
treatment plant sludge;

(7) Permit requirements; and

(8) Appropriate fees.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22C-3-26; and to amend said code by adding thereto a new section, designated §22C-4-9a, all relating generally to the powers and duties of the solid waste management board; providing for performance reviews of authorities and performance measures; requiring proposal of legislative rules for implementation of review process and system; authorizing solid waste management board to intervene under certain circumstances; providing intervention process; requiring State Auditor to establish certain accounting procedures to be adopted by all county and regional solid waste authorities; and requiring audits of authorities.

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 §22C-3-26; and that said code be amended by adding thereto a new section, designated §22C-4-9a, all to read as follows:

Article
3. Solid Waste Management Board.
4. County and Regional Solid Waste Authorities.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.
§22C-3-26. Supersede over county and regional solid waste authorities.

For purposes of exercising the authority provided under section nine-a, article four of this chapter, the Board may by resolution supersede and exercise, in part or whole, the powers granted to only county or regional solid waste authorities that operate solid waste facilities as provided in chapters seven, twenty two, twenty two-c and twenty-four of this code. Actions of the Board supersede those powers granted to only county or regional solid waste authorities that operate solid waste facilities.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-9a. Findings, Solid Waste Management Board performance reviews and measures, legislative rules, intervention of impaired authorities, establishment of uniform chart of accounts, financial examination requirements.

(a) The Legislature finds that performance review and performance measurement are valuable tools for identifying serious impairments of commercial solid waste facilities operated by county or regional solid waste authorities and fostering accountability and effective and efficient facility operations.

(b) The Solid Waste Management Board shall conduct a biennial performance review of each county and regional solid waste authority that operates a commercial solid waste facility. Provided, That the Solid Waste Management Board may conduct a performance review at any time it determines a performance review to be necessary.

(c) The Solid Waste Management Board shall develop and maintain a system of annual and quarterly or more frequent
performance measures useful in gauging the productivity and operational health of county and regional solid waste authorities operating commercial solid waste facilities. The authorities shall provide the performance measurement data in accordance with the legislative rule required under subsection (d) of this section.

(d) No later than the first day of August, two-thousand six, the Solid Waste Management Board in consultation and collaboration with the Public Service Commission, shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement a performance review process and system of quarterly performance measures designed pursuant to subsections (b) and (c) of this section.

(e) For the purposes of this section, “performance review” means an accountability system which establishes benchmarks to evaluate and determine the effective and efficient performance of a county solid waste authority operating a commercial solid waste facility or regional solid waste authority operating a commercial solid waste facility.

(f) For the purposes of this section, “performance measures” means outcome and output measures. “Outcomes” represent effects or results of programs. “Outputs” represent the units of services or activities produced.

(g) In promulgating the rules required by subsection (d) of this section, the Solid Waste Management Board shall establish criteria to be considered in conducting performance reviews, establish benchmarks to identify serious impairments, establish a recommendation process for correcting impairments and establish penalties for failure to comply, including a process for temporary intervention by the Solid Waste Management Board to correct impairments.
(h) When the Solid Waste Management Board determines through a performance review or regular monitoring of performance measures that an authority’s commercial solid waste facility is seriously impaired and the authority does not correct the impairments, the intervention process may include, but is not limited to, the following methods:

(1) Appointing a team of improvement consultants to conduct on-site reviews and make strategic recommendations toward remedy of the serious impairments;

(2) Directing the authority’s board of directors to prioritize and target its funds strategically toward alleviating the serious impairments;

(3) Recommending to the agencies that appoint the members of the authority’s board of directors, as provided by subsection (b), section three, and subsection (b), section four of this article, that one or more members of the authority’s board of directors be replaced;

(4) The Director of the Solid Waste Management Board, or his or her designee, may temporarily during intervention, preside as chair of the county or regional solid waste authority board meetings; and

(5) Exercising powers of supersedure provided under section twenty-six, article three of this chapter.

(i) The State Auditor in consultation and collaboration with the Solid Waste Management Board and the Public Service Commission shall establish a uniform chart of accounts delineating common revenue and expense account naming conventions to be adopted by all county and regional solid waste authorities, beginning no later than the first day of July, two thousand six.
(j) The chief inspector and supervisor of local government offices shall conduct an annual examination on the financial report of county and regional solid waste authorities with an audit occurring every third year. Additionally, the chief inspector, upon request by the Solid Waste Management Board, shall conduct an audit of any county or regional solid waste authority that operates a commercial solid waste facility as a part of the performance review required by this section. The definitions of “examination”, “audit” and “review” provided in section one-a, article nine, chapter six of this code apply to this subsection.

CHAPTER 207

(S. B. 728 — By Senator Bowman)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended, relating to the disposition of state surplus property generally; allowing cannibalization of commodities under certain circumstances; allowing the disposing of commodities as waste under certain circumstances; providing for procedures by legislative rules; defining cannibalization; allowing the state agency for surplus property to take possession of a commodity in certain circumstances and dispose of the commodity using any method authorized in the section; and providing that the cost of disposal in certain circumstances is the responsibility of the agency from which the state agency for surplus property received the commodity.
Be it enacted by the Legislature of West Virginia:

That §5A-3-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

(a) The state agency for surplus property has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state when the commodities are or become obsolete or unusable or are not being used or should be replaced.

(b) The agency shall determine what commodities or expendable commodities should be disposed of and make disposition in the manner which will be most advantageous to the state. The disposition may include:

1. Transferring the particular commodities or expendable commodities between departments;
2. Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code;
3. Trading in the commodities as a part payment on the purchase of new commodities;
(4) Cannibalizing the commodities pursuant to procedures established under subsection (g) of this section;

(5) Properly disposing of the commodities as waste; or

(6) Selling the commodities to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of the sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the agency considers advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids.

(c) Upon the transfer of commodities or expendable commodities between departments, or upon the sale of commodities or expendable commodities to an eligible organization, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

(d) The agency may sell expendable, obsolete or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete or unused motor vehicles owned by the state with a gross weight in excess of four thousand pounds to an eligible volunteer fire department. The agency, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision: Provided, That the sale price of any motor vehicle sold to an eligible organization may not be less than the “average loan” value, as published in the most recent available eastern edition of the National
Automobile Dealer’s Association (N. A. D. A.) Official Used Car Guide, if the value is available, unless the fair market value of the vehicle is less than the N. A. D. A. “average loan” value, in which case the vehicle may be sold for less than the “average loan” value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle and the condition of the body, engine and tires as indicators of its fair market value. If no fair market value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The agency shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization which received the commodities and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: Provided, That the agency may charge and assess fees reasonably related to the
(g)(1) For purposes of this section, “cannibalization” means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the Director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

(3)(A) Under circumstances prescribed by the procedures, state agencies shall be required to submit a form, in writing or electronically, that, at a minimum, elicits the following information for the commodity the agency is requesting to cannibalize:

(i) The commodity identification number;

(ii) The commodity’s acquisition date;

(iii) The commodity’s acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable and, if so, how well it operates;

(vi) How the agency will dispose of the remaining parts of the commodity; and

(vii) Who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.
(B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts:

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable;

(vi) Whether the part restores the commodity to an operable condition; and

(vii) The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

(C) If the agency intends to retain the cannibalized parts for future use, it shall provide information justifying its request.

(D) The procedures shall provide for the disposal of the residual components of cannibalized property.

(h)(1) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow state agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the state agency for surplus property shall inspect the condition of the commodity prior to authorizing the
disposal and those circumstances when the inspection is not necessary prior to the authorization.

(2) Whenever a state agency requests permission to dispose of a commodity in a landfill, or by other lawful means of waste disposal, the state agency for surplus property has the right to take possession of the commodity and to dispose of the commodity using any other method authorized in this section.

(3) If the state agency for surplus property determines, within fifteen days of receiving a commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal would be more beneficial to the state than disposing of the commodity using any other method authorized in this section, the cost of the disposal is the responsibility of the agency from which it received the commodity.

CHAPTER 208

(H. B. 3361 — By Delegates Beane, Ennis, Butcher, Hatfield, Hunt, laquinta, Martin, Perdue, Frich and Walters)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating
agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:

That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

(1) On the first day of July, two thousand six: Division of Motor Vehicles; Department of Revenue; Department of Health and Human Resources; Department of Environmental Protection; State Police; Consolidated Public Retirement Board; and Workers’ Compensation.

(2) On the first day of July, two thousand seven: Office of Health Facilities Licensure and Certification within the Department of Health and Human Resources; Development Office; Parkways, Economic Development and Tourism Authority;
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§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

1 (1) On the first day of July, two thousand six: Tourism Commission within the Development Office.

2 (2) On the first day of July, two thousand seven: School Building Authority.

3 (3) On the first day of July, two thousand eight: James "Tiger" Morton Catastrophic Illness Commission.

§4-10-5. Termination of agencies following preliminary performance reviews.
The following agencies terminate on the date indicated, but no agency terminates under this section unless a preliminary performance review has been conducted upon the agency:

1. On the first day of July, one thousand nine hundred ninety-six: Juvenile Facilities Review Panel.

2. On the first day of July, one thousand nine hundred ninety-seven: Public Employees Insurance Agency Advisory Board; Cable Television Advisory Board.

3. On the first day of July, one thousand nine hundred ninety-nine: Tree Fruit Industry Self-improvement Assessment Program.


5. On the first day of July, two thousand three: Advisory Council on Public Health; Governor’s Office of Fiscal Risk Analysis and Management.

6. On the first day of July, two thousand four: Workers’ Compensation Appeal Board.

7. On the first day of July, two thousand five: Clean Coal Technology Council; and Steel Advisory Commission and Steel Futures Program.

8. On the first day of July, two thousand six: Family Protection Services Board; Medical Services Fund Advisory Council; West Virginia Stream Partners Program; Ohio River Valley Water Sanitation Commission; State Lottery Commission; Whitewater Commission within the Division of Natural Resources; Unemployment Compensation; Women’s Commission; Personal Assistance Services Program; Contractor Licensing Board; State Rail Authority; Office of Explosives and
Blasting; Waste Tire Fund; Care Home Advisory Board;
Capitol Building Commission; Records Management and
Preservation Board; Public Employees Insurance Agency; Soil
Conservation Committee; and Rural Health Advisory Panel.

(9) On the first day of July, two thousand seven: Human
Rights Commission; Office of Coalfield Community Develop-
ment; State Fire Commission; Children’s Health Insurance
Board; Board of Banking and Financial Institutions; Lending
and Credit Rate Board; Governor’s Cabinet on Children and
Families; State Geological and Economic Survey; and Public
Energy Authority and Board.

(10) On the first day of July, two thousand eight: Ethics
Commission; Public Service Commission; Parks section and
parks function of the Division of Natural Resources; Office of
Water Resources of the Department of Environmental Protec-
tion; Marketing and Development Division of Department of
Agriculture; Public Defender Services; Health Care Authority;
Public Employees Insurance Agency Finance Board; West
Virginia Prosecuting Attorneys Institute; and Design-Build
Board.

(11) On the first day of July, two thousand nine: Driver’s
Licensing Advisory Board; West Virginia Commission for
National and Community Service; Membership in the Southern
Regional Education Board; Bureau of Senior Services; Oil and
Gas Inspector’s Examining Board; Division of Protective
Services; Motorcycle Safety Awareness Board; Commission on
Holocaust Education; and Commission for the Deaf and Hard
of Hearing.

(12) On the first day of July, two thousand ten: Meat
Inspection Program of the Department of Agriculture; Motor
Vehicle Dealers Advisory Board; Interstate Commission on
Uniform State Laws; Center for Professional Development
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:


2. (2) On the first day of July, two thousand six: State Board of Risk and Insurance Management.

3. (3) On the first day of July, two thousand seven: Office of the Environmental Advocate; Racing Commission; Educational Broadcasting Authority; and Oral Health Program.

4. (4) On the first day of July, two thousand eight: Environmental Quality Board; and Emergency Medical Services Advisory Council.

5. (5) On the first day of July, two thousand ten: Veterans’ council; and Oil and Gas Conservation Commission.

§4-10-5b. Termination of boards created to regulate professions and occupations.

(a) The Legislative Auditor shall evaluate each board created under chapter thirty of this code to regulate professions
and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest and whether the public interest requires that the board be continued.

(b) The following boards terminate on the date indicated, but no board terminates under this section unless a regulatory board evaluation has been conducted upon the board:

(1) On the first day of July, two thousand six: Board of Examiners in Counseling; Board of Osteopathy; Board of Examiners of Land Surveyors; Board of Dental Examiners; Board of Licensed Dietitians; Board of Examiners of Psychologists; and Real Estate Commission.

(2) On the first day of July, two thousand seven: Board of Registration for Sanitarians; Board of Embalmers and Funeral Directors; Board of Optometry; Board of Social Work Examiners; Board of Respiratory Care Practitioners; Board of Veterinary Medicine; and Board of Accountancy.

(3) On the first day of July, two thousand eight: Nursing Home Administrators Board; Board of Hearing Aid Dealers; Board of Pharmacy; Board of Medicine; Board of Barbers and Cosmetologists; and Board of Acupuncture.

(4) On the first day of July, two thousand nine: Board of Physical Therapy; Board of Chiropractic Examiners; Board of Landscape Architects; and Board of Occupational Therapy.

(5) On the first day of July, two thousand ten: Board of Registration for Professional Engineers; Board of Examiners for Registered Professional Nurses; Board of Examiners for Licensed Practical Nurses; Board of Examiners for Speech
AN ACT to amend and reenact §5-14-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the West Virginia Commission for the Deaf and Hard of Hearing.

Be it enacted by the Legislature of West Virginia:

That §5-14-12 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.

§5-14-12. West Virginia Commission for the Deaf and Hard of Hearing continued.
Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Commission for the Deaf and Hard of Hearing shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.

CHAPTER 210

(H. B. 2958 — By Delegates Beane, Ennis, Barker and Yost)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §5-16-4a of the Code of West Virginia, 1931, as amended, relating to continuing the Public Employees Insurance Agency Finance Board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4a. Public Employees Insurance Agency Finance Board continued.

Pursuant to the provisions of article ten, chapter four of this code, the Public Employees Insurance Agency Finance Board shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §5B-2-13 of the Code of West Virginia, 1931, as amended, relating to continuation of the Tourism Commission.

Be it enacted by the Legislature of West Virginia:

That §5B-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.


1 Pursuant to the provisions of article ten, chapter four of this code, the Tourism Commission shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §9-2-1a of the Code of West Virginia, 1931, as amended, relating to continuation of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of Health and Human Resources continued.

1 The Department of Health and Human Resources shall be charged with the administration of this chapter. Pursuant to the provisions of article ten, chapter four of this code, the Department of Health and Human Resources shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished.
CHAPTER 213

(S. B. 281 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 8, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-4C-5a, all relating to continuation of the Emergency Medical Services Advisory Council.

Be it enacted by the Legislature of West Virginia:

That §16-4C-5 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 §16-4C-5a, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

§16-4C-5a. Continuation of the Emergency Medical Services Advisory Council.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

(a) The Emergency Medical Services Advisory Council, heretofore created and established by former section seven of this article, is continued for the purpose of developing, with the Commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the Office
of Emergency Medical Services and the Commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state.

(b) The Council shall have the duty to advise the Commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

c) The Council shall be composed of fifteen members appointed by the Governor by and with the advice and consent of the Senate. The Mountain State Emergency Medical Services Association shall submit to the Governor a list of six names of representatives from its Association and a list of three names shall be submitted to the Governor of representatives of their respective organizations by the County Commissioners’ Association of West Virginia, the West Virginia State Firemen’s Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the state Department of Education. The Governor shall appoint from the respective lists submitted two persons who represent the Mountain State Emergency Medical Services Association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician-basic; and one person from the County Commissioners’ Association of West Virginia, the West Virginia State Firemen’s Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the state Department of Education. In addition, the Governor shall appoint one person to represent emergency medical service
providers operating within the state, one person to represent
small emergency medical service providers operating within
this state and three persons to represent the general public. Not
more than six of the members may be appointed from any one
congressional district.

(d) Each term is to be for three years and no member may
serve more than four consecutive terms.

(e) The Council shall choose its own chairman and meet at
the call of the Commissioner at least twice a year.

(f) The members of the Council shall receive compensation
and expense reimbursement in an amount not to exceed the
same compensation and expense reimbursement as is paid to
members of the Legislature for their interim duties as recom-
mended by the Citizens Legislative Compensation Commission
and authorized by law for each day or substantial portion
thereof engaged in the performance of official duties.

§16-4C-5a. Continuation of the Emergency Medical Services
Advisory Council.

Pursuant to the provisions of article ten, chapter four of this
code, the Emergency Medical Services Advisory Council shall
continue to exist until the first day of July, two thousand eight,
unless sooner terminated, continued or reestablished.

CHAPTER 214

(H. B. 2893 — By Delegates Beane, Ennis, laquinta, Talbott and Yost)
AN ACT to amend and reenact §16-5Q-3 of the Code of West Virginia, 1931, as amended, relating to continuation of the James “Tiger” Morton Catastrophic Illness Commission.

Be it enacted by the Legislature of West Virginia:

That §16-5Q-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5Q. THE JAMES “TIGER” MORTON CATASTROPHIC ILLNESS FUND.


Pursuant to the provisions of article ten, chapter four of this code, the James “Tiger” Morton Catastrophic Illness Commission shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.

CHAPTER 215

(S. B. 283 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §16-29B-28 of the Code of West Virginia, 1931, as amended, relating to continuation of the Health Care Authority.

Be it enacted by the Legislature of West Virginia:
That §16-29B-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-28. Continuation of the Health Care Authority.

Pursuant to the provisions of article ten, chapter four of this code, the Health Care Authority shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.

CHAPTER 216

(S. B. 213 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Plymale, White, Boley, Harrison, Lanham, Minear and Weeks)

[Passed April 8, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §16-41-7 of the Code of West Virginia, 1931, as amended, relating to continuation of the Oral Health Program.

Be it enacted by the Legislature of West Virginia:

That §16-41-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.

§16-41-7. Continuation of the Oral Health Program.
Pursuant to the provisions of article ten, chapter four of this code, the Oral Health Program shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.

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CHAPTER 217

(S. B. 282 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley and Minear)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §18-9D-18 of the Code of West Virginia, 1931, as amended, relating to continuation of the School Building Authority.

Be it enacted by the Legislature of West Virginia:

That §18-9D-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-18. Continuation of the School Building Authority.

Pursuant to the provisions of article ten, chapter four of this code, the School Building Authority shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §20-1A-9 of the Code of West Virginia, 1931, as amended, relating to continuation of the Public Land Corporation.

Be it enacted by the Legislature of West Virginia:

That §20-1A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-9. Continuation of the Public Land Corporation.

1 The Public Land Corporation shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact §21-9-13 of the Code of West Virginia, 1931, as amended, relating to continuation of West Virginia Board of Manufactured Housing Construction and Safety.

Be it enacted by the Legislature of West Virginia:

That §21-9-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-13. West Virginia Board of Manufactured Housing Construction and Safety continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Manufactured Housing Construction and Safety shall continue to exist until the first day of July, two thousand eleven, unless sooner terminated, continued or reestablished.
CHAPTER 220

(S. B. 285 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §29-1-1b of the Code of West Virginia, 1931, as amended, relating to continuation of the Division of Culture and History.

Be it enacted by the Legislature of West Virginia:

That §29-1-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1b. Continuation of the Division of Culture and History.

Pursuant to the provisions of article ten, chapter four of this code, the Division of Culture and History shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §29-12-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the state Board of Risk and Insurance Management.

Be it enacted by the Legislature of West Virginia:

That §29-12-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-12. Continuation of state Board of Risk and Insurance Management.

Pursuant to the provisions of article ten, chapter four of this code, the state Board of Risk and Insurance Management shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §29-21-3a of the Code of West Virginia, 1931, as amended, relating to continuation of Public Defender Services.

Be it enacted by the Legislature of West Virginia:

That §29-21-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3a. Continuation of Public Defender Services.

Pursuant to the provisions of article ten, chapter four of this code, Public Defender Services shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-9-32 of the Code of West Virginia, 1931, as amended, relating to continuation of the West Virginia Board of Accountancy.

Be it enacted by the Legislature of West Virginia:

That §30-9-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-32. Continuation of the West Virginia Board of Accountancy.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Accountancy shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-10-20, relating to continuation of the Board of Veterinary Medicine.

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 §30-10-20, to read as follows:

ARTICLE 10. VETERINARIANS.

§30-10-20. West Virginia Board of Veterinary Medicine continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Veterinary Medicine shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-36-20, relating to the continuation of the West Virginia Acupuncture Board.

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 §30-36-20, to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-20. Continuation of the West Virginia Acupuncture Board.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Acupuncture Board shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-38-19 of the Code of West Virginia, 1931, as amended, relating to continuation of the Real Estate Appraiser Licensing and Certification Board.

Be it enacted by the Legislature of West Virginia:

That §30-38-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.


Pursuant to the provisions of article ten, chapter four of this code, the Real Estate Appraiser Licensing and Certification Board shall continue to exist until the first day of July, two thousand thirteen, unless sooner terminated, continued or reestablished.
CHAPTER 227

(H. B. 2892 — By Delegates Beane, Ennis, Yost and Frich)

[Passed March 23, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §48-18-134 of the Code of West Virginia, 1931, as amended, relating to continuation of the Bureau for Child Support Enforcement.

Be it enacted by the Legislature of West Virginia:

That §48-18-134 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.


Pursuant to the provisions of article ten, chapter four of this code, the Bureau for Child Support Enforcement shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished.

CHAPTER 228

(Com. Sub. for H. B. 3023 — By Delegates Michael, Argento, Beach, DeLong, Ennis, Perry, Pethtel, Stemple, Swartzmiller, Varner and Yost)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-7-6e, relating to assessments and collections of assessment on all breeding age sheep and all breeding age goats; allocation of assessment proceeds; duties of county assessors and Commissioner of Agriculture; creation of special revenue funds; and purposes for which proceeds to be expended.

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 §7-7-6e, to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-6e. Collection of head tax on sheep and goats; duties of county assessors and Commissioner of Agriculture; deposit of tax collections; creation of special revenue fund; purposes.

1 After the thirtieth day of June, two thousand five, it shall be
2 the duty of the county assessor and his or her deputies of each
3 county within the state, at the time they are making assessments
4 of the personal property within such county, to assess and
5 collect an assessment of one dollar on all breeding age sheep
6 and one dollar on all breeding age goats.

7 The assessor collecting the assessment on breeding age
8 sheep and goats shall be allowed a commission of ten percent
9 upon all such taxes collected and shall send the Commissioner
10 of Agriculture ninety percent of such taxes so collected, who
11 shall deposit the same in a special account in the State Treasury
12 to be known as the “Integrated Predation Management Fund.”
13 Expenditures from the Fund shall be for the purposes set forth
14 in this section and are not authorized from collections but are to
15 be made only in accordance with appropriation by the Legisla-
ture 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 eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

The money in the Fund shall be used by the Commissioner solely to enter into a cooperative service agreement with the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and Wildlife Services (WS) to expand the Coyote Control Program statewide.

Any person who does not pay this assessment is not eligible for the services provided by this cooperative agreement.

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CHAPTER 229

(S. B. 463 — By Senators Minard and Sharpe)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-3-5 of the Code of West Virginia, 1931, as amended, relating to allowing a supplemental assessment on all personal property when personal property has been omitted from the record books.

Be it enacted by the Legislature of West Virginia:

That §11-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5. Correction of previous property books; entry of omitted property.

The assessor, in making out the land and personal property books, shall correct any and every mistake he or she shall discover in the books for any previous year.

When the assessor shall ascertain that any real or personal property in his or her county liable to taxation, other than that mentioned in the next succeeding paragraph, has been omitted from the land or personal property books for a period of less than five years, he or she shall make an entry thereof in the proper book of the year in which the omission was discovered and assess the same, according to the rule prescribed in section one of this article, and shall charge the same with all taxes chargeable against it at the rate of levy for the year or years the same was omitted, together with interest thereon at the rate of six percent per annum for the years the same was omitted from the books: Provided, That if the taxpayer requires proof of payment of personal property taxes pursuant to section three-a, article three, chapter seventeen-a of this code, then the taxpayer shall file a listing of all personal property owned on the assessment date preceding the tax year or years for which proof must be shown. The assessor shall then create a supplemental assessment for the year or years required for proof of payment for all personal property taxes provided on the listing and present the supplemental assessment to the sheriff who shall apply the levy rate or rates for the year or years so assessed and prepare a tax bill and collect the taxes together with interest thereon at the rate of six percent per annum for the years the same was omitted from the books and any penalties included thereon: Provided, however, That any person who has been a resident of the state less than one year prior to the assessment date shall not be required to pay any interest or penalty.
And when the assessor shall ascertain that any notes, bonds, bills and accounts receivable, stocks and other intangible personal property in his or her county liable to taxation has been omitted from the personal property books for a period of five years or less after the thirty-first day of December, one thousand nine hundred thirty-two, he or she shall make entry thereof in the personal property book of the year in which the omission was discovered and assess the same at its true and actual value, according to the rule prescribed in section one of this article, and shall charge the same with all taxes chargeable against it after the year last aforesaid at the rate of levy for the year or years the same was omitted after the year aforesaid, together with interest thereon at the rate of six percent per annum for the years the same was omitted from the books.

Any assessor failing to make an entry as in this section provided, when discovered by him or her or called to his or her attention by any taxpayer interested therein, shall forfeit one hundred dollars.

CHAPTER 230

(Com. Sub. for H. B. 3012 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Kominar, H. White and Palumbo)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting property acquired by lease purchase agreement by the state, a county, district, city, village, town or other political subdivision, state college or university, from property tax.
Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes;

(4) Property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon;
(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes, and not held or leased out for profit;

(13) Property used for the public purposes of distributing water or natural gas, or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college, or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or
college, when the property is used as residential accommodations, or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations, not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, dumb or blind, or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm, not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of two hundred dollars, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person when not held or used for profit;
(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town or other political subdivision, or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property; and

(28) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform
assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to subdivision (27), subsection (a) of this section, passed during the two thousand five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

CHAPTER 231

(S. B. 657 — By Senators Sharpe and Helmick)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-10A-9 of the Code of West Virginia, 1931, as amended, relating to the Office of Tax Appeals; and providing for certain exceptions to the sixty-day time limit for filing a petition to appeal a decision of the Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.
§11-10A-9. Appeal to Office of Tax Appeals; petition; answer.

(a) A proceeding before the Office of Tax Appeals appealing a tax assessment, a denial of a tax refund or credit or any other order of the Tax Commissioner, or requesting a hearing pursuant to the provisions of any article of this chapter which is administered pursuant to article ten of this chapter, shall be initiated by a person timely filing a written petition that succinctly states:

(1) The nature of the case;

(2) The facts on which the appeal is based; and

(3) Each question presented for review by the Office of Tax Appeals.

(b) Except where a different time for filing a petition is specified elsewhere in this code, a petition filed pursuant to subsection (a) of this section is timely filed if postmarked or hand delivered to the Office of Tax Appeals within sixty days of the date a person received written notice of an assessment, denial of a refund or credit, order or other decision of the Tax Commissioner.

(c) The Office of Tax Appeals shall, within five days of receipt of a timely petition filed pursuant to subsection (a) of this section, provide the Tax Commissioner with a copy of the petition. The Tax Commissioner shall submit a written answer to the petition within forty days of his or her receipt of the petition. The answer shall succinctly state:

(1) The nature of the case;

(2) The facts relied upon by the Commissioner;

(3) An answer to each question presented for review.
(d) A proceeding before the Office of Tax Appeals in other matters conferred by statute or legislatively approved rules shall be initiated by filing a petition with the Office of Tax Appeals in accordance with the provisions of the applicable statute or rule.

CHAPTER 232

(S. B. 650 — By Senators Sharpe and Helmick)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-10A-11 of the Code of West Virginia, 1931, as amended, relating to small claims hearings by the Office of Tax Appeals; and requiring concurrence of both the Tax Commissioner and the Office of Tax Appeals for a dispute to be conducted in a small claims hearing.

Be it enacted by the Legislature of West Virginia:

That §11-10A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.


(a) If the amount in dispute in any petition filed with the Office of Tax Appeals does not exceed ten thousand dollars for any one taxable year, then, at the option of the taxpayer and with the concurrence of the Tax Commissioner and the Office of Tax Appeals, the hearing shall be conducted under this section. Notwithstanding the provisions of section fourteen of
this article, a hearing under this section shall be conducted in an
informal manner and in accordance with the rules of practice
and procedure as the Office of Tax Appeals may prescribe.

(b) At any time before commencement of the hearing held
under this section, the petitioner may unilaterally withdraw the
election made under subsection (a) of this section. Upon a
change of election, a hearing shall be held in the same manner
as other contested matters to which this article applies.

(c) A decision entered in any hearing conducted under this
section is not subject to administrative or judicial review under
this article, article ten of this chapter or article five, chapter
twenty-nine-a of this code and may not be treated as precedent
for any other contested matter. The amount, if any, owed by the
taxpayer to the state shall be paid within thirty days after notice
of the decision is served on the taxpayer. The amount, if any,
of overpayment by the taxpayer shall be promptly refunded or
credited to the taxpayer.

(d) For purposes of this section, the amount in dispute
includes tax, additions to tax and penalties, but excludes
interest.

CHAPTER 233

(Com. Sub. for S. B. 646 — By Senators Unger and Minard)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §11-13-1 and §11-13-3 of the Code of
West Virginia, 1931, as amended, all relating generally to
business and occupation tax; exempting from tax gross income received by nonprofit homeowners associations for community services to members; deleting obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-13-1 and §11-13-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.
§11-13-3. Exemptions; annual exemption and periods thereof.

§11-13-1. Definitions.

(a) General. — When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) Terms defined. —

(1) "Person", or the term "company", used in this article interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) "Sale", "sales" or "selling" includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) "Taxpayer" means any person liable for any tax hereunder.
(4) "Gross income" means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal) or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his or her business, and extension of credit in connection with the sale of any tangible personal property or service and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

(5) "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

(6) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall include the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

(7) "Gas" means either natural gas unmixed or any mixture of natural and artificial gas or any other gas.

(8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas has been
injected for the purpose of storage prior to the first day of
March, one thousand nine hundred eighty-nine.

(9) "Gas storage service" means the injection of gas into a
storage reservoir, the storage of gas for any period of time in a
storage reservoir or the withdrawal of gas from a storage
reservoir. The gas may be owned by the storage operator or any
other person.

(10) "Net number of dekatherms of gas injected" means the
sum of the daily injection of dekatherms of gas in excess of the
sum of the daily withdrawals of dekatherms of gas during a tax
month.

(11) "Net number of dekatherms of gas withdrawn" means
the sum of the daily withdrawal of dekatherms of gas in excess
of the sum of the daily injection of dekatherms of gas during a
tax month.

(12) "Gas storage operator" means any person who operates
a storage reservoir or provides a storage service as defined in
this subsection either as owner or lessee.

(13) "Month" or "tax month" means the calendar month.

(14) "Dekatherm" means the thermal energy unit equal to
one million British thermal units (BTU's) or the equivalent of
one thousand cubic feet of gas having a heating content of one
thousand BTU's per cubic foot.

(15) "Taxable year" means the calendar year, or the fiscal
year ending during the calendar year, upon the basis of which
tax liability is computed under this article. "Taxable year"
means, in case of a return made for a fractional part of a year
under the provisions of this article, or under regulations
promulgated by the Tax Commissioner, the period for which
the return is made.
(16) "Homeowners' association" means a homeowners' association as defined in Section 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association" also includes any unit owners' association organized under section one hundred one, article three, chapter thirty-six-b of this code.

(17) "Member", for purposes of the exemption provided in subdivision (7), subsection (b), section three of this article, means a person having membership rights in a homeowners' association, 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 ordinarily conferred on members of the homeowners association, such as the right to vote, the right to elect officers and directors and the right to hold office within the organization. The term "member" also includes a "unit owner" as that term is defined in section one hundred three, article one, chapter thirty-six-b of this code.

§11-13-3. Exemptions; annual exemption and periods thereof.

(a) Monthly exemption. — For any tax imposed under the provisions of this article with respect to any period beginning on or after the first day of July, one thousand nine hundred eighty-five, there shall be an exemption in every case of forty-one dollars and sixty-seven cents per month in amount of tax computed under the provisions of this article. Only one exemption shall be allowed to any one person, whether the person exercises one or more privileges taxable hereunder.

(b) Exemptions from tax. — The provisions of this article shall not apply to:

(1) Insurance companies which pay the State of West Virginia a tax upon premiums: Provided, That said exemption shall not extend to that part of the gross income of insurance
companies which is received for the use of real property, other
than property in which any company maintains its office or
offices, in this state, whether the income be in the form of
rentals or royalties;

(2) Nonprofit cemetery companies organized and operated
for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations
organized and operated for the exclusive benefit of their
members and not for profit: Provided, That the exemption shall
not extend to that part of the gross income arising from the sale
of alcoholic liquor, food and related services of fraternal
societies, organizations and associations which are licensed as
private clubs under the provisions of article seven, chapter sixty
of this code;

(4) Corporations, associations and societies organized and
operated exclusively for religious or charitable purposes and
production credit associations, organized under the provisions
of the federal Farm Credit Act of 1933;

(5) Any credit union organized under the provisions of
chapter thirty-one of this code or any other chapter of this code:
Provided, That the exemptions of this section shall not apply to
corporations or cooperative associations organized under the
provisions of article four, chapter nineteen of this code;

(6) Gross income derived from advertising service rendered
in the business of radio and television broadcasting; and

(7) Gross income of a nonprofit homeowners’ association
received from assessments on its members for community
services such as road maintenance, common area maintenance,
water service, sewage service and security service.
AN ACT to amend and reenact §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, all relating generally to motor fuel excise tax; clarifying exemption for motor fuel sold to United States, its agencies and instrumentalities; providing procedure for sellers of tax-paid fuel to the United States, its agencies and instrumentalities to obtain refund of tax on such fuel; changing time for filing certain claims for refund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

§11-14C-31. Claiming refunds.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) Per se exemptions from flat rate component of tax. —
2 Sales of motor fuel to the following, or as otherwise stated in
3 this subsection, are exempt per se from the flat rate of the tax
4 levied by section five of this article and the flat rate may not be
5 paid at the rack:
(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption does not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane.

(b) Per se exemptions from variable component of tax. — Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption does not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) Refundable exemptions from flat rate component of tax. — Any person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

(1) The United States or any agency thereof: Provided, That if the United States government, or any agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person
selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may then claim a refund of the flat rate component of tax imposed by said section on those sales;

(2) Any county government or unit or agency thereof;

(3) Any municipal government or any agency thereof;

(4) Any county boards of education;

(5) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption: Provided, however, That in order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation: Provided,
67 however, That a refund may not be granted on any motor fuel
which is transported and delivered outside this state in the
motor fuel supply tank of a highway vehicle;

70 (8) All gallons of motor fuel used and consumed in station-
ary off-highway turbine engines;

72 (9) All gallons of special fuel used for heating any public or
private dwelling, building or other premises;

74 (10) All gallons of special fuel used for boilers;

75 (11) All gallons of motor fuel used as a dry cleaning solvent
or commercial or industrial solvent;

77 (12) All gallons of motor fuel used as lubricants, ingredi-
ents or components of any manufactured product or compound;

79 (13) All gallons of motor fuel sold for use or used as a
motor fuel for commercial watercraft;

81 (14) All gallons of special fuel sold for use or consumed in
railroad diesel locomotives;

83 (15) All gallons of motor fuel purchased in quantities of
twenty-five gallons or more for use as a motor fuel for internal
combustion engines not operated upon highways of this state;

86 (16) All gallons of motor fuel purchased in quantities of
twenty-five gallons or more and used to power a power take-off
unit on a motor vehicle. When a motor vehicle with auxiliary
equipment uses motor fuel and there is no auxiliary motor for
the equipment or separate tank for a motor, the person claiming
the refund may present to the Tax Commissioner a statement of
his or her claim and is allowed a refund for motor fuel used in
operating a power take-off unit on a cement mixer truck or
garbage truck equal to twenty-five percent of the tax levied by
this article paid on all motor fuel used in such a truck;
(17) Motor fuel used by any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: Provided, That the amount refunded is equal to six cents per gallon: Provided, however, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) Refundable exemptions from variable rate component of tax. — Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

(1) The United States or any agency thereof: Provided, That if the United States government, or any agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may then claim a refund of the variable rate of tax imposed by said section on those sales.
(2) This state and its institutions;

(3) Any county government or unit or agency thereof;

(4) Any municipal government or any agency thereof;

(5) Any county boards of education;

(6) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) Any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund: Provided, however, That a refund may not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.
(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

§11-14C-31. Claiming refunds.

(a) Any person seeking a refund pursuant to subsection (c) or (d), section nine of this article shall present to the Commissioner a petition for refund in the form required by the Commissioner and provide the information required by the Commissioner. The Tax Commissioner may require the petitioner to provide the original or duplicate original sales slips or invoices from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked “duplicate” are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of subdivision (15), subsection (c), section nine of this article when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes: And provided further, That a refund claim made under the authority of subdivision (1), subsection (c), section nine of this article and a refund claim made under the authority of subdivision (1), subsection (d) of said section shall be accompanied by such verification as prescribed by the Tax Commissioner: And provided further, That billing statements and electronic invoices are acceptable in lieu of original invoices at the discretion of the Tax Commissioner: And provided further, That the person claiming a refund under subsection (c) or (d) of said section shall retain for at least three years following the postmark date of the application for refund a copy of the
(b) Any person claiming a refund pursuant to section thirty of this article shall file a petition in writing with the Commissioner. The petition shall be in the form and with supporting records as required by the Commissioner and made under the penalty of perjury.

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect. No payment of any refund may be made to any person other than the original person entitled to claim the refund except as otherwise expressly provided in this article. The Commissioner shall cause a refund to be made under the authority of this section only when the claim for refund is filed with the Commissioner within the following time periods:

(1) A petition for refund under section thirty of this article, other than for evaporation loss, shall be filed with the Commissioner within three years from the end of the month in which:
   (A) The tax was erroneously or illegally paid; (B) the gallons were exported or lost by casualty; or (C) a change of rate took effect;

(2) A petition for refund under section thirty of this article for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

(3) A petition for refund under subsection (c) or (d), section nine of this article shall be filed with the Commissioner on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter: Provided, That any application for refund made under authority of subdivision (15), subsection (c) of said section when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be
filed within twelve months from the month of purchase or delivery of the motor fuel: *Provided, however,* That all persons authorized to claim a refundable exemption under the authority of subdivisions (1) through (6), inclusive, subsection (c), section nine of this article and subdivisions (1) through (6), inclusive, subsection (d) of said section shall do so no later than the thirty-first day of August for the purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June.

(d) Any petition for a refund not timely filed is not construed to be or constitute a moral obligation of the state of West Virginia for payment. Every petition for refund is subject to the provisions of section fourteen, article ten of this chapter.

(e) The Commissioner may make any investigation considered necessary before refunding to a person the tax levied by section five of this article. The Commissioner may also subject to audit the records related to a refund of the tax levied by section five of this article.

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CHAPTER 235

(H. B. 3357 — By Delegates Michael, Doyle, Kominar, Proudfoot, Boggs, Stalnaker and Williams)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §11-15B-2 and §11-15B-2a of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §11-15B-4a, all relating generally to streamlined sales and use tax adminis-
Be it enacted by the Legislature of West Virginia:

That §11-15B-2 and §11-15B-2a 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 §11-15B-4a, all to read as follows:

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-2a. Streamlined sales and use tax agreement defined.
§11-15B-4a. Representatives to governing board of streamlined sales and use tax agreement.


(a) General. — When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined.

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the streamlined sales and use tax agreement, as defined in section two-a of this article.

(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.
(4) "Certified automated system" or "CAS" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(5) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales tax functions.

(6) "Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(7) "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

(8) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(9) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(10) "Dietary supplement" means any product, other than "tobacco", intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;
(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v) of this subdivision;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR §101.36, or in any successor section of the code of federal regulations.

(11) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(12) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United
States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.

(13) “Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility-enhancing equipment”, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(14) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) “Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service.

(16) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages or tobacco.
(17) “Includes” and “including” when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(18) “Lease” includes rental, hire and license. “Lease” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code, or other provisions of federal, state or local law.

(19) “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.
(20) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(21) "Model I seller" means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(22) "Model II seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(23) "Model III seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(24) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.
(25) “Personal service” includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(26) “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(27) “Prewritten computer software” means “computer software”, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

(C) “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the
price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(28) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(29) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(30) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(31) "Purchase price" means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.

(32) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(33) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(34) "Retail sale" or "sale at retail" means:
(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(35)(A) “Sales price” means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for the fair market value of any trade-in.

(B) “Sales price” does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(36) “Sales tax” means the tax levied under article fifteen of this chapter.

(37) “Seller” means any person making sales, leases or rentals of personal property or services.

(38) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale, or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer’s, distributor’s or other third-party’s marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a “service” or “selected service” rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.
(39) “State” means any state of the United States and the District of Columbia.

(40) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, steam, water, gas, and prewritten computer software.

(41) “Tax” includes all taxes levied under articles fifteen and fifteen-a of this chapter, and additions to tax, interest and penalties levied under article ten of this chapter.

(42) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(43) “Taxpayer” means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax, penalties imposed by article ten of this chapter.

(44) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(45) “Use tax” means the tax levied under article fifteen-a of this chapter.

(46) “Use-based exemption” means an exemption based on the purchaser’s use of the product or service.

(47) “Vendor” means any person furnishing services taxed by article fifteen or fifteen-a of this chapter, or making sales of
tangible personal property or custom software. "Vendor" and
"seller" are used interchangeably in this article and in article
fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this
article are defined in articles fifteen and fifteen-a of this
chapter, which definitions are incorporated by reference into
this article. Additionally, other sections of this article may
define terms primarily used in the section in which the term is
defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

As used in this article and articles fifteen and fifteen-a of
this chapter, the term “streamlined sales and use tax agreement”
or “agreement” means the agreement adopted the twelfth day of
November, two thousand two, by states that enacted authority
to engage in multistate discussions similar to that provided in
section four of this article, except when the context in which the
term is used clearly indicates that a different meaning is
intended by the Legislature. “Agreement” includes amendments
to the agreement adopted by the implementing states in
calendar years two thousand three and two thousand four but
does not include any substantive changes in the agreement
adopted after the first day of January, two thousand five.

§11-15B-4a. Representatives to governing board of streamlined
sales and use tax agreement.

Upon implementation of the streamlined sales and use tax
agreement and this state becoming a party to the agreement,
West Virginia shall have four representatives to the governing
board of the agreement. Two representatives shall be the
Secretary of Revenue and the Tax Commissioner, or their
respective designees; and two representatives shall be appointed
by the President of the Senate and the Speaker of the House of
Delegates.
AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-21-12g, all relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing new increasing modification to federal adjusted gross income for amount deducted under Section 199 of Internal Revenue Code; requiring filing of certain schedules to support deduction and increasing modification; providing Tax Commissioner with additional remedies for noncompliance and for errors in computing federal adjusted gross income; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 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 §11-21-12g, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


§11-21-12g. Additional modification increasing federal adjusted gross income; disallowance of deduction taken under Internal Revenue Code Section 199.
(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand four, but prior to the first day of January, two thousand five, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand five, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year two thousand five are retroactive to the extent allowable under federal income tax law. With respect to
taxable years that began prior to the first day of January, two
thousand five, the law in effect for each of those years shall be
fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low
income senior citizen for property tax paid on his or her
homestead in this state, the term “laws of the United States” as
used in subsection (a) of this section means and includes the
term “low income” as defined in subsection (b), section twenty-
one of this article and as reflected in the poverty guidelines
updated periodically in the federal register by the U. S.
Department of Health and Human Services under the authority
of 42 U. S. C. §9902(2).

§11-21-12g. Additional modification increasing federal adjusted
gross income; disallowance of deduction taken
under Internal Revenue Code Section 199.

(a) In addition to amounts added to federal taxable income
pursuant to subsection (b), section twelve of this article, unless
already included therein, there shall be added to federal taxable
income the amount deducted under Section 199 of the Internal
Revenue Code of 1986, as amended, when determining federal
adjusted gross income for the taxable year for federal income
tax purposes.

(b) When taxpayer’s federal adjusted gross income includes
distributive share of income, gain or loss of a partnership,
limited liability company, electing small business corporation,
or other entity treated as a partnership for federal income tax
purposes, and when taxpayer’s distributive share for the taxable
year includes a deduction, or portion of a deduction computed
under Section 199 of the Internal Revenue Code, as amended,
for the taxable year, then in addition to amounts added to
federal taxable income pursuant to subsection (b), section
twelve of this article, unless already included therein, taxpayer
shall add the amount computed under Section 199 of the
Internal Revenue Code of 1986, as amended, that flows through
to the taxpayer for federal income tax purposes for the taxable year. Taxpayer shall file with its annual return under this article a copy of all schedules K-1 it received showing allocation of a Section 199 deduction and such other information as the Tax Commissioner may require.

(c) Failure to attach required schedules. — When taxpayer fails to include with the annual return due under this article the schedule or schedules required by this section, the return shall be treated as an incomplete return until the day the required schedule or schedules are filed with the Tax Commissioner. An incomplete return showing an overpayment of tax may not be treated as a claim for refund until the day the defect is cured. The filing of an incomplete return shall not start the running of the period of time during which the Tax Commissioner may issue an assessment or take other action to enforce compliance of this article for the taxable year.

(d) Audit adjustment to federal taxable income. — When auditing for compliance with this article, the Tax Commissioner may change a taxpayer’s computation of federal taxable income or pro forma taxable income to comply with the laws of the United States as in effect for the taxable year and incorporated by reference into this article.

CHAPTER 237

(S. B. 643 — By Senators Helmick, Plymale and Minard)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, all relating generally to
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personal income tax; providing that in determining West Virginia taxable income of electing small business trusts, income attributable to S corporation stock held by trust shall be included; authorizing equitable relief when statutory computation of tax for nonresident individuals, estates and trusts and part-year resident individuals produces result that is out of all proportion to amount of taxpayer's West Virginia source income; correcting erroneous cross-reference to code section concerning part-year residents; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

That §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

§11-21-18. West Virginia taxable income of resident estate or trust.

The West Virginia taxable income of a resident estate or trust means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum
distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes: Provided, That the provisions of this subdivision shall first be effective for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust’s income attributable to electing small business corporation stock held by the trust that is not included in the trust’s federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the regular session of the Legislature in two thousand five are effective for tax years beginning on or after the first day of January, two thousand five.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

(a) Computation of tax. -- For taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one, the tax due under this article on taxable income derived from sources in this state by a nonresident individual, estate, or trust or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a
nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer’s West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer’s “federal adjusted gross income” for the taxable year as defined in section nine of this article: Provided, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer’s West Virginia source income, the tax commissioner may provide such equitable relief as the tax commissioner, in his or her discretion, considers to be appropriate under the circumstances.

(b) Special rules for estates and trusts. — For purposes of subdivision (1), subsection (a) of this section:

(1) The “federal adjusted gross income” of an estate or trust shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust, “federal adjusted gross income” shall be its “federal adjusted gross income” for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust’s income attribu-
able to electing small business corporation stock held by the
trust that is not included in the trust's federal taxable income
pursuant to Section 641(c) of that code shall be included in
West Virginia taxable income of the trust.

(c) Special rules for part-year residents. --

(1) For purposes of subdivision (1), subsection (a) of this
section, the “federal adjusted gross income” of a part-year
resident individual shall be taxpayer's federal adjusted gross
income for the taxable year, as defined in section nine of this
article, increased or decreased, as the case may be, by the items
accrued under subdivision (1), subsection (b), section forty-four
of this article, to the extent such items are not otherwise
included in federal adjusted gross income for the taxable year,
and decreased or increased, as the case may be by the items
accrued under subdivision (2) of said subsection, to the extent
such items are included in federal adjusted gross income for the
taxable year; and

(2) In computing the tax due as if taxpayer were a resident
of this state for the entire tax year, West Virginia adjusted gross
income shall include the accruals specified in subdivision (1) of
this subsection, with the applicable modifications described in
section forty-four of this article.

(d) Definitions. —

(1) “Nonresident estate” means an estate of a decedent who
was not a resident of this state at the time of his or her death.

(2) “Nonresident trust” means a trust which is not a resident
trust, as defined in section seven of this article.

(3) “Part-year resident individual” means an individual who
is not a resident or nonresident of this state for the entire
taxable year.
(e) **Effective date.** — (1) The provisions of this section shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the regular session of the Legislature in two thousand five are effective for tax years beginning on or after the first day of January, two thousand five.

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**CHAPTER 238**

(Com. Sub. for S. B. 666 — By Senators Sharpe and Helmick)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §11-23-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-5 of said code, all relating to exemptions for certain insurance companies from business franchise tax and corporation net income tax; and limiting the exemptions to that portion of the tax base which is based on income subject to a tax upon premiums.

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

That §11-23-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-5 of said code be amended and reenacted, all to read as follows:
ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and other organizations exempt from tax.

The following organizations and persons are exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Natural persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons;

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any corporation or organization if the unrelated business income is subject to federal income tax;

(c) Insurance companies which pay this state a tax upon premiums and insurance companies that pay the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code;

(d) Production credit associations organized under the provisions of the federal Farm Credit Act of 1933: Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code;
(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred eighty-five;

(f) Any credit union organized under the provisions of chapter thirty-one or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(g) Any corporation organized under this code which is a political subdivision of the State of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code;

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in subdivision (8), subsection (b), section three of this article: Provided, That if a corporation or partnership is not exclusively engaged in that activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming is exempt from tax under this article;

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the Tax Commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog
racing meeting or a pari-mutuel system of wagering is exempt from tax under this article;

(j) For those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-eight, any corporation or partnership operating as a hunting club: Provided, That the corporation or partnership distributes no income or dividends to its owners or stockholders. For the purposes of this subsection, a hunting club is a group of persons owning land which is used principally for hunting purposes by the members of the club and guests, and where any charges made for hunting are principally for the purpose of defraying the costs of operating and maintaining the club and club properties or establishing a reasonable reserve to meet the operating and maintenance costs of the club. The Tax Commissioner shall, by legislative rule promulgated in accordance with article three, chapter twenty-nine of this code, further prescribe the definition of a hunting club and the manner and method in which this credit may be claimed; and

(k) For tax years beginning after the thirty-first day of December, two thousand two, any person or other organization engaged in the activity of providing venture capital to West Virginia businesses: Provided, That if the person or organization is not exclusively engaged in that activity, only that portion of its tax base under this article that is attributable to the providing of venture capital to West Virginia businesses is exempt from tax under this article and its tax liability under this article is determined by multiplying its precredit tax liability by a fraction equal to one minus a fraction, the numerator of which is its gross receipts attributable to its venture capital activities in this state and the denominator of which is its total gross receipts from all of its business activities in this state. For purposes of this exemption, a "person or organization engaged in the activity of providing venture capital to West Virginia business" means a certified West Virginia capital company as defined in section four, article one, chapter five-e of this code.
ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) Insurance companies which pay this state a tax upon premiums and insurance companies that pay the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code.

(c) Production credit associations organized under the provisions of the federal Farm Credit Act of 1933: Provided, That the exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(d) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended: Provided, That said corporations shall file the information return required by section thirteen-b of this article.

(e) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the Labor Management Relations Act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred sixty-seven.
AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-24-6a, all relating to updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; providing new increasing modification to federal taxable income for amount deducted under Section 199 of Internal Revenue Code; requiring filing of certain schedules to support deduction and increasing modification; providing Tax Commissioner with additional remedies for noncompliance and for errors in computing federal taxable income; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 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 §11-24-6a, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

§11-24-6a. Additional modification increasing federal taxable income; disallowance of deduction taken under IRC §199.

§11-24-3. Meaning of terms; general rule.
(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand three, but prior to the first day of January, two thousand five, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand five, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand five are retroactive to the
extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, two thousand five, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

§11-24-6a. Additional modification increasing federal taxable income; disallowance of deduction taken under IRC §199.

(a) General rule. — In addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken as a deduction when determining federal taxable income for the taxable year for federal income tax purposes, unless subsection (b), (d) or (e) of this section applies.

(b) Member of affiliated group filing on separate entity basis in this state. — When the taxpayer is a member of an affiliated group for federal income tax purposes for the taxable year and computation of the deduction allowed under Section 199 of the Internal Revenue Code for the taxable year is determined at the affiliated group level but the taxpayer files on a separate entity basis under this article, then in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, there shall be added to the taxpayer’s pro forma federal taxable income the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, and taken, in whole or in part, as a deduction when determining the taxpayer’s pro forma federal taxable income for the taxable year. The taxpayer shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed for the affiliated group for federal income tax purposes for the
taxable year; and (2) how that deduction is allocated among the various members of the affiliated group for purposes of determining each member's pro forma federal taxable income for the taxable year.

(c) **Consolidated federal return consolidated state return.** — When the taxpayer elects to file a consolidated return under this article for the taxable year, the general rule stated in subsection (a) of this section shall apply.

(d) **Combined state return.** — When a combined return is filed under this article for the taxable year, the members of the group filing the combined return shall in addition to amounts added to federal taxable income pursuant to subsection (b), section six of this article, unless already included therein, add to the combined group's pro forma federal taxable income for the year, the amount computed under Section 199 of the Internal Revenue Code of 1986, as amended, by the appropriate person or persons and taken, in whole or in part, as a deduction when determining pro forma federal taxable income of the combined group for the taxable year. The combined group shall file with its annual return under this article a schedule that shows: (1) The amount of the Section 199 deduction computed by the entity, or each entity that made the computation for federal income tax purposes, and to what entity and to what state it was allocated; (2) how that deduction is allocated for state income tax purposes; (3) how the amount of the Section 199 deduction taken as a deduction when determining the pro forma federal taxable income of the combined group was determined; and (4) such other information as the Tax Commissioner may require.

(e) **Taxpayer with flow-through income.** — When the taxpayer's federal taxable income includes a distributive share of income, gain or loss of a partnership, limited liability company, electing small business corporation, or other entity
treated as a partnership for federal income tax purposes, and
when the taxpayer's distributive share for the taxable year
includes a deduction, or portion of a deduction computed under
Section 199 of the Internal Revenue Code, as amended, for the
taxable year, then in addition to amounts added to federal
taxable income pursuant to subsection (b), section six of this
article, unless already included therein, the taxpayer shall add
the amount computed under Section 199 of the Internal Reve-
nu Code of 1986, as amended, that flows through to the
taxpayer for federal income tax purposes for the taxable year.
The taxpayer shall file with its annual return filed under this
article a copy of all schedules K-1 it received showing alloca-
tion of a Section 199 deduction and such other information as
the Tax Commissioner may require.

(f) Failure to attach required schedules. — When the
taxpayer fails to include with the annual return due under this
article the schedule or schedules required by this section, the
return shall be treated as an incomplete return until the day the
required schedule or schedules are filed with the Tax Commis-
sioner. An incomplete return showing an overpayment of tax
may not be treated as a claim for refund until the day the defect
is cured. The filing of an incomplete return shall not start the
running of the limitations period that would limit the time
during which the Tax Commissioner may issue an assessment
or take other action to enforce compliance with this article for
the taxable year for which the incomplete return is filed.

(g) Audit adjustment to federal taxable income. — When
auditing for compliance with this article, the Tax Commissioner
may change a taxpayer’s computation of federal taxable income
or pro forma taxable income to comply with the laws of the
United States as in effect for the taxable year and incorporated
by reference into this article.
AN ACT to amend and reenact §5A-7-4a of the Code of West Virginia, 1931, as amended, relating to the payment of telecommunications charges; authorizing the Director to review and reject telecommunications charges under certain circumstances and authorizing emergency rules in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5A-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

(a) The Legislature finds that it is in the best interest of the state, its spending units and those vendors supplying telecommunications services to the state and its spending units that any properly registered and qualified vendor supplying telecommunications services to two or more spending units under a shared account is entitled to prompt payment upon presentation of a
legitimate uncontested invoice for telecommunications services to the Division, as provided in the following subsections.

(b) To facilitate the administration and payment of telecommunications services, there is continued in the State Treasury a special revenue account to be known as the "Telecommunications Services Payment and Reserve Fund." All moneys transferred from state spending units pursuant to the requirements of this section shall be deposited in the account. Expenditures from the fund shall be made by the Director for the exclusive purposes set forth in this section: Provided, That no more than one hundred and fifty thousand dollars or the actual amount collected pursuant to subsection (j) of this section in any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the costs of administration of this section.

(c) Upon receipt of any telecommunications charges from a properly registered and qualified vendor, the Division shall conduct a preliminary review of the charges. If the Division determines during this preliminary review that: (1) Any of the charges are not authorized by law or by the contract under which the telecommunications services are provided; (2) no specific spending unit is designated for any charge; or (3) any charge or service is not in accordance with contract pricing, the Division shall reject those charges. Within fourteen days of receipt of any telecommunications charge, the Director shall notify a vendor of any rejected charges and shall include in the notice a description of the rejected charges, the reasons a charge was rejected and a proposed resolution of the rejected charge. The Director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor and Secretary, the Secretary shall make the final decision as to the legitimacy of the rejected amount and determine if payment is warranted. If the final decision of the Secretary is to require
payment of the rejected amount, the Secretary shall cause the Division to bill that amount to the appropriate spending unit which shall remit payment of the amount as required in subsection (d) of this section. If the final decision of the Secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(d) Following the preliminary review of the charges, the Director shall fully apportion all telecommunications charges not rejected during the preliminary review required by subsection (c) of this section among spending units based on the spending unit's service and usage, as determined by the Director. The Director shall send each spending unit a statement of the spending unit's proportionate share of any telecommunications charges within thirty days of receipt by the Division of the invoice detailing the telecommunications charges. The statement is to provide a date of no more than thirty calendar days from the date the Division sends the statement by which the spending unit shall submit payment or transfer to the telecommunications services payment and reserve fund all funds necessary to pay for the spending unit's charges in full: Provided, That the statement sent in last month of the fiscal year shall provide that the transfer shall be made by the thirty-first day of July. If feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

(e) All spending units shall budget for telecommunications service expenses. Prior to the date provided in each statement sent to a spending unit pursuant to subsection (d) of this section, each spending unit shall pay or transfer the statement amount to the telecommunications services payment and reserve fund.

(f) If a spending unit fails to pay or transfer funds by the date specified in the statement sent pursuant to subsection (d) of this section, the Secretary of the Department of Administration shall transfer to the telecommunications services payment
and reserve fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit: Provided, That the Secretary shall complete all such transfers by the thirty-first day of July of each fiscal year. Upon exercising a transfer under the authority of this subsection, the Director shall provide a notification to the spending unit, including, but not limited to, the date, time, total amount of the transfer, statement amount and penalty amount. If a participating spending unit does not maintain funds in the State Treasury, the Secretary may transfer funds by wire from any depository outside the State Treasury. A participating spending unit maintaining funds in depositories outside the State Treasury shall furnish the Secretary access to those funds for the exclusive purposes of this section.

(g) If a spending unit contests any portion of its statement, it shall nonetheless remit payment for the entire statement amount and notify the Division in writing within thirty days of statement receipt by the spending unit. The Secretary shall consider any contested apportionments of charges and provide a final determination on the apportionment of legitimate charges. Corrections or adjustments to apportionments may be effected on future transfer payments: Provided, That legitimate vendor charges are to be fully apportioned. If the basis of the contest is vendor error, overcharge, service failure, failure to terminate services as required by the Division, or other failure of or error in vendor performance, the Director shall withhold the contested amount from current or future vendor payments, pending resolution by the Secretary, and the Director shall bring the contested matter to the attention of the vendor. The Director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor and Secretary, the Secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted. If
the final decision of the Secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(h) The Director shall provide for full payment of legitimate, uncontested telecommunications charges within ninety days of receipt of an invoice detailing the telecommunications charges by the Division. Payment for the charges shall be made by the Director from the telecommunications services payment and reserve fund.

(i) The Director may direct the discontinuance of telecommunications services to any spending unit that fails to comply with the provisions of this section and the vendor supplying telecommunication services shall comply with the written direction of the Director on discontinuance of services.

(j) To help defray the additional cost of administering this section, the Director may assess a proportional fee of up to one hundred fifty thousand dollars in aggregate per fiscal year to the participating spending units based on each spending unit's portion of service and usage. This fee is to be included in the statement sent to spending units pursuant to subsection (d) of this section and transferred to the telecommunications service payment and reserve fund by the date specified in the statement for the transfer of payment.

(k) Notwithstanding any other provision of this code to the contrary, for purposes of this section, an invoice is considered received by the Division on the date on which the invoice is marked as received by the Division, or three business days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier. Provided, That if an invoice is received by the Division prior to the date on which the telecommunications services covered by the invoice are delivered or fully performed, for purposes of determining the ninety-day
time period for payment in subsection (h) of this section, the
invoice is considered received on the date on which the
telecommunications services covered by the invoice were
delivered or fully performed.

(l) For purposes of this section, "telecommunications
service" means and includes not only telephone service
regulated under chapter twenty-four of this code or under
federal law, but also may include, at the discretion of the
Secretary of Administration, wireless service, voice over
internet protocol service, internet service and any other service
or equipment used for the electronic transmission of voice or
data: Provided, That such service is provided under a statewide
contract.

(m) The Director may propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code to effectuate the purposes of this
section. The initial rule filed by the Division pursuant to the
amendments to this subsection enacted during the regular
session of the Legislature in two thousand five shall be filed as
an emergency rule.

CHAPTER 241

(S. B. 146 — By Senators Kessler, McKenzie, Edgell,
Bailey, Unger, Love, Hunter, Tomblin, Mr. President, Chafin,
Barnes, Boley, Jenkins, Minard, Helmick, Sprouse, Dempsey,
Oliverio, Harrison, Prezioso, Weeks, Sharpe, Minear, Guills,
Bowman, Caruth, Plymale and Facemyer)

[Passed March 16, 2005; in effect July 1, 2005.]
[Approved by the Governor on March 28, 2005.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-30, relating to creating the Unborn Victims of Violence Act; defining certain terms; identifying offenses of violence against a person that are committed against a pregnant woman or her embryo or fetus in the womb; establishing that an embryo or fetus in the womb may be a separate and distinct unborn victim in the case of certain violent crimes against a pregnant woman or her embryo or fetus in the womb; providing exceptions against the application of said section to certain persons or entities; specifying penalties; and providing that a conviction under said section, or of said article, is not a bar to prosecution of, or punishment for, any other crime allegedly committed by the defendant arising from the same incident.

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 §61-2-30, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the Unborn Victims of Violence Act.

(b) For the purposes of this article, the following definitions shall apply: Provided, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.
(1) "Embryo" means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last menstrual period.

(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of sections one, four and seven of this article, subsections (a) and (c), section nine of said article, sections ten and ten-b of said article and subsection (a), section twenty-eight of said article, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims.

(d) Exceptions. — The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

(2) Acts or omissions by medical or health care personnel during or as a result of medical or health-related treatment or services, including, but not limited to, medical care, abortion, diagnostic testing or fertility treatment;

(3) Acts or omissions by medical or health care personnel or scientific research personnel in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

(4) Acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and

(5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is carrying.
(e) For purposes of the enforcement of the provisions of this section, a violation of the provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection afforded by the provisions of subdivision (1), subsection (d) of this section.

(f) Other convictions not barred. — A prosecution for or conviction under this section is not a bar to conviction of or punishment for any other crime committed by the defendant arising from the same incident.

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation generally; and eliminating reductions in unemployment compensation for persons receiving benefits under Title II of the Social Security Act or similar payments under any act of Congress.

Be it enacted by the Legislature of West Virginia:

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. UNEMPLOYMENT COMPENSATION.

§21A-6-3. Disqualification for benefits.
Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision (1), an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to workday, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual shall not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual was compelled to leave his or her work for his or her own health-related reasons and presents certification from a licensed physician that his or her work aggravated, worsened, or will worsen the individual’s health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks
immediately following such week; or for the week in which he
or she was discharged from his or her last thirty-day employing
unit for misconduct and the six weeks immediately following
such week. Such disqualification shall carry a reduction in the
maximum benefit amount equal to six times the individual’s
weekly benefit. However, if the claimant returns to work in
covered employment for thirty days during his or her benefit
year, whether or not such days are consecutive, the maximum
benefit amount shall be increased by the amount of the decrease
imposed under the disqualification; except that:

If he or she were discharged from his or her most recent
work for one of the following reasons, or if he or she were
discharged from his or her last thirty days employing unit for
one of the following reasons: Misconduct consisting of willful
destruction of his or her employer’s property; assault upon the
person of his or her employer or any employee of his or her
employer; if such assault is committed at such individual’s
place of employment or in the course of employment; reporting
to work in an intoxicated condition, or being intoxicated while
at work; reporting to work under the influence of any controlled
substance, or being under the influence of any controlled
substance while at work; arson, theft, larceny, fraud or embez-
zelment in connection with his or her work; or any other gross
misconduct; he or she shall be and remain disqualified for
benefits until he or she has thereafter worked for at least thirty
days in covered employment: Provided, That for the purpose of
this subdivision the words “any other gross misconduct” shall
include, but not be limited to, any act or acts of misconduct
where the individual has received prior written warning that
termination of employment may result from such act or acts.

(3) For the week in which he or she failed without good
cause to apply for available, suitable work, accept suitable work
when offered, or return to his or her customary
self-employment when directed to do so by the commissioner,
and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. Such disqualification shall carry a reduction in the maximum benefit amount equal to four times the individual’s weekly benefit amount.

(4) For a week in which his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was not participating, financing, or directly interested in such dispute, and (2) did not belong to a grade or class of workers who were participating, financing or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his or her plant or operation or dismisses his or her employees in order to force wage reduction, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he or she is receiving or has received:
(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(8) (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): Provided, That any modifications to the provisions of Section 3304(a)(14) of the Federal Unemploy-
ment Tax Act as provided by Public Law 94-566 which specify
other conditions or other effective date than stated herein for
the denial of benefits based on services performed by aliens and
which modifications are required to be implemented under state
law as a condition for full tax credit against the tax imposed by
the Federal Unemployment Tax Act shall be deemed applicable
under the provisions of this section;

(b) Any data or information required of individuals
applying for benefits to determine whether benefits are not
payable to them because of their alien status shall be uniformly
required from all applicants for benefits;

(c) In the case of an individual whose application for
benefits would otherwise be approved, no determination that
benefits to such individual are not payable because of his or her
alien status shall be made except upon a preponderance of the
evidence.

(9) For each week in which an individual is unemployed
because, having voluntarily left employment to attend a school,
college, university or other educational institution, he or she is
attending such school, college, university or other educational
institution, or is awaiting entrance thereto or is awaiting the
starting of a new term or session thereof, and until the individ-
ual returns to covered employment.

(10) For each week in which he or she is unemployed
because of his or her request, or that of his or her duly autho-
rized agent, for a vacation period at a specified time that would
leave the employer no other alternative but to suspend opera-
tions.

(11) For each week with respect to which he or she is
receiving or has received benefits under Title II of the Social
Security Act or similar payments under any act of Congress,
and/or remuneration in the form of an annuity, pension or other
retirement pay from a base period and/or chargeable employer or from any trust or fund contributed to by a base period and/or chargeable employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of said benefits, payments and/or remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next lowest multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the base period and/or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period: Provided further, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to such individual for such week shall not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any act of Congress. Claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension or other retirement pay from a base period and/or chargeable employer or from a trust fund contributed to by a base period and/or chargeable employer.

(12) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: Provided, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.
CHAPTER 243

(S. B. 703 — By Senators Fanning, Weeks and Minard)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §31B-2-203 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-1-120 and §31D-1-150 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-5-503 of said code; to amend and reenact §31D-15-1509; to amend said code by adding thereto a new section, designated §31D-15-1521; to amend and reenact §31E-1-120 and §31E-1-150 of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-5-503 of said code; to amend and reenact §31E-14-1409 of said code; to amend said code by adding thereto a new section, designated §31E-14-1421; to amend and reenact §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said code; to amend and reenact §47B-3-3 of said code; and to amend and reenact §47B-10-1 and §47B-10-4 of said code, all relating to updating language in the Uniform Liability Act; West Virginia Business Corporation Act; West Virginia Nonprofit Corporation Act; Uniform Limited Partnership Act; limited liability partnerships; and authority to revoke withdrawal under the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act.

Be it enacted by the Legislature of West Virginia:

That §31B-2-203 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1002 of said code
be amended and reenacted; that §31D-1-120 and §31D-1-150 of said
code be amended and reenacted; that §31D-2-202 of said code be
amended and reenacted; that §31D-5-503 of said code be amended
and reenacted; that §31D-15-1509 of said code be amended and
reenacted; that said code be amended by adding thereto a new section,
designated §31D-15-1521; that §31E-1-120 and §31E-1-150 of said
code be amended and reenacted; that §31E-2-202 of said code be
amended and reenacted; that §31E-5-503 of said code be amended and
reenacted; that §31E-14-1409 of said code be amended and reenacted;
that said code be amended by adding thereto a new section, designated
§31E-14-1421; that §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said
code be amended and reenacted; that §47B-3-3 of said code be
amended and reenacted; and that §47B-10-1 and §47B-10-4 of said
code be amended and reenacted, all to read as follows:

Chapter
31D. West Virginia Business Corporation Act.
31E. West Virginia Nonprofit Corporation Act.
47. Regulation of Trade.
47B. Uniform Partnership Act.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article
2. Organization.
10. Foreign Limited Liability.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

1 (a) Articles of organization of a limited liability company
2 must set forth:

3 (1) The name of the company;

4 (2) The address of the initial designated office in West
5 Virginia, if any, and the mailing address of the principal office;
(3) The name and address of the initial agent for service of process, if any;

(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

(5) Whether the company is to be a term company and, if so, the term specified;

(6) Whether the company is to be manager-managed and, if so, the name and address of each initial manager;

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c); and

(8) The purpose or purposes for which the limited liability company is organized.

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members’ transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.
ARTICLE 10. FOREIGN LIMITED LIABILITY.

§31B-10-1002. Application for certificate of authority.

A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

1. The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;
2. The name of the state or country under whose law it is organized;
3. The mailing address of its principal office;
4. The name and address of each member having authority to execute instruments on behalf of the limited liability company;
5. The address of its initial designated office in this state, if any;
6. The name and address of its initial agent for service of process in this state, if any;
7. Whether the duration of the company is for a specified term and, if so, the period specified;
8. Whether the company is manager-managed and, if so, the name and address of each initial manager;
(9) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c); and

(10) The purpose or purposes for which the limited liability company is organized.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-120. Filing requirements.
§31D-1-150. Definitions.

§31D-1-120. Filing requirements.

(a) A document must satisfy the requirements of this section and any other provision of this code that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(b) The document to be filed must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(c) The document to be filed must be in the English language: Provided, That a corporate name is not required to be
in the English language if it is written in English letters or Arabic or Roman numerals: Provided, however, That the certificate of existence required of foreign corporations is not required to be in the English language if it is accompanied by a reasonably authenticated English translation.

(d) The document to be filed must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document to be filed shall sign it and state beneath or opposite his or her signature, his or her name and the capacity in which he or she signs. The document may contain a corporate seal, attestation, acknowledgment or verification.

(f) The document to be filed must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission as permitted by the Secretary of State. The Secretary of State may require one exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically.

(g) When a document is delivered to the office of the Secretary of State for filing, the correct filing fee and any franchise tax, license fee or penalty required by this chapter or any other provision of this code must be paid or provision for payment made in a manner permitted by the Secretary of State.
(h) In the case of service of notice and process as permitted by subsection (c), section five hundred four, article five of this chapter and subsections (d) and (e), section one thousand five hundred ten, article fifteen of this chapter, the notice and process must be filed with the Secretary of State as one original, plus two copies for each person to be served or noticed.

§31D-1-150. Definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:

1. “Articles of incorporation” includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

2. “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

4. “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

5. “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

6. “Distribution” means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares: Provided, That “distribution” does not include
24 a direct or indirect transfer of a corporation's own shares. A
distribution may be in the form of a declaration or payment of
26 a dividend; a purchase, redemption or other acquisition of
27 shares; or a distribution of indebtedness.

28 (7) "Effective date of notice" means the date as determined
29 pursuant to section one hundred fifty-one of this article.

30 (8) "Electronic transmission" or "electronically transmitt-
31 ed" means any process of communication not directly involv-
32 ing the physical transfer of paper that is suitable for the
33 retention, retrieval and reproduction of information by the
34 recipient.

35 (9) "Employee" includes an officer and may include a
36 director: Provided, That the director has accepted duties that
37 make him or her also an employee.

38 (10) "Entity" includes corporations and foreign corpora-
39 tions; nonprofit corporations; profit and nonprofit unincorpo-
40 rated associations; limited liability companies and foreign
41 limited liability companies; business trusts, estates, partner-
42 ships, trusts and two or more persons having a joint or common
43 economic interest; and state, United States and foreign govern-
44 ment.

45 (11) "Foreign corporation" means a corporation for profit
46 incorporated under a law other than the laws of this state.

47 (12) "Governmental subdivision" includes, but is not
48 limited to, authorities, counties, districts and municipalities.

49 (13) "Individual" includes, but is not limited to, the estate
50 of an incompetent or deceased individual.

51 (14) "Person" includes, but is not limited to, an individual
52 and an entity.
(15) "Principal office" means the office so designated in the return required pursuant to section three, article twelve-c, chapter eleven of this code where the principal executive offices of a domestic or foreign corporation are located.

(16) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.

(17) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its shareholders and their shareholdings. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(18) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(19) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter for custody of the minutes of the meetings of the board of directors and the meetings of the shareholders and for authenticating records of the corporation.

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.
“Sign” or “signature” includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by signature, mark or other symbol, with intent to authenticate it.

“State”, when referring to a part of the United States, includes a state and commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.

“Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

“United States” includes, but is not limited to, districts, authorities, bureaus, commissions, departments and any other agency of the United States.

“Voting group” means all shares of one or more classes or series that, pursuant to the articles of incorporation or this chapter, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

“Voting power” means the current power to vote in the election of directors.


(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section four hundred one, article four of this chapter;
(2) The number of shares the corporation is authorized to issue, the par value of each of the shares or a statement that all shares are without par value;

(3) The street address of the corporation's initial registered office, if any, and the name of its initial registered agent at that office, if any;

(4) The name and address of each incorporator;

(5) The purpose or purposes for which the corporation is organized; and

(6) The mailing address of the corporation's principal office.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(A) Managing the business and regulating the affairs of the corporation;

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; or

(C) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary
damages for breach of fiduciary duty as a director: Provided, That a provision may not eliminate or limit the liability of a director: (A) For any breach of the director’s duty of loyalty to the corporation or its stockholders; (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (C) under section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) for any transaction from which the director derived an improper personal benefit. No provision may eliminate or limit the liability of a director for any act or omission occurring prior to the date when that provision becomes effective; and

(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to take any action, as a director except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its shareholders; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-503. Resignation of registered agent.

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall mail a copy of the filed statement of resignation to the corporation at its principal office.
(c) The agency appointment is terminated, and the registered office is discontinued if provision for its discontinuation is made, on the thirty-first day after the date on which the statement was filed.

ARTICLE 15. FOREIGN CORPORATIONS.


(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall mail a copy of the filed statement of resignation and receipt to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if provided in the statement of registration, on the thirty-first day after the date on which the statement was filed.


(a) A corporation may revoke its withdrawal within one hundred twenty days of its effective date.

(b) Revocation of withdrawal must be authorized in the same manner as the withdrawal was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the withdrawal without shareholder action.
(c) After the revocation of withdrawal is authorized, the corporation may revoke the withdrawal by delivering to the Secretary of State for filing articles of revocation of withdrawal, together with a copy of its application of withdrawal, that sets forth:

(1) The name of the corporation;

(2) The effective date of the withdrawal that was revoked;

(3) The date that the revocation of withdrawal was authorized;

(4) If the corporation's board of directors or incorporators revoked the withdrawal, a statement to that effect; and

(5) If the corporation's board of directors revoked the withdrawal authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

(d) Revocation of withdrawal is effective upon the effective date of the articles of revocation of withdrawal.

(e) When the revocation of withdrawal is effective, it relates back to and takes effect as of the effective date of the withdrawal and the corporation resumes carrying on its business as if withdrawal had never occurred.

CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.

Article
2. Incorporation.
5. Office and Agent.

ARTICLE 1. GENERAL PROVISIONS.
§31E-1-120. Filing requirements.

(a) A document must satisfy the requirements of this section and any other provision of this code that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(b) The document to be filed must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(c) The document to be filed must be in the English language: Provided, That a corporate name is not required to be in the English language if it is written in English letters or Arabic or Roman numerals: Provided, however, That the certificate of existence required of foreign corporations is not required to be in the English language if it is accompanied by a reasonably authenticated English translation.

(d) The document to be filed must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document to be filed shall sign it and state beneath or opposite his or her signature, his or her name and the capacity in which he or she signs. The document may contain a corporate seal, attestation, acknowledgment or verification.
(f) The document to be filed must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission as permitted by the Secretary of State. The Secretary of State may require one exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically.

(g) When a document is delivered to the office of the Secretary of State for filing, the correct filing fee and any franchise tax, license fee or penalty required by this chapter or any other provision of this code must be paid or provision for payment made in a manner permitted by the Secretary of State.

(h) In the case of service of notice and process as permitted by subsection (c), section five hundred four, article five of this chapter and subsections (d) and (e), section one thousand four hundred ten, article fourteen of this chapter, the notice and process must be filed with the Secretary of State as one original, plus two copies for each person to be served or noticed.

§31E-1-150. Chapter definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:

(1) "Articles of incorporation" includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Board" or "board of directors" means the group of persons vested with management of the affairs of the corporation irrespective of the name by which the group is designated.
(4) "Business corporation" means a corporation with capital stock or shares incorporated for profit.

(5) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed, including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

(6) "Corporation" or "domestic corporation" means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state: Provided, That "corporation" or "domestic corporation" does not include towns, cities, boroughs or any municipal corporation or any department or any town, city, borough or municipal corporation.

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests or to or for the benefit of its officers or directors: Provided, That the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided by article thirteen of this chapter may not be deemed a distribution.

(9) "Effective date of notice" means the date as determined pursuant to section one hundred fifty-one of this article.
(10) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(11) "Employee" includes an officer and may include a director: Provided, That the director has accepted duties that make him or her also an employee.

(12) "Entity" includes corporation and foreign corporations; business corporations and foreign business corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts and two or more persons having a joint or common economic interest; and state, United States and foreign government.

(13) "Foreign corporation" means any nonprofit corporation which is incorporated under a law other than the laws of this state.

(14) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts and municipalities.

(15) "Individual" includes, but is not limited to, the estate of an incompetent or deceased individual.

(16) "Member" means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.

(17) "Nonprofit corporation" means a corporation which may not make distributions to its members, directors or officers.

(18) "Person" includes, but is not limited to, an individual and an entity.
(19) "Principal office" means the office so designated in the return required pursuant to section three, article twelve-c, chapter eleven of this code, where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.

(21) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its members and their interests. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(22) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(23) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

(24) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter for custody of the minutes of the meetings of the board of directors and the meetings of the members and for authenticating records of the corporation.

(25) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it.

(26) "State", when referring to a part of the United States, includes a state, commonwealth and a territory and insular
ARTICLE 2. INCORPORATION.


(a) The articles of incorporation must set forth:

1. A corporate name for the corporation that satisfies the requirements of section four hundred one, article four of this chapter;

2. A statement that the corporation is nonprofit and that the corporation may not have or issue shares of stock or make distributions;

3. Whether the corporation is to have members and, if it is to have members, the provisions required by section six hundred one, article six of this chapter to be set forth in the certificate of incorporation;

4. The mailing address of the corporation’s initial registered office, if any, and the name of its initial registered agent at that office, if any;

5. The name and address of each incorporator; and

6. The mailing address of the corporation’s principal office.

(b) The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;
(2) Provisions not inconsistent with law regarding:

(A) Managing and regulating the affairs of the corporation;

or

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and members or any class of members;

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for any action taken, or any failure to take any action, as a director or member, except liability for: (A) The amount of a financial benefit received by a director or member to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or the members; (C) a violation of section eight hundred thirty-three, article eight of this chapter regarding unlawful distributions; or (D) an intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(C) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.
ARTICLE 5. OFFICE AND AGENT.

§31E-5-503. Resignation of registered agent.

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail a copy of the filed statement of resignation to the registered office if the registered office is not discontinued and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office is discontinued if provision for its discontinuation is made, on the thirty-first day after the date on which the statement was filed.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1409. Resignation of registered agent of foreign corporation.

§31E-14-1421. Revocation of withdrawal.

§31E-14-1409. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall mail a copy of the filed statement of resignation and receipt to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if provided in the statement of
§31E-14-1421. Revocation of withdrawal.

(a) A corporation may revoke its withdrawal within one hundred twenty days of its effective date.

(b) Revocation of withdrawal must be authorized in the same manner as the withdrawal was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the withdrawal without shareholder action.

(c) After the revocation of withdrawal is authorized, the corporation may revoke the withdrawal by delivering to the Secretary of State for filing articles of revocation of withdrawal, together with a copy of its application of withdrawal, that sets forth:

(1) The name of the corporation;

(2) The effective date of the withdrawal that was revoked;

(3) The date that the revocation of withdrawal was authorized;

(4) If the corporation’s board of directors or incorporators revoked the withdrawal, a statement to that effect; and

(5) If the corporation’s board of directors revoked the withdrawal authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

(d) Revocation of withdrawal is effective upon the effective date of the articles of revocation of withdrawal.
(e) When the revocation of withdrawal is effective, it relates back to and takes effect as of the effective date of the withdrawal and the corporation resumes carrying on its business as if withdrawal had never occurred.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

1. “Certificate of limited partnership” means the certificate referred to in section eight of this article and the certificate as amended;

2. “Contribution” means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his or her capacity as a partner;

3. “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission;

4. “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient;
(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

(7) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

(8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(9) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(10) "Partner" means a limited or general partner;

(11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company, professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity;
(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it; and

(15) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.


(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The general character of its business;

(3) The mailing address of the principal office and the name and address of the agent for service of process, if any;

(4) The name and the business address of each general partner; and

(5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

§47-9-49. Registration of foreign limited partnership.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In
order to register, a foreign limited partnership shall submit to
the Secretary of State, an application for registration as a
foreign limited partnership, signed and sworn to by a general
partner and setting forth:

(1) The name of the foreign limited partnership or if its
name is unavailable for use in this state, a limited partnership
name that satisfies the requirements of section two of this
article, including a copy of the resolution of its partners
adopting the fictitious name;

(2) The state and date of its formation;

(3) The name and address of an agent for service of process,
if any;

(4) The address of the office required to be maintained in
the state of its organization by the laws of that state or, if not so
required, of the principal office of the foreign limited partner-
ship;

(5) The name and business address of each general partner;
and

(6) The address of the office at which is kept a list of the
names and addresses of the limited partners and their capital
contributions, together with an undertaking by the foreign
limited partnership to keep those records until the foreign
limited partnership’s registration in this state is canceled or
withdrawn.

(b) The foreign limited partnership shall deliver with the
completed application a certificate of existence, or a document
of similar import, duly authenticated by the Secretary of State
or other official having custody of the partnership records in the
state or country under whose law it is organized.
§47-9-53. Foreign limited partnership — Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to claims for relief or causes of action arising out of the transaction of business in this state.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

Article 3. Relations of Partners to Persons Dealing with Partnership.

10. Limited Liability Partnership.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

§47B-3-3. Statement of partnership authority.

(a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(A) The name of the partnership;

(B) The mailing address of its principal office and of its office in this state, if there is one;

(C) The names and mailing addresses of all of the partners appointed and maintained by the partnership, if any, for the purpose of subsection (b) of this section; and

(D) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and
(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to subsection (c), section five, article one of this chapter and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of
record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section and section four, article seven of this chapter and section five, article eight of this chapter, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.

§47B-10-1. Registered limited liability partnerships.

§47B-10-4. Applicability of article to foreign and interstate commerce.

§47B-10-1. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a partnership shall deliver and file with the Secretary of State a statement of registration stating the name of the partnership; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process, if any; a brief statement of the business in which the partnership engages; the name and address of each partner authorized to execute instruments on behalf of the partnership:
any other matters that the partnership determines to include; and that the partnership thereby registers as a registered limited liability partnership.

(b) The registration shall be executed by one or more partners authorized to execute a registration.

(c) The registration shall be accompanied by a fee of two hundred fifty dollars.

(d) The Secretary of State shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee and deliver to the partnership or its representative a receipt for the record and the fees.

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the Secretary of State, an annual fee of five hundred dollars. The fee shall be accompanied by a notice, on a form provided by the Secretary of State, of any material changes in the information contained in the partnership’s registration.

(f) Registration is effective:

(1) Immediately after the date a registration is filed; or

(2) On a date specified in the statement of registration, which date shall not be more than sixty days after the date of filing.

(g) Registration remains effective until:

(1) It is voluntarily withdrawn by filing with the Secretary of State a statement of withdrawal; or
(2) Thirty days after receipt by the partnership of a notice from the Secretary of State, which shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (e) of this section, unless the fee is paid within a thirty-day period.

(h) The status of a partnership as a registered limited liability partnership and the liability of the partners thereof shall not be affected by:

(1) Errors in the information contained in a statement of registration under subsection (a) of this section or notice under subsection (e) of this section; or

(2) Changes after the filing of the statement of registration or notice in the information stated in the registration or notice.

(i) The Secretary of State may provide forms for the statement of registration under subsection (a) of this section or a notice under subsection (e) of this section.

(j) All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

§47B-10-4. Applicability of article to foreign and interstate commerce.

(a) A registered limited liability partnership formed under this article may conduct its business, carry on its operations and
have and exercise the powers granted by this chapter in any
state, territory, district or possession of the United States or in
any foreign country.

(b) It is the intent of the Legislature that the legal existence
of registered limited liability partnerships formed under this
article be recognized outside the boundaries of this state and
that the laws of this state governing such registered limited
liability partnerships doing business outside this state be
granted the protection of full faith and credit under the Consti-
tution of the United States.

(c) Notwithstanding section six, article one of this chapter,
the internal affairs of registered limited liability partnerships
formed under this article, including the liability of partners for
debts, obligations and liabilities of or chargeable to the partner-
ship, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign
registered limited liability partnership shall:

(i) Comply with any statutory or administrative registration
or filing requirements governing the specific type of business
in which the partnership is engaged; and

(ii) File a notice with the Secretary of State, stating the
name of the partnership or if its name is unavailable for use in
this state, a limited partnership name that satisfies the require-
ments of section four-e of this article, including a copy of the
resolution of its partners adopting the fictitious name; the
address of its principal office; the address of a registered office
and the name and address of a registered agent for service of
process, if any; a brief statement of the business in which the
partnership engages; the name and address of each partner
authorized to execute instruments on behalf of the partnership
and any other matters that the partnership determines to
include; and a brief statement of the business in which the
partnership engages. Such notice shall be effective for two years from the date of filing, after which time the partnership shall file a new notice.

(c) The name of a foreign registered limited liability partnership doing business in this state shall contain the words “Registered Limited Liability Partnership” or the abbreviation “L.L.P.” or “LLP” as the last words or letters of its name.

(f) Notwithstanding section six, article one of this chapter, the internal affairs of foreign registered limited liability partnerships, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of the jurisdiction in which the foreign registered limited liability partnership is registered.

CHAPTER 244

(Com. Sub. for H. B. 2285 — By Mr. Speaker, Mr. Kiss, and Delegates Varner, Michael, Leach, Kominar, H. K. White and Williams)

[Passed February 21, 2005; in effect from passage.]
[Approved by the Governor on February 25, 2005.]

AN ACT providing for the payment of the veterans bonus to veterans of the Kosovo, Afghanistan, and Iraq conflicts, and for the administration thereof; designating the Division of Veterans Affairs to administer provisions of act; providing powers and duties of the Director of the Division; authorizing adoption of rules and regulations; authorizing appointment of veterans advisory committee; setting forth qualifications to receive bonus; providing definitions; providing for payment of bonus to relatives
of deceased veterans; specifying amounts of bonus; setting forth periods to apply and receive bonus; providing for determination of validity of each claim for bonus by Director; providing for a certified list of eligible veterans and relatives of deceased veterans; providing for review of decision of Director by board of review; authorizing appointment of additional boards of review and compensation for members; providing for judicial review of decisions of board of review; creation of Veterans Bonus Fund; exempting bonus from taxation; excluding bonus from certain debt collection actions; prohibiting claim for bonus from assignment; limiting charges for services provided in connection with application for bonus; and prohibiting certain acts and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

§1. Division of Veterans Affairs to administer act; veterans advisory committee.

The West Virginia Division of Veterans Affairs is hereby designated as the state agency to administer the provisions of this act. The Director of the Division of Veterans Affairs shall do all things necessary for the proper administration thereof. The director, with the advice and consent of the veterans council, may adopt and promulgate such reasonable rules and regulations, not inconsistent herewith, as may be necessary to effect the purposes of this act, including regulations concerning evidence or other data required to establish eligibility and qualifications for the bonus as herein provided. The Director shall prepare and furnish all necessary forms which shall be distributed by him or her through such veterans and other organizations as he or she may deem most practicable.

The Division of Veterans Affairs shall, insofar as possible, utilize the personnel, supplies and equipment of the Division in
the administration of this act. The Division may employ such
additional personnel as may be necessary for the proper
administration of this act, subject, however, to the approval of
the Secretary of the Department of Military Affairs and Public
Safety who must also approve the salaries and other compensa-
tion for such personnel.

The Governor may appoint a veterans advisory committee,
consisting of representatives of veterans organizations chartered
under acts of Congress and operating in this state, to advise and
counsel the Director in the administration of this act. Such
committee shall meet on the call of the Director at such times
and places as he or she may specify.

§2. Veterans entitled to bonus.

In grateful recognition of their services in time of grave
national emergency, a cash bonus as herein provided shall be
paid to veterans of the Kosovo, Afghanistan, and Iraq conflicts.
The bonus shall be paid to: (1) Veterans of the armed forces of
the United States who served on active duty in areas of conflict
in Iraq, or were members of reserve components called to active
duty by the President of the United States under Title 10,
United States Code section 12301, 12302, 12303 or 12304
during the Iraqi War, between the nineteenth day of March, two
thousand three and the date determined by the President or
Congress of the United States as the end of the involvement of
the United States armed forces in Iraq, both dates inclusive; or
(2) veterans, active service members, or members of reserve
components of the armed forces of the United States, who
served on active duty in one of the military operations for
which he or she received a campaign badge or expeditionary
medal during the periods hereinafter described. For purposes of
this act, periods of active duty in a campaign or expedition are
designated as: The conflict in Kosovo between the twentieth
day of November, one thousand nine hundred ninety-five and
the thirty-first day of December, two thousand, both dates
inclusive; and the conflict in Afghanistan, between the seventh
day of October, two thousand one and the date determined by
the President or Congress of the United States as the end of the
involvement of the United States armed forces in Afghanistan,
both dates inclusive. For purposes of this act, not more than one
bonus may be paid to or on behalf of the service of a veteran. In
order to be eligible to receive a bonus, a veteran must have been
a bona fide resident of the State of West Virginia at the time of
his or her entry into active service and for a period of at least
six months immediately prior thereto, and has not been sepa-
rated from service under conditions other than honorable.

The bonus shall also be paid to any veteran otherwise
qualified pursuant to this amendment, who was discharged
within ninety days after entering the armed forces because of a
service-connected disability.

As used in this act, “armed forces” means the army, navy,
air force, marine corps and coast guard of the United States.

As used in this act, “active duty” means full-time active
service in the armed forces with full duty pay status, but shall
not include time absent from leave, absent over leave, while in
confinement or any other time classified by the respective
branches of the armed forces as “bad” or “lost” time.

For purposes of this act, “active service” shall mean the
person’s active duty as a member of one of the armed forces
during the periods of conflict referred to herein.

As used in this act, “bona fide resident” shall mean any
person who, at the time of his or her entry into active service as
such is defined herein, was a legal resident of the State of West
Virginia. Evidence of legal residence shall be shown by the presentation of evidence that the person filed a West Virginia personal income tax for the tax year immediately preceding his or her entry into active service or proof that he or she maintained a permanent place of abode in West Virginia at the time of his or her entry into active service and for a period of at least six months prior to entry into active service.

§3. Payment of bonus to relatives of deceased veterans.

The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of the veteran, if the relatives are residents of the state when the application is made and if the relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there is more than one member of a class, the bonus shall be paid to each member according to his or her proportional share. Where a deceased veteran’s death was connected with the service and resulted from the service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of two thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

As used in this act, “unremarried widow” or “unremarried widower” means the spouse of a deceased veteran, legally married to the veteran at the time of his or her death, who has not remarried at the time of making application.

As used in this act, “child” means the natural child, adopted child or stepchild of the deceased veteran upon whose service
eligibility is derived and who has not attained the age of eighteen years at the time of making application.

As used in this act, "parent" means either of the natural, step, or adoptive father or mother of, or person standing in loco parentis to, the deceased veteran upon whose service eligibility is derived.

§4. Amount of bonus.

The amount of the bonus shall be six hundred dollars per eligible veteran who was in active service, inside the combat zone in Kosovo, Afghanistan or Iraq as designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Iraqi War and the conflict in Afghanistan, the amount of bonus shall be four hundred dollars per eligible veteran who was in active service outside the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. For purposes of this act, not more than one bonus shall be paid to or on behalf of the service of any one veteran.

In the event any veteran is eligible to receive more than one bonus, the veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

No bonus may be paid to any person, otherwise entitled thereto, unless application therefor shall be filed with the Division of Veterans Affairs. No bonus may be paid to any person, otherwise entitled thereto, for service periods of active duty in a campaign or expedition in the conflict in Kosovo within the time periods contained hereinabove, unless application therefor shall be filed with the Division of Veterans Affairs on or before the thirtieth day of June, two thousand six. No bonus may be paid to any person, otherwise entitled thereto, for
service periods of active duty in a campaign or expedition in the
conflict in Afghanistan within the time periods contained
hereinabove or for service on active duty in areas of conflict in
Iraq or for active duty service of reserve components called by
the President of the United States as described hereinabove,
unless application therefor shall be filed within one year of the
end of such veteran’s service.

§6. Determination of Director of the validity of claims.

Upon receipt of an application for benefits hereunder, the
Director shall, as soon as may be practicable, determine the
validity of the claim. If the determination is made that an
applicant is eligible for a bonus, the Director shall mail to the
applicant a notification of such determination. If the determina-
tion is made that no benefits hereunder are payable, then the
director shall mail to the applicant a notification denying
benefits and citing the reason or reasons for such denial.

Any applicant who is aggrieved by any such determination
of the Director may demand that his or her claim be reviewed
as hereinafter provided. Such demand for review shall be filed
with the Director, in writing, within sixty days after the date on
which the notice of award or notice of denial was mailed to the
applicant. Upon receipt of such demand for review, the Director
shall certify the demand, together with all files and records
relating to the application, to a board of review. Unless such
demand for review is duly filed with the Director, all findings
and orders of the Director with reference to such claim shall be
final and conclusive upon the applicant.

If the Director determines that an applicant is eligible for a
bonus, he or she shall certify that finding to the Governor. The
Governor shall then create a list of veterans and relatives of
deceased veterans eligible to receive such bonus and certify
such list to the Legislature at any regular or special session.

For the purposes of this act, the veterans council of the Division of Veterans Affairs is hereby designated as the “Veterans Bonus Board of Review.” Under rules and regulations adopted by the veterans council, any one or more members of the board of review may conduct hearings on a demand by an applicant for review of the determination of the Director, and may report his or her or their findings thereon, together with the entire record of the case, to the board of review for its final determination and decision.

If the number of demands for review hereunder becomes too numerous to be handled expeditiously by the veterans council, the Governor, upon the recommendation of the council, may appoint one or more additional boards of review. Additional boards shall consist of not more than five members, one of whom shall be a lawyer, who shall have the same qualifications as the members of the veterans council, and who shall serve at the will and pleasure of the Governor for such time as may be necessary for the purposes of this act. Each such additional board of review shall have the same authority and its final decision shall have the same force and effect as that of the veterans council under the provisions of this act.

Upon receipt from the Director of the files and records relating to any claim, the board, or a member or members thereof, as the case may be, shall fix a time and place for a hearing thereon. The applicant shall be notified of the time and place fixed and shall be informed of his or her right to demand a public hearing if he or she so desires. At the hearing, the claim shall be reexamined de novo and the submission of additional evidence may be required or permitted. Upon the conclusion of such hearing, the board of review, on the basis of the record and the recommendations, if any, made by the member or members who conducted the hearing, shall enter its
Any order so entered by the board shall be final and conclusive upon the applicant and the Director unless an application is made for review to the West Virginia Supreme Court of Appeals as hereinafter provided. The board shall mail to the applicant and to the Director a copy of the order entered by it in each case.

All notices and correspondence shall be directed to the applicant at the address listed on his or her application and all notices and correspondence to the Director shall be addressed to him or her at his or her office in the City of Charleston.

The Director shall provide for each board of review such clerical and stenographic assistants and such supplies as may be necessary for the performance of its duties.

Each member of a board of review shall receive no salary, but each member shall receive the same compensation and expense reimbursement as 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 thereof engaged in the discharge of official duties.

§8. Court review of final orders of review board.

Within thirty days after notification of the entry of any final order of a board of review, the Director or the applicant affected may petition for review of such order by the West Virginia Supreme Court of Appeals.

§9. Legislative appropriations paid into veterans bonus fund; expenditures; investment thereof; unexpended balance.
All money as appropriated by the Legislature for the payment of a cash bonus to veterans as provided in the Veterans Bonus Amendment of 2004 shall be paid into the Veterans Bonus Fund which is hereby created in the office of the State Treasurer and such fund shall be expended solely for the payment of such veterans bonus. Except for such sums necessary for current operating balances, such fund shall be invested and reinvested by the West Virginia State Board of Investments in accordance with the provisions of article six, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended: Provided, That no such investment or reinvestment shall adversely affect the current operating balances of such fund. Any unexpended balance remaining in this fund after payment of all eligible veterans and relatives of deceased veterans as is from time to time established by the certified list created by the Governor shall be available for appropriation by the Legislature.

§10. Penalty for making false statements.

Any person who shall knowingly make any false or misleading statement or representation, oral or written, in support of any claim for a bonus under the provisions of this act, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in a state correctional facility for not less than one nor more than five years.

§11. Penalty for filing more than one application.

Only one application shall be filed by any veteran or by any person who claims to be entitled to a share of the bonus payable in the case of any deceased veteran. Any person who, with intent to defraud, violates the provisions of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a state correctional facility for not less than one nor more than two years, or by both such fine and imprisonment.
§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

The bonus provided by this act is hereby declared to be a gift or gratuity made as a token of appreciation for the service rendered by the veteran to the people of West Virginia in time of grave national emergency and is in no sense compensation for such services. The money received as such bonus shall be exempt from taxation and such money, or any claim therefor, shall not be subject to garnishment, attachment or levy of execution. A claim for payment of a bonus under the provisions of this act shall not be assignable for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

No fee or charge shall be made by any person, attorney, agent or representative for any service in connection with the filing of an application for payment of a bonus hereunder, except such fees as are provided by law for the performance of official duties by a duly elected or appointed officer of this state or a political subdivision thereof. No person shall, for a consideration, discount or attempt to discount or advance money upon any warrant issued for payment of any bonus provided for in this act.

If an applicant shall employ an attorney to represent him or her in connection with the prosecution of his or her claim before a board of review, or before the Supreme Court of Appeals, the attorney shall file with the Director an executed copy of his or her contract of employment, and the total amount of the fee therein provided shall not exceed twenty-five percent of the amount under dispute.

Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the
county or regional jail for not less than ten days nor more than
twelve months, or by both such fine and imprisonment.

CHAPTER 245

(H. B. 2286 — By Delegates Williams, Beach, DeLong,
Perry, Martin and Cann)

[Passed February 21, 2005; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §18-2E-8e, relating to
the sounding of Taps at veteran’s honors funerals; encouraging
community service by capable students; making legislative
findings and stating purpose; requiring guidelines and distribution
of certain information by state board; requiring county board
policy and specifying minimum provisions; encouraging county
board collaboration with organizations to assist programs; and
limiting county board responsibility for certain costs, transporta-
tion and liability for supervision.

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-8e, to read as
follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-8e. Veteran’s honors funeral assistant community service
program.

(a) Findings. - The Legislature makes the following
findings:
(1) Serving in the armed services in defense of the life, liberty and pursuit of happiness enjoyed in our democratic society involves a tremendous sacrifice on the behalf of those who serve, often at the cost of their own lives;

(2) It is a fitting tribute to those who have served in the armed forces and the families who have shared in their sacrifice to honor that service and that sacrifice in the most respectful manner;

(3) It is often difficult for the families of deceased veterans who wish to lay their loved ones finally to rest in a military honors funeral to find a bugler to sound their final Taps; and

(4) Organizations within the state and nationally, such as the Veterans of Foreign Wars, the American Legion, Bugles Across America and many others, have recognized the difficulty of finding buglers to sound Taps at military honors funerals and may be able to assist.

(b) Purpose. - The purpose of this section is to facilitate collaboration that will encourage capable young people to assist with the sounding of Taps at military funerals honoring our veterans and, thereby, help them to develop a better understanding of the sacrifices, a respect for the commitment and an appreciation of the privileges that the men and women of the armed services have protected through their service.

(c) State board guidelines. - The state board shall, in collaboration with organizations and supporters of veterans, establish general guidelines for the establishment of school level programs that encourage capable students in grades six through twelve, inclusive, to sound Taps on a standard or valved bugle, trumpet, cornet or flugelhorn during military honors funerals held in this state. The general guidelines shall address the issues to be set forth in the county board policies required under this section and shall include contact informa-
tion for technical assistance from the department of education and organizations and supporters of veterans assisting in these programs. The state board shall distribute the guidelines to every county board. The state board shall also distribute an appropriate program summary and contact information to the colleges and universities in the state so that they may establish similar programs for their students.

(d) County board policies. - Each county board shall establish a policy for the implementation of a veteran’s honors funeral assistant community service program that addresses at least the following:

(1) The distribution of information to music and band teachers for their use in notifying capable students and obtaining the consent of their parents or guardians for voluntary registry as a candidate able to sound Taps during military honors funerals held within a reasonable distance from their residence;

(2) The credit toward community service or work based learning requirements of the county or other recognition that will be awarded to a student for the registry and sounding of Taps during military honors funerals; and

(3) The limits on the amount of regular classroom instruction that a student may miss for the sounding of Taps during military honors funerals to fulfill a community service or work based learning requirement or, if none, on the excused absences that the student may accrue for this activity.

County boards are not responsible for any costs associated with the program, may not be required to provide or pay for student transportation to funerals and are not liable for student supervision while absent to participate in funerals. However, county boards are encouraged to collaborate with organizations of veterans and supporters of veterans to assist with the veteran’s honors funeral assistant community service program.
AN ACT to repeal §22B-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7b of said code; to amend and reenact §22-12-4 of said code; and to amend and reenact §22B-3-2 of said code, all relating to water quality standards generally; transferring authority to propose rules relating to water quality standards from the Environmental Quality Board to the Department of Environmental Protection; providing that the current rule remains in force and effect until amended by the Department of Environmental Protection; establishing some requirements for water protection; providing that meetings to develop water quality standards be open with certain exceptions; authorizing the Department of Environmental Protection to consider remining variances; authorizing the Secretary to promulgate standards of purity and quality for groundwater; establishing the maximum containment levels permitted for groundwater; providing that the current groundwater standard remains in effect until modified by the Secretary.

Be it enacted by the Legislature of West Virginia:

That §22B-3-4 of the Code of West Virginia, 1931, as amended, be repealed,; that §22-11-7b of said code be amended and reenacted; that §22-12-4 of said code be amended and reenacted; and that §22B-3-2 of said code be amended and reenacted, all to read as follows:
CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of antidegradation procedures.

(a) All authority to promulgate rules and implement water quality standards vested in the Environmental Quality Board is hereby transferred from the Environmental Quality Board to the Secretary of the Department of Environmental Protection as of the effective date of the amendment and reenactment of this section during the two thousand five regular session of the Legislature: Provided, That the legislative rule containing the state’s water quality standards shall remain in force and effect as if promulgated by the Department of Environmental Protection until the Secretary amends the rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any proceedings, including notices of proposed rulemaking pending before the Environmental Quality Board, and any other functions, actions or authority transferred to the Secretary shall continue in effect as actions of the Secretary.

(b) All meetings with the Secretary or any employee of the Department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with the provisions of article nine-a, chapter six of this code. When the Secretary is considering the form and substance of the rule
governing water quality standards, the following are not
meetings pursuant to article nine-a, chapter six of this code: (i)
Consultations between the Department's employees or its
consultants, contractors or agents; (ii) consultations with other
state or federal agencies and the Department's employees or its
consultants, contractors or agents; or (iii) consultations between
the Secretary, the Department's employees or its consultants,
contractors or agents with any interested party for the purpose
of collecting facts and explaining state and federal requirements
relating to a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the
Secretary shall promulgate legislative rules in accordance with
the provisions of article three, chapter twenty-nine-a of this
code setting standards of water quality applicable to both the
surface waters and groundwaters of this state. Standards of
quality with respect to surface waters shall protect the public
health and welfare, wildlife, fish and aquatic life and the present
and prospective future uses of the water for domestic, agricul-
tural, industrial, recreational, scenic and other legitimate
beneficial uses thereof. The water quality standards of the
Secretary may not specify the design of equipment, type of
construction or particular method which a person shall use to
reduce the discharge of a pollutant.

(d) The Secretary shall establish the antidegradation
implementation procedures as required by 40 C. F. R.
131.12(a) which apply to regulated activities that have the
potential to affect water quality. The Secretary shall propose
for legislative approval, pursuant to article three, chapter
twenty-nine-a of the code, legislative rules to establish imple-
mentation procedures which include specifics of the review
depending upon the existing uses of the water body segment
that would be affected, the level of protection or "tier" assigned
to the applicable water body segment, the nature of the activity
and the extent to which existing water quality would be
degraded.
(e) All remining variances shall be applied for and considered by the Secretary and any variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remining variance the Secretary shall consider the data and information submitted by the applicant for the variance; and comments received at a public comment period and public hearing. The Secretary may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment. Any such requirement will be included as a permit condition. The Secretary may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The Secretary may not grant a variance where he or she determines that degradation of the instream water quality will result from the remining operation.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

§22-12-4. Authority of Secretary to promulgate standards of purity and quality.

(a) The Secretary has the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state.

(b) These standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall the standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The Secretary may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use.
where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the Secretary to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration is the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent is allowed and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination and to strive where practical to reduce the level of contamination over time to support drinking water use.

(c) The standards of purity and quality for groundwater promulgated by the Secretary shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.

(d) In the promulgation of such standards the Secretary shall consult with the Department of Agriculture and the Bureau for Public Health, as appropriate.

(e) Any groundwater standard that is in effect on the effective date of this article shall remain in effect until modified by the Secretary. Notwithstanding any other provisions of this code to the contrary, the authority of the Secretary to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the Secretary, those other provisions are void.
ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-2. Authority of board; additional definitions.

1 (a) In addition to all other powers and duties of the Environmental Quality Board, as prescribed in this chapter or elsewhere by law, the Board may receive any money as a result of the resolution of any case on appeal which shall be deposited in the State Treasury to the credit of the Water Quality Management Fund created pursuant to section ten, article eleven, chapter twenty-two of this code.

2 (b) All the terms defined in section three, article eleven, chapter twenty-two of this code are applicable to this article and have the meanings ascribed to them therein.

CHAPTER 247

(Com. Sub. for H. B. 3208 — By Delegates Trump, Michael, Mahan, Campbell and Ashley)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating to the wireless enhanced 911 fee; raising the fee; earmarking ten cents to the fee for the State Police; earmarking one million dollars of the fee for the construction of wireless towers; creating the Enhanced 911 Wireless Tower Assistance Fund to be administered by the Public Service Commission; authorizing the Commission to provide loans and matching grants; use of towers for emergency services; authoriz-
ing the Commission to promulgate rules and emergency rules; adjusting the formula by which the Public Service Commission distributes wireless enhanced 911 fees to the counties; and allowing counties which consolidate government services to receive one percent of fee for each county consolidated.

Be it enacted by the Legislature of West Virginia:

That §24-6-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee.

(a) Beginning on the first day of January, one thousand nine hundred ninety-eight, all CMRS providers, as defined in section two of this article, shall, on a monthly basis, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. No later than the first day of August, one thousand nine hundred ninety-eight, the Public Service Commission, shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an order which directs the CMRS providers regarding all relevant details of wireless enhanced 911 fee collection, including the determination of who is considered an in-state two-way service subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The Public Service Commission shall solicit the views of the wireless telecommunications utilities prior to issuing the order.

(b) The wireless enhanced 911 fee is three dollars per month for each valid retail commercial mobile radio service subscription, as that term is defined by the Public Service Commission in its order issued under subsection (a) of this section: Provided, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten
cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: Provided, however, That for the fiscal year beginning on the first day of July, two thousand five, and for every fiscal year thereafter, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of towers. The moneys shall be deposited in a fund administered by the West Virginia Public Service Commission, entitled “Enhanced 911 wireless Tower Access Assistance Fund”, and shall be expended in accordance with an enhanced 911 wireless tower access matching grant order adopted by the Public Service Commission. The Commission order shall contain terms and conditions designed to provide financial assistance loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers for the acquisition, equipping and construction of new wireless towers, which would provide enhanced 911 service coverage, and which would not be available otherwise due to marginal financial viability of the applicable tower coverage area: Provided further, That the grants shall be allocated among potential sites based on application from county commissions demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed with assistance from the fund created by this subdivision shall be available for use by emergency services, fire departments and law-enforcement agencies communication equipment, so long as that use does not interfere with the carrier’s wireless signal: And provided further, That the Public Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection. The Public Service Commission is specifically authorized to promulgate emergency rules.

(c) Beginning in the year one thousand nine hundred ninety-seven, and every two years thereafter, the Public Service
Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the fee so that it is the weighted average rounded to the nearest penny, as of the first day of March of the respecification year, of all of the enhanced 911 fees imposed by the counties which have adopted an enhanced 911 ordinance: Provided, That the wireless enhanced 911 fee may never be increased by more than twenty-five percent of its value at the beginning of the respecification year: Provided, however, That the fee may never be less than the amount set in subsection (b) of this section: Provided further, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: And provided further, That beginning on the first day of July, two thousand five, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of wireless towers as specified in subsection (b) of this section.

(d) The CMRS providers shall, after retaining a three percent billing fee, send the wireless enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The Public Service Commission shall, on a quarterly and approximately evenly staggered basis, disburse the fee revenue in the following manner:

(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand nine hundred ninety-seven, shall receive eight and one half tenths of one percent of the fee revenues received by the Public Service Commission: Provided, That after the effective date of this
section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Each county shall receive eight and one half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: Provided, however, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder based on that county's population as determined in the most recent decennial census as a percentage of the state total population. The Public Service Commission shall recalculate the county disbursement percentages on a yearly basis, with the changes effective on the first day of July, and using data as of the preceding first day of March. The public utilities which normally provide local exchange telecommunications service by means of lines, wires, cables, optical fibers or by other means extended to subscriber premises shall supply the data to the Public Service Commission on a county specific basis no later than the first day of June of each year;

(2) Counties which have an enhanced 911 ordinance in effect shall receive their share of the wireless enhanced 911 fee revenue for use in the same manner as the enhanced 911 fee revenues received by those counties pursuant to their enhanced 911 ordinances;

(3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue for each county which does not have an enhanced 911 ordinance in effect into an escrow
account which it has established for that county. Any county
with an escrow account may, immediately upon adopting an
enhanced 911 ordinance, receive the moneys which have
accumulated in the escrow account for use as specified in
subdivision (2), subsection (d) of this section: Provided, That
a county that adopts a 911 ordinance after the original effective
date of this section in the year one thousand nine hundred
ninety-seven or has adopted a 911 ordinance within five years
of the original effective date of this section in the year one
thousand nine hundred ninety-seven, shall continue to receive
one percent of the total 911 fee revenue for a period of five
years following the adoption of the ordinance. Thereafter, each
county shall receive that county’s eight and one half tenths of
one percent of the remaining fee revenue, plus that county’s
additional pro rata portion of the fee revenues then remaining,
based on that county’s population as determined in the most
recent decennial census as a percentage of the state total
population: Provided, however. That every five years from the
year one thousand nine hundred ninety-seven, all fee revenue
residing in escrow accounts shall be disbursed on the pro rata
basis specified in subdivision (1), subsection (d) of this section,
except that data for counties without enhanced 911 ordinances
in effect shall be omitted from the calculation and all escrow
accounts shall begin again with a zero balance.

(e) CMRS providers have the same rights and responsibilities as other telephone service suppliers in dealing with the
failure by a subscriber of a CMRS provider to timely pay the
wireless enhanced 911 fee.

(f) Notwithstanding the provisions of section one-a of this
article, for the purposes of this section, the term "county" means
one of the counties provided in section one, article one, chapter
one of this code.

(g) From any funds distributed to a county pursuant to this
section, a total of three percent shall be set aside in a special
159 fund to be used exclusively for the purchase of equipment that
160 will provide information regarding the x and y coordinates of
161 persons who call an emergency telephone system through a
162 commercial mobile radio service: Provided, That upon purchase
163 of the necessary equipment, the special fund shall be dissolved
164 and any surplus shall be used for general operation of the
165 emergency telephone system as may otherwise be provided by
166 law.

CHAPTER 248

(S. B. 744 — By Senators Kessler, Dempsey, Fanning, Foster,
Hunter Jenkins, Minard, Oliverio, White, Barnes, Caruth,
Harrison, Lanham, McKenzie and Weeks)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §23-4-2 of the Code of West Virginia,
1931, as amended, relating to clarifying the criteria for an
employee to sustain a lawsuit for intentional injury.

Be it enacted by the Legislature of West Virginia:

That §23-4-2 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intention­
ally caused by employer; legislative declarations and
findings; “deliberate intention” defined.
(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive any sum from the Workers' Compensation Fund, from a self-insured employer or otherwise under the provisions of this chapter on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee's employment, the employer may require the employee to undergo a blood test for the purpose of determining the existence or nonexistence of evidence of intoxication pursuant to rules for the administration of the test promulgated by the board of managers: Provided, That the employer must have a reasonable and good faith objective suspicion of the employee’s intoxication and may only test for the purpose of determining whether the person is intoxicated.

(b) For the purpose of this chapter, the commission may cooperate with the Office of Miners' Health, Safety and Training and the state division of labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(c) If injury or death result to any employee from the deliberate intention of his or her employer to produce the injury or death, the employee, the widow, widower, child or dependent of the employee has the privilege to take under this chapter and has a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter, whether filed or not.

(d) (1) It is declared that enactment of this chapter and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law
tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as expressly provided in this chapter and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a coemployee; that the immunity established in sections six and six-a, article two of this chapter is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common lawsuit was and is to protect those immunized from litigation outside the workers' compensation system except as expressly provided in this chapter; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.

(2) The immunity from suit provided under this section and under sections six and six-a, article two of this chapter may be lost only if the employer or person against whom liability is asserted acted with “deliberate intention”. This requirement may be satisfied only if:

(i) It is proved that the employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of: (A) Conduct which produces a result that was not specifically intended; (B) conduct which constitutes negligence, no matter how gross or aggravated; or (C) willful, wanton or reckless misconduct; or
(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition;

(C) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer, as demonstrated by competent evidence of written standards or guidelines which reflect a consensus safety standard in the industry or business, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C), inclusive, of this paragraph, the employer nevertheless intentionally thereafter exposed an employee to the specific unsafe working condition; and

(E) That the employee exposed suffered serious compensable injury or compensable death as defined in section one, article four, chapter twenty-three whether a claim for benefits under this chapter is filed or not as a direct and proximate result of the specific unsafe working condition.
(iii) In cases alleging liability under the provisions of paragraph (ii) of this subdivision:

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it finds, pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E), inclusive, paragraph (ii) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E), inclusive, paragraph (ii) of this subdivision; and

(C) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the reenactment.
(f) The amendments to this section enacted during the two thousand five session of the Legislature shall apply to all injuries occurring and all actions filed on or after the first day of July, two thousand five.

CHAPTER 249

(H. B. 2510 — By Delegates Frederick, Stalnaker, Walters, Rowan and Cann)

[Passed March 23, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §18B-3D-4 of the Code of West Virginia, 1931, as amended, relating to the Workforce Development Initiative generally; and providing that public sector employers may participate in the initiative under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-4 of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the Workforce Development Initiative Grant Program, a community and technical college must meet the following conditions:
(1) Participate in a community and technical college consortia as required by article three-c of this chapter. Consortia representatives shall participate in the development of and approve applications for funding grants under the provisions of this article and shall approve the Workforce Development Initiative budget;

(2) Develop a plan to achieve measurable improvements in the quality of the workforce within its service area over a five-year period. The plan must be developed in partnership with employers, local vocational schools and other workforce education providers; and

(3) Establish a special revolving fund under the jurisdiction of the community and technical college consortia dedicated solely to workforce development initiatives for the purposes provided in this article. Any fees or revenues generated from Workforce Development Initiatives funded by a competitive grant shall be deposited into this fund.

(b) To be eligible to receive a Workforce Development Initiative Grant, a community and technical college must provide at least the following information in its application:

(1) Identification of the specific business or business sector training needs that will be met if a Workforce Development Initiative Grant is received;

(2) A commitment from the private or public sector partner or partners to provide a match of one dollar, cash and in-kind, for each dollar of state grant money received except in cases where the community and technical college can demonstrate in the grant application that it would be a hardship for the private sector partner or partners being served to provide the match. In those cases only, the commitment to provide a match may be reduced to one dollar provided by the private sector partner or partners, cash and in-kind, for every three dollars of state grant
money provided. In the case of awards for the modernization of procurement of equipment, the development office may establish a separate match requirement of up to one dollar, cash and in-kind, for each dollar of state grant money received. Beginning in fiscal year 2006, the commitment required by this subdivision may be provided by a public sector partner using state or federal dollars to provide the required match. Provided, That no public sector partner using state or federal dollars to provide the required match is eligible for a grant under the provisions of this section unless the amount of funding provided by the Legislature for the workforce development initiative in that fiscal year exceeds six hundred fifty thousand dollars: Provided, however, That if the amount of funding provided by the Legislature for the workforce investment initiative in a fiscal year exceeds six hundred fifty thousand dollars, only one half of that amount exceeding six hundred fifty thousand dollars may be granted to a qualified applicant whose commitment of the required match is from a public sector partner using state or federal dollars to provide the match;

(3) An agreement to share with other community and technical colleges any curricula developed using funds from a workforce development initiative grant;

(4) A specific plan showing how the community and technical college will collaborate with local post-secondary vocational institutions to maximize the use of existing facilities, personnel and equipment; and

(5) An acknowledgment that acceptance of a grant under the provisions of this article commits the community and technical college and its consortia committee to such terms, conditions and deliverables as is specified by the development office in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.
Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students.

CHAPTER 250

(S. B. 222 — By Senators Unger, Kessler, McCabe, Sprouse, Minard, Sharpe and Foster)

[Passed March 29, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §5B-2B-3 of the Code of West Virginia, 1931, as amended, relating to the membership of the West Virginia Workforce Investment council.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-3. West Virginia Workforce Investment Council; membership of Board; meetings; quorum requirements.

(a) The West Virginia Workforce Investment Council is hereby created and shall serve as the state's Workforce Investment Board, as required by the federal Workforce Investment Act, 29 U. S. C. §2801, et seq. The Council shall make
general recommendations regarding workforce investment in
the state to the Governor and the Legislature.

(b) The Council may consist of no more than thirty-nine
members, including ex officio members.

(c) The Governor shall appoint, with the advice and consent
of the Senate, members to the Council according to the follow-
ing criteria:

(1) Representatives of business in the state, including at
least one representing the tourism industry, who are:

(A) Owners of businesses, chief executive officers, chief
operating officers of business and other business executives or
employers with optimum policy-making or hiring authority,
including members of regional workforce investment boards;

(B) Representatives of businesses having employment
opportunities that reflect the employment opportunities of the
state; and

(C) Individuals nominated by state business organizations
and business trade associations;

(2) No more than two members who are members of the
Council for Community and Technical College Education;

(3) Two members who are members of the West Virginia
Council for Community and Economic Development;

(4) Two members who are chief elected officials represent-
ing cities and counties;

(5) Two members who represent individuals and organiza-
tions having experience and expertise in the delivery of
workforce investment programs, including one chief executive
officer of a community and technical college and one chief
executive officer of a community-based organization operating in the state;

(6) Two members who represent individuals and organizations having experience in youth activities, including at least one youth from a post-secondary education institution; and

(7) Two members who represent labor organizations in the state who have been nominated by state labor federations.

(d) The following shall serve on the Council as ex officio members:

(1) The Governor, or his or her designee;

(2) The Superintendent of the Department of Education, or his or her designee;

(3) The Director of the Division of Rehabilitation Services, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the Division of Rehabilitation Services;

(4) The Commissioner of the Bureau of Senior Services, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the Bureau of Senior Services;

(5) The Commissioner of the Bureau of Employment Programs, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the Bureau of Employment Programs;

(6) The Director of the Division of Veterans' Affairs, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the Division of Veterans' Affairs;
(7) The Executive Director of the West Virginia Development Office;

(8) The Secretary of the Department of Health and Human Resources, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the Department of Health and Human Resources;

(9) The Chancellor of the West Virginia Council for Community and Technical College Education; and

(10) The Chancellor for Higher Education.

(e) The Speaker of the House of Delegates shall appoint two members of the House of Delegates to serve on the Council, as nonvoting members.

(f) The President of the Senate shall appoint two members of the Senate to serve on the Council, as nonvoting members.

(g) The Governor shall appoint a Chair and Vice Chair for the Council from among the members appointed pursuant to subdivision (1), subsection (c) of this section.

(h) Initial terms for appointed members of the Council are for up to three years as determined by the Governor. All subsequent terms are for three years.

(i) The Council shall meet at least quarterly and appointed members of the Council may be reimbursed for reasonable expenses incurred within the scope of their service on the Council.

(j) A majority of the members of the Council constitute a quorum: Provided, That a majority of the members making the quorum are members appointed pursuant to subdivision (1), subsection (c) of this section.
(k) The Council may create subcommittees to carry out any of its duties. Quorum requirements required by subsection (j) of this section also apply to subcommittees.

(l) No member of the Council may:

(1) Vote on a matter under consideration by the Council:

(A) Regarding the provision of services by the member or by an entity that the member represents; or

(B) That would provide direct financial benefit to the member or the immediate family of the member; or

(2) Engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the strategic five-year state Workforce Investment Plan.

CHAPTER 251

(Com. Sub. for S. B. 522 — By Senators Lanham and Facemyer)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

AN ACT to extend the time for the city council of Hurricane to meet as a levying body for the purpose of presenting to the voters of the city of Hurricane an election to continue an additional city levy to maintain the level of funding for the street department and the police department from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand five.

Be it enacted by the Legislature of West Virginia:
THE CITY COUNCIL OF HURRICANE MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city of Hurricane to meet as a levying body for election of additional levies to maintain the level of funding for the street department and the police department.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the city council of Hurricane is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the State Tax Commissioner and the State Auditor from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand five, for the purpose of submitting to the voters of the city of Hurricane the continuation of an additional city levy to maintain the level of funding for the street department and the police department where necessary.

CHAPTER 252

(S. B. 166 — By Senator Tomblin, Mr. President)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT authorizing the Department of Administration to sell 2.25 acres of land, together with the improvements thereon, situate at Crites, on Buffalo Creek, in Triadelphia tax district, Logan County.

Be it enacted by the Legislature of West Virginia:
§1. Land sale; description.

(a) The Secretary of Administration may solicit interest in, enter into a contract for sale by auction and sell and convey, for good and valuable consideration as negotiated by the Secretary of Administration, all of that certain tract or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, including the right of access, ingress and egress, to and from Logan County Route 16, containing 2.25 acres, more or less, situate at Crites, on Buffalo Creek, in Triadelphia tax district, Logan County, West Virginia. The property is more accurately bounded and described in a deed dated the tenth day of June, one thousand nine hundred seventy-six, from the West Virginia Division of Highways to the State of West Virginia for the use and benefit of the Department of Finance and Administration of said state and recorded in the office of the clerk of the county commission of Logan County, West Virginia, in deed book 384, at page 84. Any sale and conveyance of this property is subject to all restrictions, reservations, exceptions, rights-of-way, easements, utilities, covenants, leases, exclusions and other matters duly of record affecting the subject property.

(b) The money from the sale of the property shall be deposited in a special fund of the Department of Administration to be used for State Capitol Complex improvements and renovations.

(c) The Secretary of Administration may use an auction service to sell the property by oral, silent or internet auction, with the usual and customary cost of the auction, as defined by the conventions of the auction service, to be paid from the proceeds of the sale or by the buyer depending on the conventions of the auction service at the time of the closing sale.
(d) The property shall have a total reserve price or minimum bid, set by the Secretary of Administration, for sale and conveyance of the property, regardless of the appraised value.

(e) The sale by auction shall take place at least once a year until the property is successfully sold.

(f) In the event of sale by auction, no commissions will be paid to a real estate broker who was engaged by the Secretary of Administration to sell the property.

(g) Notwithstanding anything in the Code of West Virginia, 1931, as amended, to the contrary, the provisions of this section prevail.

CHAPTER 253
(H. B. 3347 — By Delegates Proudfoot and Hartman)

[Passed March 28, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to extend the time for the County Commission of Pocahontas County to meet as a levying body for the purpose of transacting business generally and particularly the business of laying the regular county levy to maintain and provide for a county budget.

Be it enacted by the Legislature of West Virginia:

THE COUNTY COMMISSION OF POCAHONTAS COUNTY.

§1. Extension of time for County Commission of Pocahontas County to meet as levying body.
Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the County Commission of Pocahontas County is hereby authorized to extend the time to meet as a levying body for the purpose of transacting business generally and particularly the business of laying the regular county levy to maintain and provide for a county budget from between the seventh and twenty-eighth days of March until the second day of May, two thousand five.

CHAPTER 254

(Com. Sub. for H. B. 2812 — By Delegates Williams and Stevens)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to extend the time for the Board of Education of Preston County to meet as a levying body for the purpose of presenting to the voters of Preston County an election on the question of enacting a special levy for school funding from between the seventh and twenty-eighth days of March and the third Tuesday in April until the ninth day of May, two thousand five.

Be it enacted by the Legislature of West Virginia:

PRESTON COUNTY SCHOOL BOARD MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Preston County School Board to meet as levying body for an election enacting a special levy for school funding.
Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the Board of Education of Preston County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until the ninth day of May, two thousand five, for the purpose of submitting to the voters of Preston County the question of enacting a special levy for school funding.

CHAPTER 255
(S. B. 411 — By Senators Kessler and Edgell)

[Passed March 18, 2005; in effect from passage.]
[Approved by the Governor on March 31, 2005.]

AN ACT to extend the time for the county commission of Tyler County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of authorizing the excess levy for vital public services in Tyler County from between the seventh and twenty-eighth days of March until the second Monday of April, two thousand five.

Be it enacted by the Legislature of West Virginia:

TYLER COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Tyler County Commission to meet as a levying body for an election authorizing an excess levy for vital public service.
Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the county commission of Tyler County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state Tax Commissioner from between the seventh and twenty-eighth day of March until the second Monday in April, two thousand five, for the purpose of submitting to the voters of Tyler County the question of authorizing an excess levy for vital public service.
AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend said Code by adding thereto a new section, designated §6B-1-6; to amend and reenact §6B-2-1, §6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said Code; to amend said Code by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; to amend and reenact §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of
said code; and to amend said code by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all relating generally to the ethical standards of public officers, employees and lobbyists; providing a definition of certain terms; creating a special revenue account; clarifying membership qualifications for the West Virginia Ethics Commission; modifying compensation and procedure for meetings of the West Virginia Ethics Commission; revising the powers, duties and authority of the Commission; providing for procedures with respect to the filing of complaints against persons subject to said chapter, the determination of probable cause that a violation of this chapter has occurred and the conduct of hearings with respect thereto; establishing the Probable Cause Review Board; providing for appointment, powers and duties; providing for confidentiality requirements as to Commission members and staff, complainants and informants; establishing prohibition against certain Commission members and staff for commenting on Commission proceedings; altering sanctions that Commission may impose; providing immunity for good faith complainants and sanctions for bad faith filings; referral of criminal conduct to prosecutor; limitations on filing complaints; altering statute of limitations; clarifying use of public office for private gain; permitting solicitation of certain donations by members of the Board of Public Works; providing ethical standards for elected and appointed officials as well as certain public employees; prohibiting public officials and employees from receiving double compensation in certain circumstances; modifying penalties; providing for ethics training for certain public officials and employees; revising the contents of financial disclosure statements required of certain public officials and public employees; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing definitions of certain terms related to lobbyists; providing for registration and reporting requirements for lobbyists; modifying registration fees for lobbyists; clarifying conflict of interests related to lobbying activities; providing for a
lobbyist training course; providing for reporting requirements for lobbyists; altering duties of lobbyists and defining certain acts which are violations; and providing for random compliance audits of lobbyists and their employers.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §6B-1-6; that §6B-2-1, §6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; that §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all to read as follows:

Article

1. Short Title; Legislative Findings, Purpose and Intent; construction and Application of Chapter; Severability.

2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies; Code of Conduct for Administration Law Judges.

3. Lobbyist.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

§6B-1-6. Special revenue account.

§6B-1-3. Definitions.

1 As used in this chapter, unless the context in which used clearly requires otherwise:

3 (a) “Review Board” means the Probable Cause Review
Board created by section two-a, article two of this chapter.

(b) "Compensation" means money, thing of value or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

(c) "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(d) "Ethics Commission" or "Commission" means the West Virginia Ethics Commission.

(e) "Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

(f) "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, the individual's own judgment as to the propriety of the action being taken.

(g) "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

(h) "Political contribution" means and has the same
definition as is given that term under the provisions of article eight, chapter three of this code.

(i) "Public employee" means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

(j) "Public official" means any person who is elected or appointed to any state, county or municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

(k) "Respondent" means a person who is the subject of an investigation by the Commission or against whom a complaint has been filed with the Commission.

(l) "Thing of value", "other thing of value" or "anything of value" means and includes: (1) Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life
estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests or any other interest or interests in realty of whatsoever nature; (8) any promise of employment, present or future; (9) donation or gift; (10) rendering of services or the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

§6B-1-6. Special revenue account.

All moneys collected pursuant to this chapter, except fines imposed pursuant to paragraph (D), subdivision (1), subsection (r), section four, article two of this chapter, shall be deposited in a special account in the state treasury to be known as the West Virginia Governmental Ethics Commission Fund. Expenditures from the fund shall be for the purposes set forth in this chapter and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand five, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.
§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

(a) There is hereby created the West Virginia Ethics Commission, consisting of twelve members, no more than seven of whom shall be members of the same political party. The members of the Commission shall be appointed by the Governor with the advice and consent of the Senate. Within thirty days of the effective date of this section, the Governor shall make the initial appointments to the Commission. No person may be appointed to the Commission or continue to serve as a member of the Commission who holds elected or appointed office under the government of the United States, the state of West Virginia or any of its political subdivisions, or who is a candidate for any of those offices, who is employed as a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Commission. A member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(b) At least two members of the Commission shall have served as a member of the West Virginia Legislature; at least
two members of the Commission shall have been employed in a full-time elected or appointed office in state government; at least one member shall have served as an elected official in a county or municipal government or on a county school board; at least one member shall have been employed full time as a county or municipal officer or employee; and at least two members shall have served part time as a member or director of a state, county or municipal board, commission or public service district and at least four members shall be selected from the public at large. No more than four members of the Commission shall reside in the same congressional district.

(c) Of the initial appointments made to the Commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section and three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of this Commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms and no person may be reappointed to the Commission until at least two years have elapsed after the completion of a second successive term.

(d) Each member of the Commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia. A member
may be removed by the Governor for substantial neglect of duty, gross misconduct in office or violation of this chapter, after written notice and opportunity for reply.

(e) The Commission shall meet within thirty days of the initial appointments to the Commission at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the Commission shall elect a chairman and other officers as are necessary. The Commission shall within ninety days after its first meeting adopt rules for its procedures.

(f) Seven members of the Commission shall constitute a quorum, except that when the Commission is sitting as a hearing board pursuant to section four of this article, then five members shall constitute a quorum. Except as may be otherwise provided in this article, a majority of the total membership shall be necessary to act at all times.

(g) Members of the Commission shall receive the same compensation and expense reimbursement as 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 thereof engaged in the discharge of official duties: Provided, That to be eligible for compensation and expense reimbursement, the member must be in personal attendance at the meeting in which the duties are performed.

(h) The Commission shall appoint an executive director to assist the Commission in carrying out its functions in accordance with Commission rules and with applicable law. The executive director shall be paid a salary fixed by the Commission or as otherwise provided by law. The Commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties.
Counsel to the Commission shall advise the Commission on all legal matters and on the instruction of the Commission may commence appropriate civil actions: Provided, That no counsel shall both advise the Commission and act in a representative capacity in any proceeding.

(i) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission, except that the Commission shall not delegate the power to hold hearings and determine violations to the chairman or executive director.

(j) The principal office of the Commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the Commission shall be public unless: (1) They are required to be private by the provisions of this chapter relating to confidentiality; or (2) they involve discussions of Commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(k) Meetings of the Commission shall be upon the call of the chair and may be conducted by telephonic or other electronic conferencing: Provided, That telephone or other electronic conferencing and voting are not permitted when the Commission is acting as a hearing board under section four of this article or when an investigative panel meets to receive an oral response as authorized under subsection (d), section four of this article. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the Commission in accordance with its record retention policy.
§6B-2-2. Same – General powers and duties.

(a) The Commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this Code, to carry out the purposes of this article.

(b) The Commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this article by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

(c) The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its duties and powers of investigation.

(d) The Commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The Commission may:
(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the Commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the Commission may require in the discharge of its duties: Provided, That the Commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.


(a) There is hereby established a Probable Cause Review Board that shall conduct hearings to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred and, if so, to refer that investigation to the Ethics Commission. The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the
Review Board, each of whom shall be a resident and citizen of
the state. Each member of the Review Board shall hold office
until his successor has been appointed and qualified. At least
one member of the Board must be an attorney licensed by the
state of West Virginia and no more than two members can
belong to the same political party. The members of the Review
Board shall be appointed for overlapping terms of two years,
except that the original appointments shall be for terms of one,
two and three years, respectively. Any member whose term
expires may be reappointed by the Governor. In the event a
Review Board member is unable to complete his or her term, a
Governor shall appoint a person with similar qualification to
complete that term. Each Review Board member shall receive
the same compensation and expense reimbursement as provided
to Ethics Commission members pursuant to section one of this
article. These and all other costs incurred by the Review Board
shall be paid from the budget of the Ethics Commission.

(c) No person may be appointed to the Review Board or
continue to serve as a member of the Review Board who holds
elected or appointed office under the government of the United
States, the state of West Virginia or any of its political
subdivisions, or who is a candidate for any of such offices, or
who is a registered lobbyist, or who is otherwise subject to the
provisions of this chapter other than by reason of his or her
appointment to or service on the Review Board. A Review
Board member may contribute to a political campaign, but no
member shall hold any political party office or participate in a
campaign relating to a referendum or other ballot issue.

(d) The Ethics Commission shall propose, for approval by
the Review Board, any procedural and interpretative rules
governing the operation of the Review Board. The Commission
shall propose these rules pursuant to article three, chapter
twenty-nine-a of the code.
(e) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and Commission staff shall, as the Commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(f) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board’s duties.

(g) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, Commission staff shall send notice to the Commission members of the Review Board’s finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the Commission may take no further action until it receives the Review Board’s probable cause finding.

§6B-2-3a. Complaints.

(a) The Commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The Commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which,
if true, would merit an inquiry into whether a violation of this article has occurred.

(c) (1) No complaint may be accepted or initiated by the Commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) The Commission shall stay any proceedings with regard to an ethics complaint filed against a public official or public employee candidate more than sixty days prior to the election: Provided, Where there has not yet been a probable cause determination with regard to the allegations in the complaint, the public official or public employee candidate may waive the postponement in writing, in which case the Commission and the Review Board shall process the complaint and provide the candidate with a probable cause determination at least thirty days prior to the election.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the Commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the Commission or the complainant or his or her representative personally filed the complaint with the Commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or
agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the Commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the Commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the Review Board created pursuant to section two-
a of this article.

(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the Commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties, and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”. The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the Commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the Commission within thirty days after the receipt
of the notice, but that no fact or allegation shall be taken as
admitted by a failure or refusal to timely respond.

(d) Within the 45-day period following the mailing of a
notice of investigation, the Review Board shall proceed to
consider: (1) The allegations raised in the complaint; (2) any
timely received written response of the respondent; and (3) any
other competent evidence gathered by or submitted to the
Commission which has a proper bearing on the issue of
probable cause. A respondent may appear before the Review
Board and make an oral response to the complaint. The
Commission shall promulgate rules prescribing the manner in
which a respondent may present his or her oral response. The
Commission may ask a respondent to disclose specific amounts
received from a source and request other detailed information
not otherwise required to be set forth in a statement or report
filed under the provisions of this chapter, if the information
sought is considered to be probative as to the issues raised by
a complaint or an investigation initiated by the Commission.
Any information thus received shall be confidential except as
provided by subsection (e) of this section. If a person asked to
provide information fails or refuses to furnish the information
to the Commission, the Commission may exercise its subpoena
power as provided in this chapter, and any subpoena issued by
the Commission shall have the same force and effect as a
subpoena issued by a circuit court of this state. Enforcement of
any subpoena may be had upon application to a circuit court of
the county in which the Review Board is conducting an
investigation, through the issuance of a rule or an attachment
against the respondent as in cases of contempt.

(e)(1) No person who has filed a complaint, provided
information to the Commission or has knowledge that the
Commission is undertaking an investigation and no Commis-
sion member or employee or former member or employee shall
disclose:
(A) His or her knowledge that a complaint has been filed or an investigation has been undertaken;

(B) Any information he or she obtained as a result of having interacted with the Commission in connection with a particular investigation;

(C) The fact that he or she has filed a complaint, provided information to or testified before the Commission or otherwise participated in the Commission investigation; or

(D) The contents of any investigations, complaints, reports, records, proceedings, and other information received by the Commission and related to complaints made to the Commission or investigations conducted by the Commission pursuant to this section, including the identity of the complainant or respondent, except as follows:

(i) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the Commission with a copy of the Review Board’s order and the statement of charges prepared pursuant to the provisions of subsection (g) of this section, the complaint and all reports, records, non-privileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential

(ii) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the Commission’s orders, are not confidential.
(iii) The Commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(iv) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(v) Where the Commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(2) If, in a specific case, the Commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the Commission shall order that all or a portion of the information communicated to the Commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential, and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the Commission.

(3) If a complainant knowingly discloses confidential information in violation of this subsection, the Commission may impose the sanctions specified in subsection (r) of this section and in addition, or in lieu thereof, dismiss the complaint.

(f) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the Commission in an order signed by the majority members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is
probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the Commission staff to prepare a statement of charges, to assign the matter for hearing to the Commission or a hearing examiner as the Commission may subsequently direct. The Commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The Commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(g) At least eighty days prior to the date of the hearing, the Commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the Commission, by legislative rule, directs.

(h) The Commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the Commission to preside at the taking of evidence. The Commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(i) A member of the Commission or a hearing examiner presiding at a hearing may:
(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(j) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the Commission or a hearing examiner. The Commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the Commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the Commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the
Commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party’s proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the Commission for final decision.

(k) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the Commission, unless by leave of the Commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(l) The Commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the Commission. The Commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the Commission, acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(m) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least seven members of the Commission.

(n) Members of the Commission shall recuse themselves from a particular case upon their own motion with the approval of the Commission or for good cause shown upon motion of a
party. The remaining members of the Commission shall, by majority vote, select a temporary member of the Commission to replace a recused member. Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (b), section one of this article, as the recused member.

(o) Except for statements made in the course of official duties to explain Commission procedures, no member or employee or former member or employee of the Commission may make any public or nonpublic comment about any proceeding previously or currently before the Commission. Any member or employee or former member or employee of the Commission who violates this subsection is subject to the penalties contained in subsection (e), section ten of this article. In addition, violation of this subsection by a current member or employee of the Commission is grounds for immediate removal from office or termination of employment.

(p) A complainant may be assisted by a member of the Commission staff assigned by the Commission after a determination of probable cause.

(q) No employee of the Commission assigned to prosecute a complaint may participate in the Commission deliberations or communicate with Commission members or the public concerning the merits of a complaint.

(r)(1) If the Commission finds by evidence beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders:
(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed five thousand dollars per violation;

or

(E) Reimbursement to the Commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the Commission for its costs under this paragraph shall be collected by the Commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the Commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The Commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(s) At any stage of the proceedings under this section, the Commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the Commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the Commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(t) Decisions of the Commission involving the issuance of sanctions may be appealed to the Circuit Court of Kanawha County, West Virginia, or to the circuit court of the county where the violation is alleged to have occurred, only by the respondent, and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.
(u)(1) Any person who in good faith files a verified complaint or any person, official, or agency who gives credible information resulting in a formal complaint filed by Commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the Commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the Commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the Commission for the actual costs of its investigation.

In addition, the Commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(v)(1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the Commission that there is credible information or evidence that
the respondent may have committed a criminal violation, the matter shall be referred to the full Commission for its consider-
ation. If, by a vote of two thirds of the members of the full Commission, it is determined that probable cause exists to believe a criminal violation has occurred, the Commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the Commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the Commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two thirds of the full Commission determine that a criminal violation has occurred, the Commission shall remand the matter to the Review Board, the hearing examiner or the Commission itself as a hearing board, as the case may be, for further proceedings under this article.

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year before the filing of a complaint: Provided, That the applicable statute of limitations for violations which occur on or after the first day of July, two thousand five, is two years after the date on which the alleged violation occurred.

§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. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. 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, 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. Those 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 those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to 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. Accord-
ingly, the Commission is directed, by legislative rule, to
establish categories of public officials and public employees,
identifying them generally by the office or employment held,
and offering persons who fit within those categories the
opportunity to apply for an exemption from the application of
the provisions of this subsection. 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 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 or her 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 has a speaking engagement;

(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 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.”

(7) Upon written notice to the Commission, any member of the Board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The 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 office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the state register as provided in article two of chapter twenty-nine-a of the code and with the Commission, 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 member of the Board of Public Works shall contain the following disclaimer: “This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.” Any moneys in excess of those donations needed for the conference or function shall be deposited in the
Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(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 the 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 the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her 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.

(3) Where the provisions of subdivisions (1) and (2) of this
subsection would result in the loss of a quorum in a public body
or agency, in excessive cost, undue hardship, or other substan-
tial interference with the operation of a state, county, munici-
pality, 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 the 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 legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;
(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at 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.

(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 purchase, sell or lease real or
personal property to or from 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 “employ-
ment” 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 official or public employee has supervisory responsi-
bility.

(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 exemp-
tion from the prohibition contained in subdivision (1), of this
subsection. 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 informa-
tion 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. — Mem-
bers 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 func-
tions as defined in section three, article one of this chapter, in
any license or rate-making proceeding that directly affects the
license or rates of any person to whom the public official or
public employee or his or her immediate family, or a partner-
ship, 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 article three,
eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
or thirty-one, chapter thirty of this code.

(k) Certain compensation prohibited. — (1) A public
employee may not receive additional compensation from
another publicly-funded state, county or municipal office or
employment for working the same hours, unless:

(A) The public employee's compensation from one public
employer is reduced by the amount of compensation received
from the other public employer;

(B) The public employee's compensation from one public
employer is reduced on a pro rata basis for any work time
missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation,
personal or compensatory time or takes unpaid leave from his
or her public employment to perform the duties of another
public office or employment; or

(D) A part-time public employee who does not have
regularly scheduled work hours or a public employee who is
authorized by one public employer to make up, outside of
regularly scheduled work hours, time missed to perform the
duties of another public office or employment maintains time
records, verified by the public employee and his or her immedi-
ate supervisor at least once every pay period, showing the hours
that the public employee did, in fact, work for each public
employer. The public employer shall submit these time records
to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or
public employee from receiving compensation from a publicly-
funded office or employment in addition to any retirement
benefits to which the retired public official or public employee
is entitled.

(I) 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.

(m) 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
the institution or has been approved by the employee’s depart-
ment supervisor or the president of the institution by which the
faculty or staff member is employed.

(n) 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.

(o) The Commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this Code, define further exemptions from this section as necessary or appropriate.

§6B-2-5b. Ethics training requirements.

An individual who, on or after the effective date of this subsection, is elected or appointed to serve in the Legislature, as a member of the Board of Public Works, and those positions in the executive branch of state government which the Governor designates by executive order, shall, within six months of filling such position, attend a training course conducted by the Ethics Commission on the requirements of the Ethics Act. The Commission shall offer the training contemplated by this
section once every four years and shall prescribe by legislative
rule the nature, duration and content of the training and the
manner in which the training will be conducted.

§6B-2-7. Financial disclosure statement; contents.

The financial disclosure statement required under this
article shall contain the following information:

1. The name, residential and business addresses of the
person filing the statement and all names under which the
person does business.

2. The name and address of each employer of the person.

3. The name and address of each business in which the
person filing the statement has or had in the last year an interest
of ten thousand dollars at fair market value or five percent
ownership interest, if that interest is valued at more ten thou-
sand dollars.

4. The identification, by category, of every source of
income over one thousand dollars received during the preceding
calendar year, in his or her own name or by any other person for
his or her use or benefit, by the person filing the statement and
a brief description of the nature of the services for which the
income was received. This subdivision does not require a
person filing the statement who derives income from a business,
profession or occupation to disclose the individual sources and
items of income that constitute the gross income of that
business, profession or occupation nor does this subdivision
require a person filing the statement to report the source or
amount of income derived by his or her spouse.

5. If the person, profited or benefitted in the year prior to
the date of filing from a contract for the sale of goods or
services to a state, county, municipal or other local governmen-
27 tal agency either directly or through a partnership, corporation
28 or association in which the person owned or controlled more
29 than ten percent, the person shall describe the nature of the
30 goods or services and identify the governmental agencies which
31 purchased the goods or services.

(6) Each interest group or category listed below doing
32 business in this state with which the person filing the statement,
33 did business or furnished services and from which the person
34 received more than twenty percent of his or her gross income
during the preceding calendar year. The groups or categories
35 are electric utilities, gas utilities, telephone utilities, water
36 utilities, cable television companies, interstate transportation
37 companies, intrastate transportation companies, oil or gas retail
38 companies, banks, savings and loan associations, loan or
39 finance companies, manufacturing companies, surface mining
40 companies, deep mining companies, mining equipment compa-
41 nies, chemical companies, insurance companies, retail compa-
42 nies, beer, wine or liquor companies or distributors, recreation
43 related companies, timbering companies, hospitals or other
44 health care providers, trade associations, professional associa-
45 tions, associations of public employees or public officials,
46 counties, cities or towns, labor organizations, waste disposal
47 companies, wholesale companies, groups or associations
48 promoting gaming or lotteries, advertising companies, media
49 companies, race tracks and promotional companies.

(7) The names of all persons, excluding that person’s
50 immediate family, parents or grandparents residing or transact-
51 ing business in the state to whom the person filing the state-
52 ment, owes, on the date of execution of this statement in the
53 aggregate in his or her own name or in the name of any other
54 person more than five thousand dollars: Provided, That nothing
55 herein shall require the disclosure of a mortgage on the person’s
56 primary and secondary residences or of automobile loans on
57 automobiles maintained for the use of the person’s immediate
family, or of a student loan, nor shall this section require the
disclosure of debts which result from the ordinary conduct of
the person's business, profession, or occupation or of debts of
the person filing the statement to any financial institution, credit
card company, or business, in which the person has an owner-
ship interest: Provided, however, That the previous proviso
shall not exclude from disclosure loans obtained pursuant to the
linked deposit program provided for in article one-a, chapter
twelve of this code or any other loan or debt incurred which
requires approval of the state or any of its political subdivisions.

(8) The names of all persons except immediate family
members, parents and grandparents residing or transacting
business in the state (other than a demand or savings account in
a bank, savings and loan association, credit union or building
and loan association or other similar depository) who owes on
the date of execution of this statement more, in the aggregate,
than five thousand dollars to the person filing the statement,
either in his or her own name or to any other person for his or
her use or benefit. This subdivision does not require the
disclosure of debts owed to the person filing the statement
which debts result from the ordinary conduct of the person's
business, profession or occupation or of loans made by the
person filing the statement to any business in which the person
has an ownership interest.

(9) The source of each gift, including those described in
subdivision (2), subsection (c), section five of this article,
having a value of over one hundred dollars, received from a
person having a direct and immediate interest in a governmental
activity over which the person filing the statement has control,
shall be reported by the person filing the statement when such
gift is given to said person in his or her name or for his or her
use or benefit during the preceding calendar year: Provided,
That, effective from passage of the amendments to this section
enacted during the First Extraordinary Session of the Legisla-
ture in two thousand five, any person filing a statement required
to be filed pursuant to this section on or after the first day of
January, two thousand five, is not required to report those gifts
described in subdivision (2), subsection (c), section five of this
article that are otherwise required to be reported under section
four, article three of this chapter: Provided, however, That gifts
received by will or by virtue of the laws of descent and distribu-
tion, or received from one’s spouse, child, grandchild, parents
or grandparents, or received by way of distribution from an
inter vivos or testamentary trust established by the spouse or
child, grandchild, or by an ancestor of the person filing the
statement are not required to be reported. As used in this
subdivision, any series or plurality of gifts which exceeds in the
aggregate the sum of one hundred dollars from the same source
or donor, either directly or indirectly, and in the same calendar
year shall be regarded as a single gift in excess of that aggregate
amount.

(10) The signature of the person filing the statement.

§6B-2-9. Special prosecutor authorized

(a)(1) If after referral to the appropriate county prosecuting
attorney under subsection (v), section four of this article the
Ethics Commission finds that the prosecuting attorney is, due
to ill health or conflict of interest, unable to undertake a
criminal investigation or prosecution, the chair of the Ethics
Commission may, upon a two-thirds vote of the members of the
Ethics Commission, petition the appropriate circuit court for the
appointment of a special prosecutor through the West Virginia
Prosecuting Attorneys Institute pursuant to the provisions of
section six, article four, chapter seven of this Code for the
purpose of conducting an investigation to determine whether a
violation of the criminal law of this state has occurred.

(2) If the West Virginia Prosecuting Attorneys Institute is
unable, due to a conflict of interest of its Executive Director, to
assign a special prosecuting attorney to a criminal investigation or prosecution, the chair of the Ethics Commission may, upon a two-thirds vote of the members of the Ethics Commission, petition the appropriate circuit court for the appointment of a special prosecutor through communication with the Board of Directors of the West Virginia Prosecuting Attorneys Institute.

(b) A special prosecutor shall have the same authority as a county prosecutor to investigate and prosecute persons subject to this article for criminal violations committed in connection with their public office or employment which constitute felonies. No person who is serving as a prosecuting attorney or assistant prosecuting attorney of any county is required to take an additional oath when appointed to serve as a special prosecuting attorney.

(c) The ethics committee shall be authorized to employ and assign the necessary professional and clerical staff to assist any such special prosecutor in the performance of his or her duties.

(d) The special prosecutor shall be empowered to make a presentment to any regularly or specially impaneled grand jury in the appointing circuit court. The special prosecutor shall be empowered to prosecute any person indicted by such grand jury.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article, and any person, other than a complainant, who violates the provisions of subsection (e), section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in the county or regional jail for a period not to exceed six months or fined not more than one thousand dollars, or both. A member or employee of the Commission convicted of violating subsection (e), section four
of this article is subject to immediate removal from office or discharge from employment.

(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars, or confined in the county or regional jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article, is guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars.

(d) If any Commission member or staff knowingly violates subsection (o), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than one thousand dollars.

**ARTICLE 3. LOBBYISTS**

§6B-3-1. Definitions.
§6B-3-2. Registration of lobbyists.
§6B-3-3a. Registration fees.
§6B-3-3b. Conflict of interest.
§6B-3-3c. Lobbyist training course.
§6B-3-4. Reporting by lobbyists.
§6B-3-7. Duties of lobbyists.
§6B-3-11. Compliance audits.

§6B-3-1. Definitions.

As used in this article, unless the context in which used clearly indicates otherwise:
(1) "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

(2) "Employer" or "lobbyist’s employer" means any person who employs or retains a lobbyist.

(3) "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

(4) "Government officer or employee" means a member of the Legislature, a legislative employee, the Governor and other members of the Board of Public Works, heads of executive departments and any other public officer or public employee under the legislative or executive branch of state government who is empowered or authorized to make policy and perform nonministerial functions. In the case of elected offices included herein, the term "government officer or employee" includes candidates who have been elected but who have not yet assumed office.

(5) "Legislation" means bills, resolutions, motions, amendments, nominations and other matters pending or proposed in either house of the Legislature and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the Governor.

(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or
(ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

(7) “Lobbying firm” means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

(A) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, and any partner, owner, officer or employee of the business entity.

(B) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

(8)(A) “Lobbyist” means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

(i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

(ii) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.
The term "lobbyist" does not include the following persons, who are exempt from the registration and reporting requirements set forth in this article, unless they engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies, are exempt.

(ii) Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying are exempt.

(iii) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio or television and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station or television station are exempt.

(iv) Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying activities do not exceed one hundred fifty dollars during any calendar year, are exempt. The exemptions contained in this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or her option register and report under this article.
(v) Persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may, at his or her option, register and report under this article.

(vi) The Governor, members of the Governor's staff, members of the Board of Public Works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt.

(vii) Members of the Legislature are exempt.

(viii) Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties are exempt.

(ix) Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation are exempt.

(9) "Person" means any individual, partnership, trust, estate, business trust, association or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau or any other instrumen-
tality of the state; or any county, municipal corporation, school
district or any other political subdivision of the state.

§6B-3-2. Registration of lobbyists.

(a) Before engaging in any lobbying activity, or within
thirty days after being employed as a lobbyist, whichever
occurs first, a lobbyist shall register with the Ethics Commis-
sion by filing a lobbyist registration statement. The registration
statement shall contain information and be in a form prescribed
by the Ethics Commission by legislative rule, including, but not
limited to, the following information:

(1) The registrant's name, business address, telephone
numbers and any temporary residential and business addresses
and telephone numbers used or to be used by the registrant
while lobbying during a legislative session;

(2) The name, address and occupation or business of the
registrant's employer;

(3) A statement as to whether the registrant is employed or
retained by his or her employer solely as a lobbyist or is a
regular employee performing services for the employer which
include, but are not limited to, lobbying;

(4) A statement as to whether the registrant is employed or
retained by his or her employer under any agreement, arrange-
ment or understanding according to which the registrant's
compensation, or any portion of the registrant's compensation,
is or will be contingent upon the success of his or her lobbying
activity;

(5) The general subject or subjects, if known, on which the
registrant will lobby or employ some other person to lobby in
a manner which requires registration under this article; and
(6) An appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be represented.

(b) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for lobbying with respect to the same subject is to be paid or contributed by more than one person, then the lobbyist may file a single statement, in which he or she shall detail the name, business address and occupation of each person paying or contributing to the fee.

(c) Whenever a change, modification or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of the change, modification or termination, furnish full information regarding the change, modification or termination by filing with the Commission an amended registration statement.

(d) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered year and failure to do so terminates his or her authorization to lobby. Until the registration is renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt under paragraph (B), subdivision (7), section one of this article.

§6B-3-3a. Registration fees.

(a) Each lobbyist shall, at the time he or she registers, pay the Commission a base registration fee of one hundred dollars, plus one hundred dollars for each employer represented, to be filed with the initial registration statement and with each new
registration statement filed by the lobbyist in subsequent odd numbered years. Whenever a lobbyist modifies his or her registration to add additional employers an additional registration fee of one hundred dollars for each additional employer represented shall be paid to the Commission.

(b) All fees authorized and collected pursuant to this article shall be paid to the Ethics Commission and thereafter deposited into the special revenue account created pursuant to section six, article one of this chapter.

§6B-3-3b. Conflict of interest.

A lobbyist or a lobbyist’s immediate family member may not participate in any decision as a member of a state or county board, council, commission or public service district if the lobbyist may receive direct, personal economic or pecuniary benefit from a decision of that state or county board, council, commission or public service district. The lobbyist’s economic or pecuniary benefit must affect him or her directly and not merely as a member of a class.

§6B-3-3c. Lobbyist training course.

The Commission shall provide a training course for registered lobbyists and prospective lobbyists at least twice each year regarding the provisions of the ethics code relevant to lobbyists. One such course shall be conducted during the month of January. In addition to the registration fees authorized in section three-a of this article, the Commission may collect a reasonable fee from those attending lobbyist training, which is to be collected by the Ethics Commission and deposited in the special revenue account created pursuant to section six, article one of this chapter. To maintain registration and engage in lobbying activities, a lobbyist must complete one such training course per year.
§6B-3-4. Reporting by lobbyists.

(a) A registered lobbyist shall file with the Commission reports of his or her lobbying activities, signed by the lobbyist. The reports shall be filed three times a year as follows:

(1) On or before the fifteenth day of May, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of January through the thirtieth day of April.

(2) On or before the fifteenth day of September, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of May through the thirty-first day of August;

(3) On or before the fifteenth day of January, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of September through the thirty-first day of December.

(b) If the date on which a lobbyist expenditure report is due falls on a Saturday, Sunday or legal holiday, the report will be considered timely filed if it is postmarked not later than the next business day. If a registered lobbyist files a late report, the lobbyist shall pay the Commission a fee of ten dollars for each late day, not to exceed a total of two hundred fifty dollars. If a registered lobbyist fails to file a report or to pay the required fee for filing an untimely report, the Commission may, after written notice sent by registered mail, return receipt requested, suspend the lobbyist’s privileges as a registered lobbyist until the lobbyist has satisfactorily complied with all reporting requirements and paid the required fee.

(c)(1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying activities made or incurred by on behalf of the lobbyist during the period covered by the report. The report shall also show subtotals segregated according to
financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to public officials or employees or to members of the immediate family of a public official or employee; and other expenses or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for the lobbyist's own living accommodations;

(C) Any expenses incurred for the lobbyist's own travel to and from public meetings or hearings of the legislative and executive branches; or

(D) Any expenses incurred for telephone and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(d) If a lobbyist is employed by more than one employer, the report shall show the proportionate amount of the expenditures in each category incurred on behalf of each of his or her employers.

(e) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(f) If, during the period covered by the report, the lobbyist made expenditures or expenditures were made or incurred on behalf of the lobbyist in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (g) of this section, the lobbyist shall report the name of the public official or employee to whom or on whose behalf
the expenditures were made, the total amount of the expendi-
tures, and the subject matter of the lobbying activity, if any:

Provided, That a registered lobbyist who entertains more than
one public official or public employee at a time with meals and
beverages complies with the provisions of this section if he or
she reports the names of the public officials or public employ-
ees entertained and the total amount expended for meals and
beverages for all of the public officials or public employees
entertained: Provided, however, That where several lobbyists
join in entertaining one or more public officials or public
employees at a time with meals and beverages, each lobbyist
complies with the provisions of this section by reporting the
names of the public officials or public employees entertained
and his or her proportionate share of the total amount expended
for meals and beverages for all of the public officials or public
employees entertained. Under this subsection, no portion of the
amount of an expenditure for a dinner, party or other function
sponsored by a lobbyist's employer need be attributed to a
particular public official or employee who attends the function
if the sponsor has invited to the function all the members of: (1)
The Legislature; (2) either house of the Legislature; (3) a
standing or select committee of either house; or (4) a joint
committee of the two houses of the Legislature. However, the
amount spent for the function shall be added to other expendi-
tures for the purpose of determining the total amount of
expenditures reported under subdivision (1), subsection (c) of
this section: Provided further, That if the expenditure is for a
function to which the entire membership of the Legislature has
been invited, the lobbyist need only report that fact, the total
amount of the expenditure and the subject matter of the
lobbying activity.

(g) If, during the period covered by the report, the lobbyist
made expenditures in the reporting categories of meals and
beverages, lodging, travel, gifts and scheduled entertainment for
or on behalf of a particular public official or public employee
in return for the participation of the public official or employee
in a panel or speaking engagement at a meeting, the lobbyist
shall report the name of the public official or employee to
whom or on whose behalf the expenditures were made and the
total amount of the expenditures.

§6B-3-7. Duties of lobbyists.

A person required to register as a lobbyist under this article
also has the following obligations, the violation of which
constitutes cause for revocation of his or her registration and
termination of his or her lobbying privileges and may subject
the person, and the person’s employer, if employer aids, abets,
ratifies or confirms the violation, to other civil liabilities as
provided by this chapter.

(1) Any person required to register as a lobbyist shall
obtain, preserve and make available for inspection by the
Commission at any time all accounts, bills, receipts, books,
papers and documents necessary to substantiate the financial
reports required to be made under this article for a period of at
least two years from the date of the filing of the statement to
which those items relate: Provided, That if a lobbyist is
required under the terms of his or her employment contract to
turn any records over to his or her employer, responsibility for
the preservation of the records under this subsection shall rest
with the employer.

(2) In addition, a person required to register as a lobbyist
may not:

(A) Engage in any lobbying activity before registering as a
lobbyist;

(B) Knowingly deceive or attempt to deceive any govern-
ment officer or employee as to any fact pertaining to a matter
which is the subject of lobbying activity;
(C) Cause or influence the introduction of any legislation for the purpose of thereafter being employed to secure its defeat;

(D) Exercise any undue influence, extortion or unlawful retaliation upon any government officer or employee by reason of the government officer or employee's position with respect to, or his or her vote upon, any matter which is the subject of lobbying activity;

(E) Exercise undue influence upon any legislator or other privately employed government officer or employee through communications with the person's employer;

(F) Give a gift to any government officer or employee in excess of or in violation of any limitations on gifts set forth in subsection (c), section five, article two of this chapter or give any gift, whether lawful or unlawful, to a government officer or employee without the government officer or employee's knowledge and consent.

§6B-3-11. Compliance audits.

(a) The Commission shall initiate, by lottery, random audits of lobbyist registration statements and disclosure reports required to be filed under this chapter on or after the first day of July, two thousand five: Provided, That the Commission may not conduct compliance audits pursuant to this section until it has proposed for promulgation and received final approval from the Legislature of a legislative rule in accordance with the provisions of chapter twenty-nine-a of this Code setting forth, among other things, the manner in which the audit is to be conducted, the information, documents and materials to be considered during the audit, the selection and qualification of the auditor(s), the audit procedures to be employed by the auditors and the preparation and contents of any post-audit reports.
(b) The Commission may hold up to four lotteries per year. The number of lotteries held within a given year will be a matter within the Commission’s discretion.

(c) The number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings and based on various factors, including the complexity, results and time required to complete the audits.

(d) No lobbyist or lobbyist’s employer will be subject to a random audit more than once in any 24-month period.

CHAPTER 2

(S. B. 1001 — By Senators Tomblin, Mr. President, and Sprouse)
(By Request of the Executive)

[Passed January 27, 2005; in effect from passage.]
[Approved by the Governor on February 14, 2005.]

AN ACT to amend and reenact §3-8-2a of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-4-2 of said code, all relating to authorizing the excess contribution received by inaugural committees to be used for the enhancement of the Governor’s Mansion; and creating the Governor’s Mansion Fund.

Be it enacted by the Legislature of West Virginia:

That §3-8-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5A-4-2 of said code be amended and reenacted, all to read as follows:

Chapter
3. Elections.
5A. Department of Administration.
§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

(a) For purposes of this section:

(1) "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for a person elected to a statewide public office; and

(2) "Inaugural event" means any event or events held between the general election of a person elected to a statewide public office and ninety days after the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the person elected and for which the person elected is a prominent participant or for which solicitations of contributions include the name of the person elected in prominent display.

(b) Any inaugural committee soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to a statewide office that receives an individual contribution in excess of two hundred fifty dollars for any such event shall file and retain detailed records of any such contribution.

(c) No person may contribute more than five thousand dollars for any inaugural event. For purposes of this section, "contribution" does not include volunteer personal services but does include in-kind contributions of materials or supplies.

(d) Any inaugural committee, financial agent or any person or officer acting on behalf of such committee which is subject
to the provisions of this section shall file a verified financial
statement with the Secretary of State on a form prescribed by
the state election commission within ninety days of the event.
The financial statement shall contain information as may be
required by the provisions of this section relating to any
contribution in excess of two hundred fifty dollars. The
Secretary of State shall file and retain such statements as public
records for a period of not less than six years.

(e) In addition to any other information required by the
state election commission, the report of contributions required
by the provisions of this section shall include the methodology
of the fundraising, the nature of the expenditures made and the
names, addresses and amounts paid to any person.

(f) Amounts received by an inaugural committee for any
person elected to a statewide public office in excess of the
amount expended for an inaugural event may be contributed to
any educational, cultural or charitable organization, or to the
governor’s mansion fund created in section two, article four,
chapter five-a of this code. The inaugural committee shall,
within sixty days after filing the report required by subsection
(d) of this section, expend any excess moneys and report, on a
form prescribed by the Secretary of State, any amounts contrib-
uted to the governor’s mansion fund, any amounts contributed
to educational, cultural or charitable organizations and the
names of the organizations to which such excess moneys were
contributed. The Secretary of State shall file and retain such
records as public records for a period of not less than six years.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-2. Care, control and custody of capitol buildings and
grounds.
(a) The director has the full responsibility for the care, control and custody of the capitol buildings and in this connection he or she shall:

(1) Furnish janitorial services, which are to be provided by employees of the Department of Administration for the main capitol building, including east and west wings, together with all the departments in the building, or connected with the building, regardless of the budget or budgets, departmental or otherwise, from which the janitorial services are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the buildings: Provided, That nothing in this section shall be construed to prohibit contracts for janitorial services with sheltered workshops. The President of the Senate and Speaker of the House of Delegates, or their respective designees, have charge of the halls and committee rooms of their respective houses and any other quarters at the State Capitol provided for the use of the Legislature or its staff and shall keep the areas properly cleaned, warmed and in good order and shall do and perform any other duties in relation to the areas as either house may require;

(2) Landscape and take care of the lawns and gardens; and

(3) Direct the making of all minor repairs to and alterations of the capitol buildings and governor's mansion and the grounds of the buildings and mansion. Major repairs and alterations shall be made under the supervision of the director, subject to the direction of the secretary.

(b) The offices of the assistants and employees appointed to perform these duties shall be located where designated by the secretary, except that they shall not be located in any of the legislative chambers, offices, rooms or halls. Office hours shall be arranged so that emergency or telephone service is available at all times. The hours shall be arranged so that janitorial service shall not interfere with other employment during regular office hours.
(c) There is created in the state treasury a special revenue account to be named the "Capitol Dome and Capitol Improvements Fund". The fund shall consist of moneys received under section ten, article twenty-two-a, chapter twenty-nine of this code and funds from any other source. Moneys in the fund shall be expended for maintenance and repairs of the capitol dome and other capital improvements and repairs to state-owned buildings.

(d) There is hereby created in the state treasury a special revenue fund to be known as the "Governor's Mansion Fund". The fund shall operate as a special revenue fund whereby all deposits and payments thereto do not expire to the general revenue fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of moneys deposited in the fund pursuant to the provisions of section two-a, article eight, chapter three of this Code as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the director for enhancement of the governor's mansion subject to the direction of the secretary of administration and the discretion of the Governor: Provided, That any furniture, fixtures and equipment purchased with moneys from the Governor's Mansion Fund are property of the State of West Virginia.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-28; to amend said code by adding thereto a new article, designated §5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and §5B-1-7; to amend and reenact §5B-2-2, §5B-2-3 and §5B-2-8 of said code; to amend said code by adding thereto a new section, designated §5B-2-14; to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of said code; to amend and reenact §5D-1-4 and §5D-1-5 of said code; to amend said code by adding thereto a new section, designated §5D-1-24; to amend and reenact §5F-1-2 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §7-22-3, §7-22-6, §7-22-7, §7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and §7-22-15 of said code; to amend and reenact §8-38-3, §8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12, §8-38-14 and §8-38-15 of said code; to amend and reenact §12-7-4 and §12-7-5 of said code; to amend and reenact §13-2C-21 of said code; to amend and reenact §17-24-4 of said code; to amend and reenact §18-9D-1 of said code; to amend and reenact §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code; to amend and reenact §22C-1-4 of said code; to amend and reenact §29-8-2 of said code; to amend and reenact §29-22-18a of said code; to amend and reenact §31-15A-3 and §31-15A-11 of said code; and to amend and reenact §31-18-4 and §31-18-5 of said code, all relating to the reorganization of the executive branch of state government; establishing prerequisites for bond issuance and refunding; creating a new department of commerce in the executive branch of state government; creating the office of secretary as the chief executive officer of the department of commerce; providing for the transfer to and incorporation into the department of commerce of the bureau of commerce and numerous state divisions, agencies and boards and allied, advisory, affiliated and related entities and funds; describing the powers, duties and authority of the secretary, administrators, division heads and employees of the department of commerce; providing for annual reports by the secretary of the department of commerce
to the governor; providing for the delegation of powers and duties for the secretary of the department of commerce; extending authority of executive agencies to transfer funds; providing for interdepartmental communication of certain confidential information in certain cases; providing for an appeal in instances relating to the interference of government by the department of commerce; establishing the economic development authority as an independent agency within the executive branch; providing for the appointment and duties of the executive director of the development office; transferring authority from the council for community and economic development to the development office in certain cases; transferring rule-making authority from the council for community and economic development to the development office or its executive director; transferring the certified development community program to the economic development office; revising the powers and duties of the development office; transferring authority to approve tourism development projects from the council for community and economic development to the executive director of the development office; transferring authority to approve county and municipal economic opportunity development district projects from the council for community and economic development to the development office; authorizing the development office to determine economic viability of waste tire processing facilities; transferring authority to approve disposal of equipment purchased with workforce development grant funds from council for community and economic development to development office; transferring authority to administer the state fund for community and technical college and workforce development from council for community and economic development to development office; authorizing executive director of development office to approve expenditure of grant funds; authorizing executive director of development office to appoint advisory committee to review applications for workforce development grants; transferring authority to administer economic development project bridge loan fund from the council for community and economic development
to the economic development authority; expiring terms of
members of public energy authority board; reconstituting
composition of public energy authority board; providing for
governor to chair the public energy authority board; restoring
authority of public energy authority to initiate, acquire, construct,
finance or issue bonds for electric power projects and transmis-
sion facilities; restoring authority of public energy authority to
exercise powers of eminent domain; providing for sunset review
of public energy authority; modifying membership of the jobs
investment trust board; providing for the composition and
appointment of the jobs investment trust fund board; providing
for governor to chair the jobs investment trust board; authorizing
the governor to appoint an executive director of the jobs invest-
ment trust board; establishing the water development authority as
an independent agency within the executive branch; modifying
composition of the water development authority; providing for
governor to chair the water development authority; authorizing
the governor to appoint an executive director of the water
development authority; modifying composition of school building
authority; decreasing terms of certain members of school building
authority; providing for governor to chair the school building
authority; authorizing the governor to appoint an executive
director of the school building authority; authorizing governor to
remove members of school building authority for cause; provid-
ing for governor to chair the infrastructure and jobs development
council; providing applications for infrastructure projects to be
submitted to the executive director of the development office;
providing for governor to chair the housing development fund
board; authorizing the governor to appoint an executive director
of the housing development fund board; clarifying that the
Blennerhassett Island historical state park is within the division
of natural resources; clarifying division of tourism in West
Virginia development office; and making technical corrections.

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 §5-1-28; that said code be amended by adding thereto a new article, designated §5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and §5B-1-7; that §5B-2-2, §5B-2-3 and §5B-2-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5B-2-14; that §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of said code be amended and reenacted; that §5D-1-4 and §5D-1-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5D-1-24; that §5F-1-2 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §7-22-3, §7-22-6, §7-22-7, §7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and §7-22-15 of said code be amended and reenacted; that §8-38-3, §8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12, §8-38-14 and §8-38-15 of said code be amended and reenacted; that §12-7-4 and §12-7-5 of said code be amended and reenacted; that §13-2C-21 of said code be amended and reenacted; that §17-24-4 of said code be amended and reenacted; that §18-9D-1 of said code be amended and reenacted; that §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code be amended and reenacted; that §22C-1-4 of said code be amended and reenacted; that §29-8-2 of said code be amended and reenacted; that §29-22-18a of said code be amended and reenacted; that §31-15A-3 and §31-15A-11 of said code be amended and reenacted; and that §31-18-4 and §31-18-5 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.
5D. Public Energy Authority.
5F. Reorganization of the Executive Branch of State Government.
7. County Commissions and Officers.
13. Public Bonded Indebtedness.
17. Roads and Highways.
18. Education.
18B. Higher Education.
22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.
29. Miscellaneous Boards and Officers.

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

ARTICLE 1. THE GOVERNOR.

§5-1-28. Prerequisites for bond issuance and refunding.

(a) On and after the first day of February, two thousand five, bonds may not be issued or refunded by the state of West Virginia or any of its agencies, boards or commissions without the express written direction of the governor, if:

(1) The ultimate user of the proceeds of the bonds is the state of West Virginia or any of its agencies, boards, commissions or departments; or

(2) The issuance or refunding of the bonds implicates the state’s credit rating.

(b) Prior to any state agency, board or commission participating in any formal presentation to any nationally recognized rating agency, with respect to the proposed issuance or refunding of bonds where the ultimate user of the proceeds of the bonds is the state of West Virginia or any of its agencies, boards, commissions or departments, or the issuance or refunding of the bonds implicates the state’s credit rating, the chair or director of the state agency, board or commission shall provide written notice to the governor, the president of the
Senate and the speaker of the House of Delegates of the date, time and place of the formal presentation at least ten days in advance.

(c) All bond sale requirements established in this code shall apply unless contrary to the provisions of this section.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article
  1. Department of Commerce.
  2. West Virginia Development Office.
  2E. West Virginia Tourism Development Act.

ARTICLE 1. DEPARTMENT OF COMMERCE. August 3, 2005

§5B-1-1. Department of commerce; office of secretary of department of commerce.
§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of commerce.
§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.
§5B-1-4. Reports by secretary.
§5B-1-5. Delegation of powers and duties by secretary.
§5B-1-6. Confidentiality of information.
§5B-1-7. Right of appeal from interference with functioning of agency.

§5B-1-1. Department of commerce; office of secretary of department of commerce.

(a) The secretary of commerce is the chief executive officer of the department. The governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the governor is elected. Any reference in this code to the bureau of commerce means the department of commerce. Any reference in this code to the commissioner of the department of commerce means the secretary of commerce. As used in this article, “secretary” means the secretary of commerce and “department” means department of commerce.

(b) The department may receive federal funds.
(c) The secretary serves at the will and pleasure of the governor. The annual salary of the secretary is ninety thousand dollars.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of commerce.

The department of commerce consists of the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities which are incorporated in and shall be administered as part of the department of commerce:

(1) Division of labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational safety and health review commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of manufactured housing construction and safety provided in article nine, chapter twenty-one of this code;

(2) Office of miners' health, safety and training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(A) Board of coal mine health and safety and coal mine safety and technical review committee provided in article six, chapter twenty-two-a of this code;

(B) Board of miner training, education and certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine inspectors' examining board provided in article nine, chapter twenty-two-a of this code;
(3) The West Virginia development office, which includes the division of tourism and the tourism commission provided in article two, chapter five-b of this code;

(4) Division of natural resources and natural resources commission provided in article one, chapter twenty of this code;

(5) Division of forestry provided in article one-a, chapter nineteen of this code; and

(6) Geological and economic survey provided in article two, chapter twenty-nine of this code.

§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

(a) The secretary controls and supervises the department and is responsible for the work of each department employee.

(b) The secretary has the power and authority specified in this article, in article two, chapter five-f of this code and as otherwise specified in this code.

(c) The secretary may assess agencies, boards, commissions, divisions and offices in the department for the payment of expenses of the office of the secretary.

(d) The secretary may employ professional staff, including, but not limited to, certified public accountants, economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.

(e) The secretary and administrators, division heads and other employees of the department shall perform their duties as specified in this code and as may be prescribed by the governor.

§5B-1-4. Reports by secretary.
The secretary shall report annually to the governor concerning the conduct of the department and make other reports as the governor may require.

§5B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate his or her powers and duties to assistants and employees, but the secretary is responsible for all official acts of the department.

§5B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality.— Information that would be confidential under the laws of this state when provided to a division, agency, board, commission or office within the department is confidential when that information is provided to the secretary or an employee in the office of the secretary. The confidential information may be disclosed only: (1) To the applicable agency, board, commission or division of the department to which the information relates; or (2) in the manner authorized by provisions of this code applicable to that agency, board, commission or division. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

(b) Interdepartmental communication of confidential information.— Notwithstanding any provision of this code to the contrary, information that is confidential pursuant to this code in the possession of any division, agency, board, commission or office of the department may be disclosed to the secretary or an employee in the office of the secretary. The secretary or employee shall safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is
confidential. This subsection does not require disclosure of individually identifiable health care or other information that is prohibited from disclosure by federal law. This subsection is a specific exemption from the disclosure requirements of article one, chapter twenty-nine-b of this code.

(c) The provisions of this section:

(1) Apply only to information that is actually disclosed by a division, agency, board, commission or office within a department to the secretary, or an employee in the office of the secretary, of that department;

(2) Do not authorize disclosure or exempt from the provisions of article one, chapter twenty-nine-b of this code any confidential information of a division, agency, board, commission or office within a department to any person or entity other than the secretary, or an employee in the office of the secretary, of that department;

(3) Apply only to disclosure between a division, agency, board, commission or office within a department and the secretary, or an employee in the office of the secretary, of that department.

§5B-1-7. Right of appeal from interference with functioning of agency.

Any governmental entity may appeal to the governor for review upon a showing that application of the secretary’s authority may interfere with the successful functioning of that entity. The governor’s decision controls on appeal.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

§SB-2-8. Division of tourism and tourism commission created; members, appointment and expenses.

§SB-2-14. Certified development community program.

§SB-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

1. (1) No less than nine nor more than eleven members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture. One such member shall be a member of a regional planning and development council. Of these members at least three shall represent each congressional district of the state and appointments shall be made in such a manner as to provide a broad geographical distribution of members of the council;

2. (2) Four at-large members to be appointed by the governor with the advice and consent of the Senate;

3. (3) The president of the West Virginia economic development council; and

4. (4) The chair, or his or her designee, of the tourism commission created pursuant to the provisions of section eight of this article.

In addition, the president of the Senate and the speaker of the House of Delegates, or his or her designee, shall serve as ex officio nonvoting members.
(b) The governor appoints the members of the council to four-year terms. A member whose term has expired continues to serve until the successor is duly appointed and qualified. Except as otherwise provided in this section, any member is eligible for reappointment. A vacancy is filled by appointment by the governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term.

(c) Members of the council are not compensated for services performed as members, but receive reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with guidelines of the travel management office of the department of administration. A majority of the voting members constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

(d) The governor shall appoint an executive director of the West Virginia development office who is qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The executive director shall serve at the will and pleasure of the governor. The salary of the director shall annually be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director provide professional and technical expertise in the field of professional economic and tourism development in order to support the policy-making functions of the council, but that the director not be a public officer, agent, servant or contractor within the meaning of section thirty-eight, article VI of the constitution of West Virginia and not be a statutory officer within the meaning of section one, article two,
chapter five-f of this code. Subject to the provisions of the contract provided in section four of this article, the director may hire and fire economic development representatives employed pursuant to the provisions of section five of this article.

(e) The executive director of the West Virginia development office may promulgate rules to carry out the purposes and programs of the West Virginia development office to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state. The executive director may adopt any of the rules previously promulgated by the council for community and economic development.

§5B-2-3. Powers and duties of council for community and economic development.

The council for community and economic development shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.
§5B-2-8. Division of tourism and tourism commission created; members, appointment and expenses.

(a) There is hereby created within the West Virginia development office the division of tourism and an independent tourism commission, which is a body corporate and politic, constituting a public corporation and government instrumentality. The commission consists of thirteen members:

(1) Nine members to be appointed by the governor, with the advice and consent of the Senate, representing participants in the state’s tourism industry. At least seven of the members shall be from the private sector. Of the nine members so appointed, one shall represent a convention and visitors bureau and another shall be a member of a convention and visitors bureau. In making the appointments the governor may select from a list provided by the West Virginia hospitality and travel association of qualified applicants. Of the nine members so appointed, no more than three shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

(2) One member to be appointed by the governor from the membership of the council for community and economic development created pursuant to the provisions of section two of this article;

(3) One member to be appointed by the governor to represent public sector nonstate participants in the tourism industry within the state;

(4) The secretary of transportation or his or her designee, ex officio; and

(5) The director of the division of natural resources or his or her designee, ex officio.
(b) Each member appointed by the governor shall serve staggered terms of four years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the commission shall not be entitled to compensation for services performed as members. A majority of these members shall constitute a quorum for the purpose of conducting business. The governor shall appoint a chair of the commission for a term to run concurrent with the term of the office of the member appointed to be the chair. The chair is eligible for successive terms in that position.

§5B-2-14. Certified development community program.

The certified development community program is continued and is transferred to, incorporated in and administered as a program of the West Virginia development office. The program shall provide funding assistance to the participating economic development corporations or authorities through a matching grant program. The West Virginia development office shall establish criteria for awarding matching grants to the corporations or authorities within the limits of funds appropriated by the Legislature for the program. The matching grants to eligible corporations or authorities are in the amount of thirty thousand dollars for each fiscal year, if sufficient funds are appropriated by the Legislature. The West Virginia development office shall recognize existing county, regional or multicounty corporations or authorities where appropriate.

In developing its plan, the West Virginia development office shall consider resources and technical support available
through other agencies, both public and private, including, but
not limited to, the state college and university systems; the
West Virginia housing development fund; the West Virginia
economic development authority; the West Virginia parkways,
economic development and tourism authority; the West
Virginia round table; the West Virginia chamber of commerce;
regional planning and development councils; regional partner-
ship for progress councils; and state appropriations.

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.

As used in this article, unless the context clearly indicates
otherwise:

(1) "Agreement" means a tourism development agreement
entered into, pursuant to section six of this article, between the
development office and an approved company with respect to
a tourism development project.

(2) "Approved company" means any eligible company
approved by the development office pursuant to section five of
this article seeking to undertake a tourism development project.

(3) "Approved costs" means:

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contrac-
tors, subcontractors, builders, suppliers, delivery persons and
material persons in connection with the acquisition, construc-
tion, equipping, installation or expansion of a tourism development project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, installation or expansion of a tourism development project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, installation or expansion of a tourism development project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, installation or expansion of a tourism development project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(B) Excluded costs. — The term “approved costs” does not include any portion of the cost required to be paid for the
acquisition, construction, equipping and installation or expansion of a tourism development project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code.

(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business, as certified by the state tax commissioner.

(5) "Development office" means the West Virginia development office as provided in article two of this chapter.

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(7) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a tourism development project, whether owned or leased, within the state that meets the standards required by the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee.

(8) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism development project or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major
theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(9) "Final approval" means the action taken by the executive director of the development office qualifying the eligible company to receive the tax credits provided in this article.

(10) "Preliminary approval" means the action taken by the executive director of the development office conditioning final approval.

(11) "State agency" means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(12) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center or an entertainment destination center. A tourism development project or attraction does not include any of the following:

(A) Lodging facility, unless:

(i) The facility constitutes a portion of a tourism development project and represents less than fifty percent of the total approved cost of the tourism development project, or the facility is to be located on recreational property owned or leased
by the state or federal government and the facility has received
prior approval from the appropriate state or federal agency;

(ii) The facility involves the restoration or rehabilitation of
a structure that is listed individually in the national register of
historic places or is located in a national register historic district
and certified by the state historic preservation officer as
contributing to the historic significance of the district and the
rehabilitation or restoration project has been approved in
advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction,
restoration, rehabilitation or upgrade of a full-service lodging
facility or the reconstruction, restoration, rehabilitation or
upgrade of an existing structure into a full-service lodging
facility having not less than five hundred guest rooms, with
construction, reconstruction, restoration, rehabilitation or
upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of
goods, other than an entertainment destination center, a West
Virginia crafts and products center or a tourism development
project where the sale of goods is a secondary and subordinate
component of the project; and

(C) A recreational facility that does not serve as a likely
destination where individuals who are not residents of the state
would remain overnight in commercial lodging at or near the
new tourism development project or existing attraction.

(13) “Tourism development project” means the acquisition,
including the acquisition of real estate by a leasehold interest
with a minimum term of ten years, construction and equipping
of a tourism attraction; the construction and installation of
improvements to facilities necessary or desirable for the
acquisition, construction, installation or expansion of a tourism
attraction, including, but not limited to, surveys, installation of
utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

(14) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make preliminary and final approvals of all applications for tourism development projects and enter into agreements pertaining to tourism development projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any tourism development project; and

(3) Impose and collect fees and charges in connection with any transaction.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.
(a) Each eligible company that seeks to qualify a tourism development project for the tax credit provided by this article must file a written application for approval of the project with the development office.

(b) With respect to each eligible company making an application to the development office for the tourism development project tax credit, the development office shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) Based upon a review of the application and additional documentation provided by the eligible company, if the executive director of the development office determines that the applicant and the tourism development project may reasonably satisfy the criteria for final approval set forth in subsection (d) of this section, then the director of the development office may grant a preliminary approval of the applicant and the tourism development project.

(d) After preliminary approval by the executive director of the development office, the development office shall engage the services of a competent consulting firm or firms to analyze the data made available by the applicant and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism development project:

1. Likely will attract at least twenty-five percent of its visitors from outside of this state;
(2) Will have approved costs in excess of one million dollars;

(3) Will have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism development project will compete directly with or complement existing tourism attractions in the state and the amount by which increased tax revenues from the tourism development project will exceed the credit given to the approved company;

(4) Will produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred days per year; and

(5) Will provide additional employment opportunities in the state.

(e) The applicant shall pay to the development office, prior to the engagement of the services of a competent consulting firm or firms pursuant to the provisions of subsection (d) of this section, for the cost of the consulting report or reports and shall cooperate with the consulting firm or firms to provide all of the data that the consultant considers necessary or convenient to make its determination under subsection (d) of this section.

(f) The executive director of the development office, within thirty days following receipt of the consultant's report or reports, shall review, in light of the consultant's report or reports, the reasonableness of the project's budget and timetable for completion and, in addition to the criteria for final approval set forth in subsection (d) of this section, the following criteria:

(1) The quality of the proposed tourism development project and how it addresses economic problems in the area in which the tourism development project will be located;
(2) Whether there is substantial and credible evidence that the tourism development project is likely to be started and completed in a timely fashion;

(3) Whether the tourism development project will, directly or indirectly, improve the opportunities in the area where the tourism development project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(4) Whether the tourism development project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the tourism development project will be located;

(5) Whether the project helps to diversify the local economy;

(6) Whether the project is consistent with the goals of this article;

(7) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(8) The ability of the eligible company to carry out the tourism development project.

(g) The development office may establish other criteria for consideration when approving the applications.

(h) The executive director of the development office may give its final approval to the applicant’s application for a tourism development project and may grant to the applicant the status of an approved company: Provided, That the total amount of tourism development project tax credits for all approved companies may not exceed one million five hundred
93 thousand dollars each calendar year. The executive director of
94 the development office shall act to approve or not approve any
95 application within sixty days following the receipt of the
96 consultant’s report or reports or the receipt of any additional
97 information requested by the development office, whichever is
98 later. The decision by the executive director of the develop-
99 ment office is final.

§5B-2E-6. Agreement between development office and approved
1 company.

The development office, upon final approval of an applica-
2 tion by the executive director, may enter into an agreement with
3 any approved company with respect to its tourism development
4 project. The terms and provisions of each agreement shall
5 include, but not be limited to:

6 (1) The amount of approved costs of the project that qualify
7 for the sales tax credit, provided in section seven of this article.
8 Within three months of the completion date, the approved
9 company shall document the actual cost of the project through
10 a certification of the costs to the development office by an
11 independent certified public accountant acceptable to the
12 development office; and

13 (2) A date certain by which the approved company shall
14 have completed and opened the tourism development project to
15 the public. Any approved company that has received final
16 approval may request and the development office may grant an
17 extension or change, however, in no event shall the extension
18 exceed three years from the date of final approval to the
19 completion date specified in the agreement with the approved
20 company.


1 The executive director of the development office may
2 promulgate rules to implement the tourism development project
application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

§5D-1-24. Continuation of board.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

(a) The West Virginia public energy authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by a seven-member board known as the West Virginia public energy authority board, which is continued. The seven members include the governor or designee; the secretary of the department of environmental protection or designee; the director of the economic development authority or designee; and four members representing the general public. The public members are appointed by the governor, by and with the advice and
(c) On the thirty-first day of March, two thousand five, the terms of all appointed members, appointed prior to the amendment of this section during the first extraordinary session of the seventy-seventh Legislature, expire. Not later than the thirty-first day of March, two thousand five, the governor appoints the public members required in subsection (b) of this section to assume the duties of the office immediately, pending the advice and consent of the Senate.

(d) The successor of each appointed member is appointed for a four-year term. A vacancy is filled by appointment by the governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term. Each board member serves until a successor is appointed.

(e) No more than three of the public members may at any one time belong to the same political party. No more than two public members may be employed by or associated with any industry the authority is empowered to affect. One member shall be a person with significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.
(g) The governor serves as chair. The board annually elects
one of its public members as vice chair, and appoints a secre-
tary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the
affirmative vote of the majority of members present at any
meeting is necessary for any action taken by vote of the board.
A vacancy in the membership of the board does not impair the
rights of a quorum by such vote to exercise all the rights and
perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including
a board member if so appointed, shall give bond in the sum of
fifty thousand dollars in the manner provided in article two,
chapter six of this code.

(j) Each public member receives the same compensation
and expense reimbursement as 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 thereof engaged in the discharge
of official duties. All expenses incurred by the board shall be
paid in a manner consistent with guidelines of the travel
management office of the department of administration and are
payable solely from funds of the authority or from funds
appropriated to the authority for such purpose by the Legisla-
ture. Liability or obligation is not incurred by the authority
beyond the extent to which moneys are available from funds of
the authority or from such appropriations.

(k) The governor may appoint an executive director, with
the advice and consent of the Senate, who serves at the gover-
nor's will and pleasure. The director is responsible for manag-
ing and administering the daily functions of the authority and
for performing all other functions necessary to the effective
operation of the authority.
§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

The West Virginia public energy authority has and may exercise all powers necessary or appropriate to execute its corporate purpose. The authority may:

(1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same at pleasure.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral development industry. The authority is encouraged to maximize the use of the West Virginia mineral development industry, but is not prohibited from utilizing nonstate mineral resources.

(6) Represent the state with respect to national initiatives concerning the mineral development industry and international marketing activities affecting the mineral development industry.

(7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.
(8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, that it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.

(9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the public energy authority board may deem advisable.

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the
applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia - Ohio valley market retention and recovery agreement or a comparable agreement.

(13) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or
rights therein, rights-of-way, property, rights, easements and
interests acquired hereunder in such manner and upon such
terms and conditions as the authority deems proper: Provided,
That if the authority determines that land or an interest therein
acquired by the authority through the exercise of the power of
eminent domain for the purpose of this article is no longer
necessary or useful for such purposes, and if the authority
desires to sell such land or interest therein, the authority shall
first offer to sell such land or interest to the owner or owners
from whom it was acquired, at a price equal to its fair market
value: Provided, however, That if the prior owner or owners
shall decline to reacquire the land or interest therein, the
authority shall be authorized to dispose of such property by
direct sale, auction, or competitive bidding. In no case shall
such land or an interest therein acquired under this subdivision
be sold for less than its fair market value. This article does not
authorize the authority to take or disturb property or facilities
belonging to any public utility or to a common carrier, which
property or facilities are required for the proper and convenient
operation of such public utility or common carrier, except for
the acquisition of easements or rights-of-way which will not
unreasonably interfere with the operation of the property or
facilities of such public utility or common carrier, and in the
event of the taking or disturbance of property or facilities of
public utility or common carrier, provision shall be made for
the restoration, relocation or duplication of such property or
facilities elsewhere at the sole cost of the authority.

The term “real property” as used in this article is defined to
include lands, structures, franchises and interests in land,
including lands under water and riparian rights, and any and all
other things and rights usually included within the said term,
and includes also any and all interests in such property less than
full title, such as easements, rights-of-way, uses, leases, licenses
and all other incorporeal hereditaments and every estate,
interest or right, legal or equitable, including terms for years
and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section, “fair market value” shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any
project or for research and development with respect to electric
power projects, natural gas transmission projects or other
energy projects, and receive and accept aid or contribution from
any source of money, property, labor or other things of value to
be held, used and applied only for the purpose for which such
grants and contributions are made.

(18) Purchase property coverage and liability insurance for
any electric power project or natural gas transmission project or
other energy project and for the principal office and suboffices
of the authority, insurance protecting the authority and its
officers and employees against liability, if any, for damage to
property or injury to or death of persons arising from its
operations and any other insurance which may be provided for
under a resolution authorizing the issuance of bonds or in any
trust agreement securing the same.

(19) Charge, alter and collect transportation fees and other
charges for the use or services of any natural gas transmission
project as provided in this article.

(20) Charge and collect fees or other charges from any
energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated
by the authority, charge reasonable fees in connection with the
making and providing of electric power and the sale thereof to
corporations, states, municipalities or other entities in the
furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced
by an electric power project in and out of the state of West
Virginia.

(23) Enter into wheeling contracts for the transmission of
electric power over the authority’s or another party’s lines.
(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of congress establishing a uniform system of bankruptcy throughout the
United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(32) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority
255 and be made available prior to any final decision or final
256 approval of any project and prior to the conducting of any
257 public hearings regarding the project, and in any such case, no
258 assessment pursuant to the legislative rule need be made.

§5D-1-24. Continuation of board.

1 The West Virginia public energy authority board shall
2 continue to exist, pursuant to the provisions of article ten,
3 chapter four of this code, until the first day of July, two
4 thousand ten, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

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

Article
2. Transfer of Agencies and Boards.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary
created.

1 (a) There are created, within the executive branch of the
2 state government, the following departments:

3 (1) Department of administration;

4 (2) Department of education and the arts;

5 (3) Department of environmental protection;

6 (4) Department of health and human resources;

7 (5) Department of military affairs and public safety;

8 (6) Department of revenue;
9 (7) Department of transportation; and

10 (8) Department of commerce.

(b) Each department will be headed by a secretary appointed by the governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

§5F-2-2. Power and authority of secretary of each department.

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

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of administration:

6 (1) Building commission provided in article six, chapter five of this code;

8 (2) Public employees insurance agency and public employees insurance agency advisory board provided in article sixteen, chapter five of this code;

11 (3) Governor’s mansion advisory committee provided for in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided in article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided in article ten-d, chapter five of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of commerce:

(1) Division of labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational safety and health review commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of manufactured housing construction and safety provided in article nine, chapter twenty-one of this code;

(2) Office of miners' health, safety and training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:
(A) Board of coal mine health and safety and coal mine safety and technical review committee provided in article six, chapter twenty-two-a of this code;

(B) Board of miner training, education and certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine inspectors' examining board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia development office, which includes the division of tourism and the tourism commission provided in article two, chapter five-b of this code;

(4) Division of natural resources and natural resources commission provided in article one, chapter twenty of this code;

(5) Division of forestry provided in article one-a, chapter nineteen of this code; and

(6) Geological and economic survey provided in article two, chapter twenty-nine of this code.

(c) The economic development authority provided for in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The water development authority and board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) Bureau of employment programs provided in article one, chapter twenty-one-a of this code is continued as an independent agency within the executive branch.
(f) Workers' compensation commission provided in article one, chapter twenty-three of this code is continued as an independent agency within the executive branch.

(g) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided in article two, chapter twenty-two-b of this code;

(2) Solid waste management board provided in article three, chapter twenty-two-c of this code;

(3) Environmental quality board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors' examining board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided in article nine, chapter twenty-two-c of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of education and the arts:
99 (1) Library commission provided in article one, chapter ten of this code;
100
101 (2) Educational broadcasting authority provided in article five, chapter ten of this code;
102
103 (3) Division of culture and history provided in article one, chapter twenty-nine of this code;
104
105 (4) Division of rehabilitation services provided in section two, article ten-a, chapter eighteen of this code.
106
107 (i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of health and human resources:
108
109 (1) Human rights commission provided for in article eleven, chapter five of this code;
110
111 (2) Division of human services provided for in article two, chapter nine of this code;
112
113 (3) Bureau for public health provided for in article one, chapter sixteen of this code;
114
115 (4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;
116
117 (5) Health care authority provided for in article twenty-nine-b, chapter sixteen of this code;
118
119 (6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;
(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;
(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

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

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

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

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

(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code;
179  (8) Division of banking provided for in article two, chapter
180  thirty-one-a of this code;
181  
182  (9) The state budget office, formerly known as the budget
183  section of the finance division, department of administration,
184  previously provided for in article two, chapter five-a of this
185  code and now provided for in article two of this chapter;
186  
187  (10) The municipal bond commission provided for in article
188  three, chapter thirteen of this code;
189  
190  (11) The office of tax appeals provided for in article ten-a,
191  chapter eleven of this code; and
192  
193  (12) The state athletic commission provided for in article
194  five-a, chapter twenty-nine of this code.
195  
196  (I) The following agencies and boards, including all of the
197  allied, advisory, affiliated or related entities and funds associ- 
198  ated with any agency or board, are transferred to and incorpo- 
199  rated in and administered as a part of the department of 
200  transportation:
201  
202  (1) Division of highways provided for in article two-a, 
203  chapter seventeen of this code;
204  
205  (2) Parkways, economic development and tourism authority
206  provided for in article sixteen-a, chapter seventeen of this code;
207  
208  (3) Division of motor vehicles provided for in article two, 
209  chapter seventeen-a of this code;
210  
211  (4) Driver’s licensing advisory board provided for in article 
212  two, chapter seventeen-b of this code;
213  
214  (5) Aeronautics commission provided for in article two-a, 
215  chapter twenty-nine of this code;
(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.
(p) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

1. Employ and discharge within the office of the secretary such employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

2. Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

3. Eliminate or consolidate positions, other than positions of administrators or positions of board members, and name a person to fill more than one position;

4. Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;

5. Reorganize internal functions or operations;
(6) Formulate comprehensive budgets for consideration by the governor, and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. The authority to transfer funds under this section shall expire on the thirtieth day of June, two thousand six;

(7) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligating of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(8) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever
kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;

(9) Conduct internal audits;

(10) Supervise internal management;

(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code;

(12) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department, without which written consent no proposal of a rule shall have any force or effect;

(13) Delegate to administrators such duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary; and

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

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments
to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction and restrictions in the use of the state’s vehicle or other transportation fleet;

(2) The elimination, reduction and restrictions in the preparation of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any such program and the powers granted to the secretary shall be so construed.
(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code or the right of classified employees of the board of regents to the procedures and protections set forth in article twenty-six-b, chapter eighteen of this code.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.
§7-22-6. Notice; hearing.
§7-22-7. Application to development office for approval of an economic opportunity development district project.
§7-22-8. Establishment of the economic opportunity development district fund.
§7-22-10. Ordinance to create district as approved by development office and authorized by the Legislature.
§7-22-11. District board; duties.
§7-22-12. Special district excise tax authorized.
§7-22-14. Modification of included area; notice; hearing.
§7-22-15. Abolishment and dissolution of district; notice; hearing.

§7-22-3. Definitions.

1 For purposes of this article, the term:
(1) "County commission" means the governing body of a county of this state;

(2) "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(3) "District" means an economic opportunity development district created pursuant to this article;

(4) "District board" means a district board created pursuant to section ten of this article; and

(5) "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article.

§7-22-6. Notice; hearing.

(a) General. — A county commission desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and
(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.

(d) Application to West Virginia development office. — If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the West Virginia development office for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

§7-22-7. Application to development office for approval of an economic opportunity development district project.

(a) General. — The development office shall receive and act on applications filed with it by county commissions pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed develop-
ment expenditures to be made in the district as part of the
project;

(5) A description of the proposed method of financing the
development expenditures, together with a description of the
reserves to be established for financing ongoing development
or redevelopment expenditures necessary to permanently
maintain the optimum economic viability of the district
following its inception: *Provided,* That the amounts of the
reserves shall not exceed the amounts that would be required by
ordinary commercial capital market considerations;

(6) A description of the sources and anticipated amounts of
all financing, including, but not limited to, proceeds from the
issuance of any bonds or other instruments, revenues from the
special district excise tax and enhanced revenues from property
taxes and fees;

(7) A description of the financial contribution of the county
commission to the funding of development expenditures;

(8) Identification of any businesses that the county commis-
sion expects to relocate their business locations from the district
to another place in the state in connection with the establish-
ment of the district or from another place in this state to the
district: *Provided,* That for purposes of this article, any entities
shall be designated "relocated entities";

(9) Identification of any businesses currently conducting
business in the proposed economic opportunity development
district that the county commission expects to continue doing
business there after the district is created;

(10) A good faith estimate of the aggregate amount of
consumers sales and service tax that was actually remitted to
the tax commissioner by all business locations identified as
provided in subdivisions (8) and (9) of this subsection with
respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The tax commissioner’s certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the development office; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and

(14) Any additional information the development office may require.

(b) Review of applications.—The development office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project’s budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;
(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;
(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) The ability of the county commission and the project developer or project team to carry out the project: Provided, that no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the county submits clear and convincing information, to the satisfaction of the development office, that such investment will be made if the development office approves the project and the Legislature authorizes the county commission to levy an excise tax on sales of goods and services made within the economic opportunity district as provided in this article.

(c) Additional criteria. — The development office may establish other criteria for consideration when approving the applications.

(d) Action on the application. — The executive director of the development office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the development office, whichever is the later.

(e) Certification of project. — If the executive director of the development office approves a county's economic opportunity district project application, he or she shall issue to the county commission a written certificate evidencing the approval.
The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the executive director of the development office approves a county's economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not
limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(g) Promulgation of rules. — The executive director of the development office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§7-22-8. Establishment of the economic opportunity development district fund.

(a) General. — There is hereby created a special revenue account in the state treasury designated the “economic opportunity development district fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount. — A separate and segregated subaccount within the account shall be established for each economic opportunity development district that is approved by the executive director of the development office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for
the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

§7-22-10. Ordinance to create district as approved by development office and authorized by the Legislature.

(a) General. — If an economic opportunity development district project has been approved by the executive director of the development office and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the county commission may create the district by order entered of record as provided in article one of this chapter: Provided, That the county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of
operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members’ terms, their method of appointment and a general description of the district board’s powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage and maintain buildings and structures and provide adequate
insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district’s rights in its subaccount of the economic opportunity development district fund;
(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of order. — The county commission’s order shall also state the general intention of the county commission to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of order. — Upon entry of an order establishing an economic opportunity development district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§7-22-11. District board; duties.

(a) General. — The county commission of a county that has been authorized by the Legislature to establish an economic opportunity development district, in accordance with this article, shall provide, by order entered of record, for the appointment of a district board to oversee the operations of the district: Provided, That the county commission may, by order, in lieu of appointing a separate district board, designate itself to act as the district board.
(b) Composition of board. — If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the county within which the district is located.

(c) Annual report. — The district board, in addition to the duties prescribed by the order creating the district, shall submit an annual report to the county commission and the development office containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. — Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the county commission may contract to provide specified services within the district.

(e) Compensation of board members. — Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the county commission: Provided, That when a district board is not created for the district but the work of the board is done by the county commission, the county commissioners shall receive no additional compensation.
§7-22-12. Special district excise tax authorized.

(a) General. — The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. — The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That except for the exemption provided in section nine-f of said article, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax and sales of gasoline and special fuel shall not be subject to special district excise tax but shall remain subject to the tax levied by said article.

(c) Tax rate. — The rate of a special district excise tax levied pursuant to this section shall be stated in an order entered of record by the county commission and equal to the general rate of tax on each dollar of gross proceeds from sales of tangible personal property and services subject to the tax levied by section three, article fifteen, chapter eleven of this code. The tax on fractional parts of a dollar shall be levied and collected in conformity with the provision of said section.

(d) Collection by tax commissioner. — The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the tax commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.
(e) Deposit of net tax collected. —

(1) The order of the county commission imposing a special district excise tax shall provide that the tax commissioner deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The state treasurer shall withhold from the county commission’s subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(f) Effective date of special district excise tax. — Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.

(g) Copies of order. — Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§7-22-14. Modification of included area; notice; hearing.
(a) General. — The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the executive director of the development office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature.

(b) Limitations. — Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.

(c) Public hearing required. —

(1) The county commission of any county desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

(d) Application to West Virginia development office. — Following the hearing, the county commission may, by resolution, apply to the development office to approve inclusion of the additional property in the district.

(e) Consideration by the executive director of the development office. — Before the executive director of the development office approves inclusion of the additional property in the district, the development office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that
were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) Legislative action required. — After the executive director of the development office approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission’s order or a later date as set forth in the order.

§7-22-15. Abolishment and dissolution of district; notice; hearing.

(a) General. — Except upon the express written consent of the executive director of the development office and of all the
holders or obligees of any indebtedness or other instruments the
proceeds of which were applied to any development or redevelop-
ment expenditures or any indebtedness the payment of which
is secured by revenues payable into the fund provided under
section eight of this article or by any public property, a district
may only be abolished by the county commission when there is
no outstanding indebtedness, the proceeds of which were
applied to any development or redevelopment expenditures or
the payment of which is secured by revenues payable into the
fund provided under section eight of this article, or by any
public property, and following a public hearing upon the
proposed abolishment.

(b) Notice of public hearing. — Notice of the public
hearing required by subsection (a) of this section shall be
provided by first-class mail to all owners of real property within
the district and shall be published as a Class I-0 legal advertise-
ment in compliance with article three, chapter fifty-nine of this
code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the
abolishment of any economic opportunity development district,
any funds or other assets, contractual rights or obligations,
claims against holders of indebtedness or other financial
benefits, liabilities or obligations existing after full payment has
been made on all existing contracts, bonds, notes or other
obligations of the district are transferred to and assumed by the
county commission. Any funds or other assets transferred shall
be used for the benefit of the area included in the district being
abolished.

(d) Reinstatement of district. — Following abolishment of
a district pursuant to this section, its reinstatement requires
compliance with all requirements and procedures set forth in
this article for the initial development, approval, establishment
and creation of an economic opportunity development district.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


For purposes of this article, the term:

1. "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

2. "District" means an economic opportunity development district created pursuant to this article;

3. "District board" means a district board created pursuant to section ten of this article;

4. "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article; and

5. "Municipality" is a word of art and shall mean, for the purposes of this article, only Class I and Class II cities as classified in section three, article one of this chapter.
§8-38-6. Notice; hearing.

(a) General. — A municipality desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty-nine days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

c) Opportunity to be heard. — At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.

d) Application to West Virginia development office. — If the municipality, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the West Virginia development office for approval of the economic
opportunity development district project pursuant to the procedures provided in section seven of this article.

§8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.

(a) General. — The development office shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;
(7) A description of the financial contribution of the municipality to the funding of development expenditures;

(8) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The tax commissioner’s certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the develop-
ment office; (ii) the estimated amount of economic opportunity
district excise tax that will be collected during the first twelve
months after the month in which the tax commissioner would
first begin to collect that tax; and (iii) the estimated amount of
economic opportunity district excise tax that will be collected
during the first thirty-six months after the month in which the
tax commissioner would first begin to collect that tax; and

(14) Any additional information the development office
may require.

(b) Review of applications. — The development office shall
review all project proposals for conformance to statutory and
regulatory requirements, the reasonableness of the project’s
budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses
economic problems in the area in which the project will be
located;

(2) The merits of the project determined by a cost-benefit
analysis that incorporates all costs and benefits, both public and
private;

(3) Whether the project is supported by significant private
sector investment and substantial credible evidence that, but for
the existence of sales tax increment financing, the project would
not be feasible;

(4) Whether the economic opportunity development district
excise tax dollars will leverage or be the catalyst for the
effective use of private, other local government, state or federal
funding that is available;

(5) Whether there is substantial and credible evidence that
the project is likely to be started and completed in a timely
fashion;
(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the municipality has a strategy for economic development in the municipality and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) The ability of the municipality and the project developer or project team to carry out the project: Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the municipality submits clear and convincing information, to the satisfaction of the development office, that such investment will be made if the development
office approves the project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and services made within the economic opportunity development district as provided in this article.

(c) Additional criteria. — The development office may establish other criteria for consideration when approving the applications.

(d) Action on the application. — The executive director of the development office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the development office, whichever is the later.

(e) Certification of project. — If the executive director of the development office approves a municipality’s economic opportunity district project application, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount
provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the executive director of the development office approves a municipality's economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(g) Promulgation of rules. — The executive director of the development office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not
subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§8-38-8. Establishment of the economic opportunity development district fund.

1 (a) General. — There is hereby created a special revenue account in the state treasury designated the "economic opportunity development district fund" which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount.— A separate and segregated subaccount within the account shall be established for each economic opportunity development district that is approved by the executive director of the development office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

    (1) All interest or return on the investment accruing to the subaccount;

    (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

    (3) Any appropriations by the Legislature which are made for this purpose.

§8-38-10. Ordinance to create district as approved by development office and authorized by the Legislature.

1 (a) General. — If an economic opportunity development district project has been approved by the executive director of
the development office and the levying of a special district
excise tax for the district has been authorized by the Legisla-
ture, all in accordance with this article, the municipality may
create the district by ordinance entered of record as provided in
article one of this chapter: Provided, That the municipality may
not amend, alter or change in any manner the boundaries of the
economic opportunity development district authorized by the
Legislature. In addition to all other requirements, the ordinance
shall contain the following:

(1) The name of the district and a description of its bound-
aries;

(2) A summary of any proposed services to be provided and
capital improvements to be made within the district and a
reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that
may be imposed upon sales by businesses for the privilege of
operating within the district, which tax shall be passed on to and
paid by the consumer, and the manner in which the taxes will
be imposed, administered and collected, all of which shall be in
conformity with the requirements of this article; and

(4) The district board members’ terms, their method of
appointment and a general description of the district board’s
powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for
its organization and operations not inconsistent with any
applicable laws;

(B) To elect its own officers, to appoint committees and to
employ and fix compensation for personnel necessary for its
operations;
(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage, and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;
(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district’s rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of ordinance. — The municipality’s ordinance shall also state the general intention of the municipal-
ity to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of ordinance. — Upon enactment of an ordinance establishing an economic opportunity development district excise tax, a certified copy of the ordinance shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§8-38-11. District board; duties.

(a) General. — The council of a municipality that has been authorized by the development office to establish an economic opportunity development district, in accordance with this article, shall provide, by ordinance, for the appointment of a district board to oversee the operations of the district: Provided, That the municipality may, in the ordinance, in lieu of appointing a separate district board, designate itself to act as the district board.

(b) Composition of board. — If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the municipality within which the district is located.

(c) Annual report. — The district board, in addition to the duties prescribed by the ordinance creating the district, shall submit an annual report to the municipality and the development office containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;
(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. — Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the municipality may contract to provide specified services within the district.

(e) Compensation of board members. — Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the municipality: Provided, That when a district board is not created for the district but the work of the board is done by the municipality, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.

(a) General. — The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. — The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That except for the exemption provided in section nine-f of said article, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax and sales of gasoline and special fuel shall not be subject to
special district excise tax but shall remain subject to the tax
levied by said article.

(c) **Tax rate.** — The rate of a special district excise tax
levied pursuant to this section shall be stated in an ordinance
enacted by the municipality and equal to the general rate of tax
on each dollar of gross proceeds from sales of tangible personal
property and services subject to the tax levied by section three,
article fifteen, chapter eleven of this code. The tax on fractional
parts of a dollar shall be levied and collected in conformity with
the provision of said section.

(d) **Collection by tax commissioner.** — The ordinance of the
municipality imposing a special district excise tax shall provide
for the tax to be collected by the tax commissioner in the same
manner as the tax levied by section three, article fifteen, chapter
eleven of this code is administered, assessed, collected and
enforced.

(e) **Deposit of net tax collected.** —

(1) The ordinance of the municipality imposing a special
district excise tax shall provide that the tax commissioner
deposit the net amount of tax collected in the special economic
opportunity development district fund to the credit of the
municipality’s subaccount therein for the economic opportunity
development district and that the money in the subaccount may
only be used to pay for development expenditures as provided
in this article except as provided in subsection (f) of this
section.

(2) The state treasurer shall withhold from the municipal-
ity’s subaccount in the economic opportunity development
district fund and shall deposit in the general revenue fund of
this state, on or before the twentieth day of each calendar month
next following the effective date of a special district excise tax,
a sum equal to one twelfth of the base tax revenue amount last
certified by the development office pursuant to section seven of
this article.

(f) Effective date of special district excise tax. — Any taxes
imposed pursuant to the authority of this section shall be
effective on the first day of the calendar month that begins at
least sixty days after the date of enactment of the ordinance
imposing the tax or at any later date expressly designated in the
ordinance that begins on the first day of a calendar month.

(g) Copies of ordinance. — Upon enactment of an ordi-
nance levying a special district excise tax, a certified copy of
the ordinance shall be mailed to the state auditor, as ex officio
the chief inspector and supervisor of public offices, the state
treasurer and the tax commissioner.

§8-38-14. Modification of included area; notice; hearing.

(a) General. — The ordinance creating an economic
opportunity development district may not be amended to
include additional contiguous property until after the amend-
ment is approved by the executive director of the development
office in the same manner as an application to approve the
establishment of the district is acted upon under section seven
of this article.

(b) Limitations. — Additional property may not be included
in the district unless it is situated within the boundaries of the
municipality and is contiguous to the then current boundaries of
the district.

(c) Public hearing required. —

(1) The council of any municipality desiring to amend its
ordinance shall designate a time and place for a public hearing
upon the proposal to include additional property. The notice
shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.

(d) *Application to West Virginia development office.* — Following the hearing, the municipality may, by resolution, apply to the development office to approve inclusion of the additional property in the district.

(e) *Consideration by the executive director of the development office.* — Before the executive director of the development office approves inclusion of the additional property in the district, the development office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the municipality proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) *Legislative action required.* — After the executive director of the development office approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the municipality may then amend its ordinance: *Provided,* That the ordinance may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the amended ordinance imposing the levy of the special
district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or the first day of a later calendar month as set forth in the ordinance of the municipality.

(g) *Collection of special district excise tax.* — All businesses included in a district because of the boundary amendment shall on the effective date of the ordinance, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the municipality’s ordinance or a later date as set forth in the ordinance.

§8-38-15. Abolishment and dissolution of district; notice; hearing.

(a) *General.* — Except upon the express written consent of the executive director of the development office and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness, the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolition.

(b) *Notice of public hearing.* — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertise-
ment in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) **Transfer of district assets and funds.** — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) **Reinstatement of district.** — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**ARTICLE 7. JOBS INVESTMENT TRUST FUND.**

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

(a) The jobs investment trust board is continued. The board is a public body corporate and established to improve and otherwise promote economic development in this state.

(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the
governor or designee; president of West Virginia university or
designee; the president of Marshall university or designee; the
chancellor of the higher education policy commission or
designee; and the executive director of the West Virginia
housing development fund. One member is appointed by the
governor from a list of two names submitted by the board of
directors of the housing development fund. One member is
appointed by the governor from a list of two names submitted
by the commissioner of the division of tourism. The other six
members are appointed from the general public by the gover-
nor. Of the general public members appointed by the governor,
one is an attorney with experience in finance and investment
matters; one is a certified public accountant; one is a representa-
tive of labor; one is experienced or involved in innovative
business development; and two are present or past executive
officers of companies listed on a major stock exchange or large
privately held companies. All appointments made pursuant to
the provisions of this article are by and with the advice and
consent of the Senate.

(c) A vacancy on the board is filled by appointment by the
governor in the same manner as the original appointment. A
member appointed to fill a vacancy serves for the remainder of
the unexpired term.

(d) The governor may remove any appointed member in
case of incompetency, neglect of duty, moral turpitude or
malfeasance in office and fill the vacancy as provided in other
cases of vacancy.

(e) The governor or designee serves as the chair. The board
annually elects one of its public members as vice chair and
appoints a secretary to keep records of its proceedings who
need not be a member of the board.

(f) Seven members of the board is a quorum. Action may
not be taken by the board except upon the affirmative vote of at
least a majority of those members present or participating by 
any other means as described in subsection (g) of this section, 
but in any event not fewer than six of the members serving on 
the board.

(g) Members of the board may participate in a meeting of 
the board by means of conference telephone or similar commu-
nication equipment by means of which all persons participating 
in the meeting can hear each other. Participation in a board 
meeting pursuant to this subsection constitutes presence in 
person at the meeting.

(h) The members of the board are not compensated for their 
services as members of the board, but receive reasonable and 
necessary expenses actually incurred in discharging their duties 
under this article in a manner consistent with guidelines of the 
travel management office of the department of administration.

(i) The board meets on a quarterly basis or more often if 
necessary.

(j) The governor shall appoint a member for a four-year 
term. Any member whose term has expired serves until a 
successor is duly appointed and qualified. Any member is 
eligible for reappointment.

(k) Additionally, one member of the West Virginia House 
of Delegates, appointed by the speaker of the House of Dele-
gates, and one member of the West Virginia Senate, appointed 
by the president of the Senate, serve as advisory members of the 
jobs investment trust board and, as advisory members, are ex 
officio, nonvoting members.

§12-7-5. Management and control of jobs investment trust vested 
in board; officers; liability; authority of executive 
director to act on behalf of board; relationship to 
higher education institutions.
(a) It is the duty of the board to manage and control the jobs investment trust. With the advice and consent of the Senate, the governor appoints an executive director of the jobs investment trust who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The director serves at the governor’s will and pleasure and is responsible for managing and administering the daily functions of the jobs investment trust and for performing other functions necessary to the effective operation of the trust. The compensation of the director is annually fixed by the board.

(b) The board annually elects a secretary to keep a record of the proceedings of the board, who need not be a member of the board.

(c) The members and officers of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

(e) Upon the affirmative vote of at least a majority of those members in attendance or participating by such other means as described in subsection (g), section four of this article in a meeting of the board, but in any event not fewer than six of the members serving on the board, the board may approve any action to be taken and authorize the executive director for and on behalf of the board to execute and deliver all instruments, agreements or other documents that are required or are reasonably necessary to effectuate the decisions or acts of the board.

(f) The West Virginia housing development fund shall provide office space and staff support services for the director and the board shall act as fiscal agent for the board and, as such,
shall provide accounting services for the board, invest all funds as directed by the board, service all investment activities of the board and shall make the disbursements of all funds as directed by the board, for which the West Virginia housing development fund shall be reasonably compensated as determined by the board.

(g) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board’s activities in order to enhance the opportunities at the institutions for learning and for participation in the board’s investment activities and in the economic development of the state, whether in research, financial analysis, management participation or in such other ways as the board and the executive director may, in their discretion, find appropriate.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

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 in
this section 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 development office promulgates
pursuant to section two, 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 subsec-
tion (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 development office promulgates pursuant to section two, 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 development office promulgates pursuant to section two, 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 development office. 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:

(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the bonds;

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

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

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

(6) The type of issue; and

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

(f) The development office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the 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 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

(a) The division of highways shall administer all funds made available to the division for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles. The commissioner of the division of highways may: (i) Propose for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to implement the provisions of this article; and (ii) administer all funds appropriated by the Legislature to carry out the requirements of this article and any other funds from whatever source, including, but not limited to, federal, state or private grants.

(b) The commissioner also has the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the governor.
(c) The provisions of articles two-a and four of this chapter and the policy, rules, practices and procedures under those articles shall be followed by the commissioner in carrying out the purposes of this article.

(d) On or before the first day of June, two thousand one, the commissioner shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The commissioner may contract with the department of health and human resources or the division of corrections, or both, to remediate or assist in remediation of waste tire piles throughout the state. Use of available department of health and human resources and the division of corrections work programs shall be given priority status in the contract process so long as such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped and the division of environmental protection notified upon the discovery of any potentially hazardous material at a remediation site. The division of environmental protection shall respond to the notification in accordance with the provisions of article eighteen, chapter twenty-two of this code.

(g) The commissioner may establish a tire disposal program within the division to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at such division of highways county headquarters as have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The commissioner may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the division. The commissioner may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The
commissioner may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The commissioner may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin fund created by section six of this article, to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the water development authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the solid waste management board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and regulations and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: Provided, however, That the waste tire processing facility shall have a capital cost of not less than three hundred million dollars and the West Virginia development office shall determine that the waste tire processing facility is a viable economic development project of benefit to the state’s economy.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

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

(a) The school building authority consists of eleven members, including the governor or designee; the state superintendent of schools, ex officio; three members of the state board
of education, elected by the state board; and six citizens of the
state, appointed by the governor, by and with the advice and
consent of the Senate, who are knowledgeable in matters
relevant to the issues addressed by the authority, one of whom
is representative of the interests of the construction trades.

(b) Citizen members are appointed for three-year terms,
which are staggered in accordance with the initial appointments
under prior enactment of this section. State board of education
members are elected for three-year terms and may not be
elected to serve additional consecutive terms or portions
thereof.

(c) The governor or designee serves as chair. The authority
shall annually elect one of its public members as vice chair and
shall appoint a secretary, who need not be a member of the
authority and who shall keep records of its proceedings.

(d) The governor appoints an executive director of the
authority, with the advice and consent of the Senate, who serves
at the governor’s will and pleasure. The director is responsible
for managing and administering the daily functions of the
authority and for performing all other functions necessary to the
effective operation of the authority.

(e) The governor may remove any appointed member for
incompetency, neglect of duty, moral turpitude or malfeasance
in office. If the governor removes a member, the governor shall
fill the vacancy for the remainder of the unexpired term in the
same manner as the original appointment.

(f) The school building authority shall meet at least
quarterly and the citizen members shall be reimbursed for
reasonable and necessary expenses actually incurred in the
performance of their official duties in a manner consistent with
guidelines of the travel management office of the department of
administration from funds appropriated or otherwise made
available for such purpose upon submission of an itemized statement.

(g) The acts performed by the members of the state board of education in their capacity as members of the school building authority are solely the acts of the authority.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

§18B-3D-2. Workforce development initiative program created; program administration.


§18B-3D-4. Grant application procedures.

§18B-3D-5. Legislative rules.

§18B-3D-1. Legislative findings and intent.

(a) The Legislature finds that a recent statewide study of the workforce training needs of employers throughout the state provided a clear message from the business community:

(1) The needs of employers are rapidly changing and training providers must be more responsive or the state economy will suffer;

(2) Information specific to West Virginia, once again emphasizes the critical link between education and economic development that empowering youth and adults with the knowledge and skills they need to succeed in the competitive work world also results in a workforce which enables businesses and communities to prosper;

(3) Although employers are generally satisfied with the quality of the West Virginia workforce and the study provides additional support that the measures adopted in the Jobs Through Education Act will bring continued improvement,
workforce needs are not static, critical skill shortages currently exist, and the establishment of a workforce development system that responds more quickly to the evolving skill requirements of employers is needed.

(b) The Legislature further finds that a study of community and technical education in West Virginia performed by the national center for higher education management systems called attention to problems in providing needed workforce education and found that there is a need to:

1. Jump-start development of community and technical college and post-secondary workforce development initiatives;

2. Provide incentives for existing public post-secondary providers to respond jointly to both short and long-term needs of employers and other clients;

3. Provide funding for explicit incentives for partnerships between employers and public post-secondary institutions to develop comprehensive community and technical college and workforce development services; and

4. Allocate funds competitively on the basis of proposals submitted by providers.

(c) It is further the intent of the Legislature that the granting of funds under this article will promote the development of comprehensive community and technical colleges as set forth in article three-c of this chapter.

(d) It is the intent of the Legislature through the grant of funds under this article to provide limited seed money to address some of the specific areas where improvement is needed, including:

1. Improving employer awareness and access to services available through the state’s education institutions;
(2) Providing designated professionals and resources to support workforce education through the state's education institutions;

(3) Assisting with the modernization and procurement of equipment needed for workforce training programs: Provided, That any equipment purchased or upgraded with grant funds awarded under the provisions of this article may not be sold, disposed of or used for purposes other than those specified in the grant without prior approval of the development office;

(4) Increasing the capacity of the state's education institutions to respond rapidly to employer needs for workforce education and training on an on-going basis through the development of a client-focused, visible point of contact for program development and delivery, service referral and needs assessment, such as a workforce development center; and

(5) Maximizing the use of available resources for workforce education and training through partnerships with public vocational, technical and adult education centers and private training providers.

(e) It is further the intent of the Legislature that consideration and partnering opportunities be given to small businesses on an equal basis with larger businesses for the purposes of this article and that the seed money will assist providers in becoming self-sustaining through partnerships with business and industry which will include cost-sharing initiatives and fees charged for the use of services.

(f) The Legislature intends that grants of funds made under the provisions of this article will be competitive among applicants who meet all of the criteria established in this article and such other criteria as may be specified by the development office. Subject to the availability of funds, more than one competition may be held during the same fiscal year and the
dollar range of awards granted in successive competitions shall be prorated based on the number of months remaining in the fiscal year. Subject to annual review and justification, it is the intent of the Legislature to renew grant awards made under this article each year for not more than five years following the initial grant award.

§18B-3D-2. Workforce development initiative program created; program administration.

(a) For the purposes of this article, “development office” means the West Virginia development office provided in article two, chapter five-b of this code.

(b) There is under the development office 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 development office 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 executive director of the development office 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 executive director of the development office appoints an advisory committee consisting of the chancellor of the West Virginia council for community and technical college education; the secretary of education and the arts or designee; the assistant state superintendent for
technical and adult education; the chair of the West Virginia
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 executive
director of the development office. 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 executive director of the development office shall
give special consideration to proposals by community and
technical colleges that involve businesses with fewer than fifty
employees.

(3) The executive director of the development office 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 estab-
lished local businesses.

(d) The executive director of the development office 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 executive director of the development office shall
report to the legislative oversight commission on workforce
investment for economic development on the status of the
workforce development initiative program annually 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 are carried forward for use in the next fiscal year.

(g) Nothing in this article requires a specific level of appropriation by the Legislature.


(a) The statewide mission of the workforce development initiative program is to develop a strategy to strengthen the quality of the state’s workforce by linking the existing post-secondary education capacity to the needs of business, industry and other employers. Available funding will be used to provide explicit incentives for partnerships between employers and community and technical colleges to develop comprehensive workforce development services. Funds will be granted on the basis of proposals developed according to criteria established by the development office.

(b) The mission of any community and technical college accepting a workforce development initiative grant is to:

(1) Become client-focused and develop programs that meet documented employer needs;

(2) Involve and collaborate with employers in the development of programs;

(3) Develop customized training programs that provide for the changing needs of employers and that are offered at flexible times and locations to accommodate employer scheduling;

(4) Develop partnerships with other public and private providers, including small business development centers and vocational, technical and adult education centers, and with business and labor, to fulfill the workforce development needs of the service area;
(5) Establish cooperative arrangements with the public school system for the seamless progression of students through programs of study that begin at the secondary level and conclude at the community and technical college level, particularly with respect to career and technical education 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.

(6) Assist in the on-going assessment of the workforce development needs of the service area; and

(7) Serve as a visible point of contact and referral for services to meet the workforce development needs of the service area.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the workforce development initiative grant program, a community and technical college must meet the following conditions:

(1) Participate in a community and technical college consortia as required by article three-c of this chapter. Consortia representatives shall participate in the development of and approve applications for funding grants under the provisions of this article and shall approve the workforce development initiative budget;

(2) Develop a plan to achieve measurable improvements in the quality of the workforce within its service area over a five-year period. The plan must be developed in partnership with employers, local vocational schools and other workforce education providers;
(3) Establish a special revolving fund under the jurisdiction of the community and technical college consortia dedicated solely to workforce development initiatives for the purposes provided in this article. Any fees or revenues generated from workforce development initiatives funded by a competitive grant shall be deposited into this fund.

(b) To be eligible to receive a workforce development initiative grant, a community and technical college must provide at least the following information in its application:

(1) Identification of the specific business or business sector training needs that will be met if a workforce development initiative grant is received;

(2) A commitment from the private sector to provide a match of one dollar, cash and in-kind, for each dollar of state grant money received except in cases where the community and technical college can demonstrate in the grant application that it would be a hardship for the business being served to provide such a match. In those cases only, the match required may be reduced to one private dollar, cash and in-kind, for every three dollars of state grant money provided. In the case of awards for the modernization of procurement of equipment, the development office may establish a separate match requirement of up to one dollar, cash and in-kind, for each dollar of state grant money received;

(3) An agreement to share with other community and technical colleges any curricula developed using funds from a workforce development initiative grant;

(4) A specific plan showing how the community and technical college will collaborate with local post-secondary vocational institutions to maximize the use of existing facilities, personnel and equipment;
(5) An acknowledgment that acceptance of a grant under the provisions of this article commits the community and technical college and its consortia committee to such terms, conditions and deliverables as is specified by the development office in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

(c) Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students.

§18B-3D-5. Legislative rules.

The executive director of the development office shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than the first day of September, two thousand five.

Any rule in effect as of the effective date of the amendment and reenactment of this section in the year two thousand five will remain in effect until amended, modified, repealed or replaced.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of
office, compensation and expenses; director of authority; compensation.

(a) The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by a seven-member board known as the water development board. The governor or designee, the secretary of the department of environmental protection or designee and the commissioner of the bureau for public health or designee are members ex officio of the board. Four members are appointed by the governor, by and with the advice and consent of the Senate, for six-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, appointments are filled in the same manner as the original appointment for the remainder of the unexpired term. A member continues to serve until the appointment and qualification of the successor. More than two appointed board members may not at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

(c) All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two of said chapter. The governor may remove any board member for cause as provided in article six of said chapter.

(d) The governor or designee serves as chair. The board annually elects one of its appointed members as vice chair and
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appoints a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(e) The governor or designee, the secretary of the department of environmental protection and the commissioner of the bureau for public health do not receive compensation for serving as board members. Each appointed member receives an annual salary of twelve thousand dollars, payable in monthly installments. Each of the seven board members is reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties as a member of the board in a manner consistent with guidelines of the travel management office of the department of administration. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(f) There is a director of the authority appointed by the governor, with the advice and consent of the Senate, who serves at the governor’s will and pleasure. The director is responsible for managing and administering the daily functions of the authority and for performing other functions necessary to the effective operation of the authority. The compensation of the director is fixed annually by the board.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.
ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

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

(a) There is within the division of natural resources the Blennerhassett Island historical state park commission. All assets, real and personal property, debts, liabilities, duties, powers and authority are the property of the division of natural resources. The Blennerhassett Island historical state park commission is maintained as an advisory commission as hereinafter provided. The commission is composed of ten members who must be citizens and residents of this state, appointed by the governor for terms of four years, by and with the advice and consent of the Senate: Provided, That the terms of all members previously appointed to the Blennerhassett Island historical state park commission prior to any amendment and reenactment of this section shall continue for the periods originally specified and no member serving as of the effective date of the amendment and reenactment need be reappointed.

(b) Each member must be qualified to carry out the functions of the commission under this article by reason of his or her special interest, training, education or experience.

No person may be eligible to appointment as a member who is an officer or member of any political party executive committee; or the holder of any other public office or public employment under the United States government or the government of this state or a political subdivision of this state. Not more than six members may belong to the same political party.
(c) The commission shall elect a chairman from among its members on the second Monday in September of each year.

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

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

(f) The commission shall advise the division of natural resources in all matters relating to the development, establishment and maintenance of the Blennerhassett Island historical state park.

(g) All employee positions in the former Blennerhassett Island historical state park commission transferred to the division of commerce by a previous amendment and reenactment of this section are continued in the classified service of the civil service system pursuant to article six of this chapter. Any person included in the classified service by the provisions of this section who is employed in any of these
positions as of the effective date of any amendment and
reenactment of this section shall not be required to take and
pass qualifying or competitive examinations upon or as a
condition to being added to the classified service: Provided,
That no person included in the classified service by the provi-
sions of this section who is employed in any of these positions
as of the effective date of any amendment and reenactment of
this section, be thereafter severed, removed or terminated from
such 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.

(h) Notwithstanding any provision of this code to the
contrary, the division of natural resources is vested with
exclusive regulatory authority over watercraft transport of
visitors to the Blennerhassett Island portion of the
Blennerhassett Island historical state park and the watercraft
transport of these visitors is not subject to the provisions of
article eighteen, chapter seventeen of this code.

(i) Notwithstanding the provisions of section fifty-eight,
article two, chapter twenty of this code, the natural resources
commission shall promulgate rules pursuant to the provisions
of section seventeen, article one, chapter twenty and section
three, article one, chapter twenty-nine-a of this code to permit
and regulate the hunting of white-tailed deer at Blennerhassett
Island historical state park.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State excess lottery revenue fund.

(a) There is continued a special revenue fund within the
state lottery fund in the state treasury which is designated and
known as the "state excess lottery revenue fund". The fund
consists of all appropriations to the fund and all interest earned
from investment of the fund and any gifts, grants or contribu-
tions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the “state excess lottery revenue fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the “general purpose account” to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2)
seventeen million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements.

(c) For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars into the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million
dollars into the state park improvement fund for park improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping,
improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the state treasury a special revenue fund named the “economic development project fund” into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia economic development authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the economic development project fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

(3) After the West Virginia economic development author-
requirements of all funds have been satisfied, including any
coverage and reserve funds established in connection with the
bonds issued pursuant to this subsection, any balance remaining
in the economic development project fund may be used for the
redemption of any of the outstanding bonds issued under this
subsection which, by their terms, are then redeemable or for the
purchase of the outstanding bonds at the market price, but not
to exceed the price, if any, at which redeemable, and all bonds
redeemed or purchased shall be immediately canceled and shall
not again be issued.

(4) Bonds issued under this subsection shall state on their
face that the bonds do not constitute a debt of the state of West
Virginia; that payment of the bonds, interest and charges
thereon cannot become an obligation of the state of West
Virginia; and that the bondholders’ remedies are limited in all
respects to the “special revenue fund” established in this
subsection for the liquidation of the bonds.

(5) The West Virginia economic development authority
shall expend the bond proceeds from the revenue bond issues
authorized and directed by this section for such projects as may
be certified under the provision of this subsection: Provided,
That the bond proceeds shall be expended in accordance with
the requirements and provisions of article five-a, chapter
twenty-one of this code and either article twenty-two or
twenty-two-a, chapter five of this code, as the case may be:
Provided, however, That if such bond proceeds are expended
pursuant to article twenty-two-a, chapter five of this code and
if the design-build board created under said article determines
that the execution of a design-build contract in connection with
a project is appropriate pursuant to the criteria set forth in said
article and that a competitive bidding process was used in
selecting the design builder and awarding such contract, such
determination shall be conclusive for all purposes and shall be
deemed to satisfy all the requirements of said article.
(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the governor, or his or her designee, the secretary of the department of tax and revenue, the executive director of the West Virginia development office and six persons appointed by the governor: Provided, That at least one citizen member must be from each of the state's three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refilled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;
(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state. The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the economic development authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields parks, stadiums and other sports and sports-related facilities;
(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the national register of historic places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.
(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the state treasury to be known as the "economic development project bridge loan fund" to be administered by the economic development authority created in article fifteen, chapter thirty-one of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund; and fourth, make the distribution to the general purpose account: Provided, That, subject to the provisions of this subsection, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued from time to time under this section, the revenues shall be distributed on a pro rata basis.
(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (b), (c) and (h) of this section and after transferring to the state lottery fund created under section eighteen of this article an amount equal to any transfer from the state lottery fund to the excess lottery fund pursuant to subsection (f), section eighteen of this article, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the school building authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate first to the economic development project fund an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July, two thousand two, as certified to the lottery director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the school building authority, infrastructure, higher education and park improvements an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.
(h) In fiscal year two thousand four and thereafter, prior to
the distributions provided in subsection (c) of this section, the
lottery commission shall deposit into the general revenue fund
amounts necessary to provide reimbursement for the refundable
credit allowable under section twenty-one, article twenty-one,
chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities
in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for
professional educators and public employees;

(B) Providing adequate funding for the public employees
insurance agency; and

(C) Providing funding to help address the shortage of
qualified teachers and substitutes in areas of need, both in
number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed
by any court to require any appropriation or any specific
appropriation or level of funding for the purposes set forth in
this subsection.

(j) The Legislature further directs the governor to focus
resources on the creation of a prescription drug program for
senior citizens by pursuing a medicaid waiver to offer prescrip-
tion drug services to senior citizens; by investigating the
establishment of purchasing agreements with other entities to
reduce costs; by providing discount prices or rebate programs
for seniors; by coordinating programs offered by pharmaceuti-
cal manufacturers that provide reduced cost or free drugs; by
coordinating a collaborative effort among all state agencies to
ensure the most efficient and cost effective program possible
for the senior citizens of this state; and by working closely with
the state's congressional delegation to ensure that a national
program is implemented. The Legislature further directs that the governor report his progress back to the joint committee on government and finance on an annual basis beginning in November of the year two thousand one until a comprehensive program has been fully implemented.

CHAPTER 31. CORPORATIONS.

Article
15A. West Virginia Infrastructure and Jobs Development Council.
18. West Virginia Housing Development Fund.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the governor or designee, the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or
his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the chancellor of the higher education policy commission and the chancellor of the West Virginia council for community and technical college education serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of
expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the department of administration.

(e) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The governor’s civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the governor’s civil contingent fund.

(f) The water development authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

(g) The council shall invite to each meeting one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall invite such other appropriate parties as is necessary to effectuate the purposes of this article.


Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds
deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (1), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the executive director of the West Virginia development office for review, recommendation and approval regarding infrastructure project funding.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

(a) There is continued as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia housing development fund.

(b) The housing development fund is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in improving and otherwise promoting their health, welfare and prosperity.

(c) The housing development fund shall be governed by a board of directors, consisting of eleven members, four of whom shall be the governor, the attorney general, the commissioner of agriculture, and the state treasurer, or their designated representatives as public directors, and seven of whom shall be chosen
from the general public residing in the state, as private directors. No more than four of the private directors shall be from the same political party.

(d) Upon organization of the housing development fund, the governor shall appoint, by and with the advice and consent of the Senate, the seven private directors to take office and to exercise all powers thereof immediately, with two each appointed for terms of two years and three years, and with three each appointed for terms of four years, respectively, as the governor shall designate; at the expiration of said terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.

(e) A vacancy in the office of a private director is filled by appointment by the governor for the remainder of the unexpired term.

(f) The governor may remove any private director for reason of incompetency, neglect of duty, gross immorality, or malfeasance in office and appoint a director to fill the vacancy as provided in other cases of vacancy.

(g) The governor or designee serves as chair. The board of directors shall annually elect one of its public members as vice chair and appoint a secretary to keep records of its proceedings, who need not be a member of the board.

(h) Six members of the board of directors constitutes a quorum. A vacancy in the membership of the board does not impair the duties of the board of directors.

(i) Action may not be taken by the board of directors except upon the affirmative vote of at least six of the directors.

(j) The directors, including the chair, vice chair and treasurer, and the secretary of the board are not compensated for
their services but receive reasonable and necessary expenses actually incurred in discharging their duties under this article in a manner consistent with guidelines of the travel management office of the department of administration.

§31-18-5. Management and control of housing development fund vested in board; officers; liability.

(a) The management and control of the housing development fund shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the housing development fund, and, in his or her absence, the vice chairman shall act as chief executive officer.

(c) The governor appoints an executive director of the housing development fund, with the advice and consent of the Senate, who serves at the governor's will and pleasure. The director is responsible for managing and administering the daily functions of the housing development fund and for performing other functions necessary to the effective operation of the housing development fund. The executive director's compensation is fixed annually by the board of directors.

(d) The board of directors of the housing development fund shall annually elect from its membership a treasurer and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the housing development fund.

(e) The treasurer of the housing development fund shall be custodian of all funds of the housing development fund and shall be bonded in such amount as the other members of the board of directors may designate.

(f) The directors and officers of the West Virginia housing development fund shall not be liable personally, either jointly
§23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; to amend and reenact §23-3-1 and §23-3-4 of said code; to amend and reenact §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said code; to amend and reenact §23-4A-1 and §23-4A-4 of said code; to amend said code by adding thereto a new section, designated §23-4A-9; to amend said code by adding thereto a new section, designated §23-4B-9; to amend and reenact §23-4C-5 of said code; to amend said code by adding thereto a new section, designated §23-4C-6; to amend and reenact §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said code; to amend and reenact §29-22A-10 and §29-22A-10b of said code; to amend and reenact §33-1-2 and §33-1-10 of said code; to amend and reenact §33-2-10 and §33-2-20 of said code; to amend and reenact §33-41-2, §33-41-8 and §33-41-11 of said code; and to amend and reenact §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said code, all relating to workers’ compensation generally; reducing the unfunded liability of the workers’ compensation fund; providing existing and new revenue sources therefor, including new and existing taxes; providing for dissolution of workers’ compensation commission; converting state agency to employer-owned mutual insurance company; providing for private carriers to offer workers’ compensation insurance; providing for employees of the commission to be exempt from provisions of civil service coverage; providing for transfer of fraud investigation and prosecution unit and assets necessary for its operation; providing for transfer of certain workers’ compensation commission functions, rights, responsibilities, employees and assets to the insurance commissioner and the industrial council; providing certain civil remedies to commission, mutual company and private carriers; providing for exemption from required
coverage for certain employers who cover their employees under Federal Longshore and Harbor Workers' Compensation Act; providing for payment periods to be other than quarterly; providing authority to enjoin employers from engaging in business when in default; requiring self-insured employers to obtain insurance for catastrophic risks; providing for transfer of authority over certain funds to the insurance commissioner; providing for statutory subrogation of medical and indemnity benefits; providing for expedited appeals to the office of judges; authorizing negotiation for subrogation claims; providing for capital and surplus requirements of employers' mutual insurance company; providing for election of a board of directors of employers' mutual insurance company; providing for establishment of claims index to assist insurers; providing for establishment and administration of certain funds and accounts in state treasury; providing for adverse risk assignment plan; providing, upon meeting of certain criteria, for issuance of proclamation by the governor; providing for preferential placement of any employee laid off after transfer of functions; providing certain retraining and other benefits; providing for novation of policies to new employers mutual insurance company; providing for requirements of a basic policy of workers' compensation insurance; providing for setting of industrial insurance rates; providing for collection of premiums; providing for transfer of occupational pneumoconiosis board; providing for limitation of liability for insurers providing workers' compensation insurance and third-party administrators; providing for transfer of rules to be applicable to the industrial insurance market; providing for transfer of certain assets to new mutual insurance company; providing for termination of interdisciplinary examining board and health care advisory panel; providing for selection of occupational pneumoconiosis board members by governor; providing for transfer of authority over occupational pneumoconiosis board; providing for negotiation of final settlement in workers' compensation claims; providing terms of employment for chief administrative law judge; making technical corrections throughout; providing
internal effective dates; providing for civil administrative and criminal penalties; and making conforming changes throughout.

Be it enacted by the Legislature of West Virginia:

amended by adding thereto a new section, designated §23-4A-9; that said code be amended by adding thereto a new section, designated §23-4B-9; that §23-4C-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-4C-6; that §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said code be amended and reenacted; that §29-22A-10 and §29-22A-10b of said code be amended and reenacted; that §33-1-2 and §33-1-10 of said code be amended and reenacted; that §33-2-10 and §33-2-20 of said code be amended and reenacted; that §33-41-2, §33-41-8 and §33-41-11 of said code be amended and reenacted; and that §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said code be amended and reenacted, all to read as follows:

Chapter
4. The Legislature.
11. Taxation.
23. Workers' Compensation.
29. Miscellaneous Boards and Officers.
33. Insurance.
61. Crimes and Their Punishment.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT MONEYS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund until the first day of June, two thousand five, then to workers' compensation deficit reduction fund.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's health related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of
educating the public about the health risks associated with 
tobacco usage and establishing a program designed to reduce 
and stop the use of tobacco by the citizens of this state and in 
particular by teenagers.

(b) There is hereby created a special account in the state 
treasury, designated the “West Virginia Tobacco Settlement 
Medical Trust Fund”, which shall be an interest-bearing 
account and may be invested in the manner permitted by section 
nine, article six, chapter twelve of this code, with the interest 
income a proper credit to the fund. Unless contrary to federal 
law, fifty percent of all revenues received pursuant to the 
master settlement agreement shall be deposited in this fund. 
Funds paid into the account may also be derived from the 
following sources:

(1) All interest or return on investment accruing to the fund;

(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;

(3) Any appropriations by the Legislature which may be 
made for this purpose; and

(4) Any funds or accrued interest remaining in the board of 
risk and insurance management physicians’ mutual insurance 
company account created pursuant to section seven, article 
twenty-f, chapter thirty-three of this code on or after the first 
day of July, two thousand four.

(c) The moneys from the principal in the trust fund may not 
be expended for any purpose, except that on the first day of 
April, two thousand three, the treasurer shall transfer to the 
board of risk and insurance management physicians’ mutual 
insurance company account created by section seven, article 
twenty-f, chapter thirty-three of this code, twenty-four million
dollars from the West Virginia tobacco settlement medical trust fund for use as the initial capital and surplus of the physicians’ mutual insurance company created pursuant to said article. The remaining moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget and expended in accordance with the provisions of section three of this article.

(d) Notwithstanding the preceding subsections to the contrary, the first thirty million dollars of all revenues received after the thirtieth day of June, two thousand five, pursuant to section IX(c)(1) of the tobacco master settlement agreement shall in the fiscal year beginning the first day of July, two thousand five, and each fiscal year thereafter, be deposited in the workers’ compensation debt reduction fund established in the state treasury in section five, article two-d, chapter twenty-three of this code. Receipts in excess of thirty million dollars shall be deposited as provided in section three of this article.

(e) Notwithstanding anything in this code to the contrary, strategic compensation payments received pursuant to section IX(c)(2) of the tobacco master settlement agreement, beginning in two thousand eight, shall be deposited in their entirety in the workers’ compensation debt reduction fund.

CHAPTER 11. TAXATION.

Article 9. Crimes and Penalties.
13V. Workers’ Compensation Debt Reduction Act.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.
(a) The provisions of this article apply to the following taxes imposed by this chapter:

1. Inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter;
2. Business registration tax imposed by article twelve of this chapter;
3. Minimum severance tax on coal imposed by article twelve-b of this chapter;
4. Corporate license tax imposed by article twelve-c of this chapter;
5. Business and occupation tax imposed by article thirteen of this chapter;
6. Severance and business privilege taxes imposed by article thirteen-a of this chapter;
7. Additional severance taxes imposed by article thirteen-v of this chapter;
8. Telecommunications tax imposed by article thirteen-b of this chapter;
9. Gasoline and special fuels excise tax imposed by article fourteen of this chapter;
10. Motor fuels excise tax imposed by article fourteen-c of this chapter;
11. Motor carrier road tax imposed by article fourteen-a of this chapter;
12. Interstate fuel tax agreement authorized by article fourteen-b of this chapter;
(13) Consumers sales and service tax imposed by article fifteen of this chapter;

(14) Use tax imposed by article fifteen-a of this chapter;

(15) Tobacco products excise taxes imposed by article seventeen of this chapter;

(16) Soft drinks tax imposed by article nineteen of this chapter;

(17) Personal income tax imposed by article twenty-one of this chapter;

(18) Business franchise tax imposed by article twenty-three of this chapter;

(19) Corporation net income tax imposed by article twenty-four of this chapter; and

(20) Health care provider taxes imposed by article twenty-seven of this chapter.

(b) The provisions of this article also apply to the West Virginia tax procedure and administration act in article ten of this chapter and to any other articles of this chapter when application is expressly provided by the Legislature.

(c) The provisions of this article also apply to municipal sales and use taxes imposed pursuant to article thirteen-c, chapter eight of this code; the charitable bingo fee imposed by sections six and six-a, article twenty, chapter forty-seven of this code; the charitable raffle fee imposed by section seven, article twenty-one of said chapter; and the charitable raffle boards and games fees imposed by section three, article twenty-three of said chapter.
(d) Each and every provision of this article applies to the articles of this chapter listed in subsections (a), (b) and (c) of this section, with like effect, as if the provisions of this article were applicable only to the tax and were set forth in extenso in this article.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-3. Application of this article.

(a) The provisions of this article apply to inheritance and transfer taxes, estate tax and interstate compromise and arbitration of inheritance and death taxes, business registration tax, minimum severance tax on coal, corporate license tax, business and occupation tax, severance tax, additional severance taxes, telecommunications tax, interstate fuel tax, consumer sales and service tax, use tax, tobacco products excise taxes, soft drinks tax, personal income tax, business franchise tax, corporation net income tax, gasoline and special fuels excise tax, motor fuels excise tax, motor carrier road tax, health care provider taxes and tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f of this article for timely filing and payment to the tax commissioner or state tax department are the same methods utilized for timely filing and payment with the sheriff.

(b) The provisions of this article apply to beer barrel tax levied by article sixteen of this chapter; and to wine liter tax levied by section four, article eight, chapter sixty of this code.
(c) The provisions of this article apply to any other article of this chapter when the application is expressly provided by the Legislature.

(d) The provisions of this article apply to municipal sales and use taxes imposed under article thirteen-c, chapter eight of this code and collected by the tax commissioner.

ARTICLE 13V. WORKERS’ COMPENSATION DEBT REDUCTION ACT.

§11-13V-1. Short title.
§11-13V-2. Legislative intent and findings.
§11-13V-4. Imposition of tax.
§11-13V-6. Time for filing annual returns and other documents.
§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.
§11-13V-10. Place for filing returns or other documents.
§11-13V-11. Time and place for paying tax shown on returns.
§11-13V-12. Signing of returns and other documents.
§11-13V-13. Bond of taxpayer may be required.
§11-13V-14. Collection of tax; agreement for processor to pay tax due from severor.
§11-13V-17. Crimes and penalties.

§11-13V-1. Short title.

This article may be cited as the “Workers’ Compensation Debt Reduction Act of 2005”. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection, subdivision or paragraph of this article.

§11-13V-2. Legislative intent and findings.
(a) Legislative intent.—It is the intent of the Legislature in enacting this article to impose new, additional privilege taxes on severing or producing natural resources in this state and for the net proceeds from collection of the new taxes to be dedicated to paying down the unfunded liability in the workers' compensation fund, or paying debt service on bonds sold to raise funds to pay down the unfunded liability in the workers' compensation fund, or for any combination of these two purposes.

(b) Findings.—The Legislature finds and declares that:

(1) The unfunded liability in the state workers' compensation program exceeds three billion dollars;

(2) Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the condition of the workers' compensation fund will continue to negatively affect economic development in this state;

(3) Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the Legislature will not be able to privatize workers' compensation;

(4) Until a fiscally responsible plan for paying this unfunded liability is provided, the Legislature will need to annually appropriate dollars from the general revenue fund of the state to pay down this unfunded liability and to cover the annual shortfall between funds available to pay workers' compensation benefits to injured workers and premiums collected by the workers' compensation fund from employers;

(5) In accordance with the constitution of this state and decisions of the West Virginia supreme court of appeals, the Legislature may enact a new tax and dedicate the net collections of the tax to pay down this unfunded liability or to pay debt
service on bonds sold by the state to raise funds to pay down this unfunded liability.


All definitions set forth in articles twelve-d and thirteen-a of this chapter apply to those defined terms that also appear in this article, if applicable.

§11-13V-4. Imposition of tax.

(a) Imposition of additional tax on privilege of severing coal. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after the thirtieth day of November, two thousand five. The tax shall be fifty-six cents per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after the thirtieth day of November, two thousand five, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the tax commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before the first day of July, two thousand five, the rule may be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) Imposition of additional tax on privilege of severing natural gas. — For the privilege of engaging or continuing within this state in the business of severing natural gas for sale,
profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be four and seven-tenths cents per mcf of natural gas and the measure of the tax is natural gas produced after the thirtieth day of November, two thousand five, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after the thirtieth day of November, two thousand five.

(c) 

Imposition of additional tax on privilege of severing timber. — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after the thirtieth day of November, two thousand five.

(d) No pyramiding of tax burden. — Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.

(e) Effect on utility rates. — The public service commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not
currently making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) Dedication of new taxes. — The net amount of all monies received by the tax commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the workers' compensation debt reduction fund created in article two-d, chapter twenty-three of this code. As used in this section, "net amount of all taxes received by the tax commissioner" means the gross amount received by the tax commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(g) Sunset expiration date of taxes. — The new taxes imposed by this section shall expire and not be imposed with respect to privileges exercised on and after the first day of the month following the month in which the governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the debt service provided for; and (2) that an independent certified actuary has determined that the
unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.


(a) General rule. — For purposes of the taxes imposed by this article, a taxpayer’s taxable year shall be the same as the taxpayer’s taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer’s taxable year under this article.

(b) Change of taxable year. — If a taxpayer’s taxable year is changed for federal income tax purposes, taxpayer’s taxable year for purposes of this article is similarly changed. The taxpayer shall provide a copy of the authorization for the change from the internal revenue service, with taxpayer’s annual return for the taxable year filed under this article.

(c) Methods of accounting same as federal. —

(1) Same as federal. — A taxpayer’s method of accounting under this article shall be the same as the taxpayer’s method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used, unless the tax commissioner, in writing, consents to the use of another method. Accrual basis taxpayers may deduct bad debts only in the year to which they relate.

(2) Change of accounting methods. — If a taxpayer’s method of accounting is changed for federal income tax purposes, the taxpayer’s method of accounting for purposes of
this article is similarly changed. The taxpayer shall provide a
copy of the authorization for the change from the internal
revenue service with its annual return for the taxable year filed
under this article.

(d) **Adjustments.** — In computing a taxpayer’s liability for
tax for any taxable year under a method of accounting different
from the method under which the taxpayer’s liability for tax
under this article for the previous year was computed, there
shall be taken into account those adjustments which are
determined, under rules promulgated by the tax commissioner
in accordance with article three, chapter twenty-nine-a of this
code, to be necessary solely by reason of the change in order to
prevent amounts from being duplicated or omitted.

§11-13V-6. **Time for filing annual returns and other documents.**

On or before the expiration of one month after the end of
the taxable year, every taxpayer subject to a tax imposed by this
article shall make and file an annual return for the entire taxable
year showing all information the tax commissioner requires and
computing the amount of taxes due under this article for the
taxable year. Returns made on the basis of a calendar year shall
be filed on or before the thirty-first day of January following
the close of the calendar year. Returns made on the basis of a
fiscal year shall be filed on or before the last day of the first
month following the close of the fiscal year.

§11-13V-7. **Periodic installment payments of taxes imposed by
this article; exceptions.**

(a) **General rule.** — Except as provided in subsection (b) of
this section, taxes levied by this article are due and payable in
periodic installments as follows:

(1) **Tax of fifty dollars or less per month.** — If a person’s
aggregate annual tax liability under this article and article
(2) **Tax of more than one thousand dollars per month.** — For taxpayers whose aggregate estimated tax liability under this article and article thirteen-a of this chapter exceeds one thousand dollars per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: *Provided, That* the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year. When this subdivision applies, the taxpayer shall, on or before the due date specified in this subdivision, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: *Provided, however, That* the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(3) **Tax of one thousand dollars per month or less.** — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued. When this subdivision applies, the taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner.
(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

(c) Remittance by electronic funds transfer. — When the taxpayer’s annual aggregate liability for tax under this article and article thirteen-a of this chapter exceeds fifty thousand dollars for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the tax commissioner and rules of the state treasurer, except as otherwise permitted by the tax commissioner.


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


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

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

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

§11-13V-10. Place for filing returns or other documents.

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

§11-13V-11. Time and place for paying tax shown on returns.

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

(b) Date fixed for payment of tax. — The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for the payment (determined without regard to any extension of time for paying the tax).
10  (c) Terms of extension. — Any extension of time for
11 payment of tax under this section may be granted upon such
12 terms as the tax commissioner may, by rule prescribe, or by
13 contract require.

§11-13V-12. Signing of returns and other documents.

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

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

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

18  (d) Signing of limited liability company returns. — The
19 return of a limited liability company shall be signed by any one
20 of its authorized members. The fact that a member’s name is
21 signed on the return shall be prima facie evidence that the
22 member is authorized to sign the return on behalf of the limited
23 liability company.

24  (e) Signature presumed authentic. — The fact that an
25 individual’s name is signed to a return, statement or other
26 document shall be prima facie evidence for all purposes that the
(f) Verification of returns. — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13V-13. Bond of taxpayer may be required.

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

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

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

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section.

(e) The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer’s business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. This action may be
brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

§11-13V-14. Collection of tax; agreement for processor to pay tax due from severor.

(a) General. — In the case of natural resources, other than natural gas, where the tax commissioner finds that it would facilitate and expedite the collection of the taxes imposed by this article, the tax commissioner may authorize the taxpayer processing the natural resource to report and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in the form prescribed by or acceptable to the tax commissioner.

(1) The agreement must be signed:

(A) By the owner, if the taxpayer is a natural person;

(B) In the case of a partnership, limited liability company or association, by a partner or member;

(C) In the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the agreement.

(2) The agreement may be terminated by any party to the agreement upon giving thirty days’ written notice to the other parties to the agreement: Provided, That the tax commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) Natural gas. —

(1) In the case of natural gas, except for those cases:
(A) Where the person severing (or both severing and processing) the natural gas will sell the gas to the ultimate consumer; or

(B) Where the tax commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes, the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. That person shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and that person shall remit the taxes to the tax commissioner;

(C) In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article;

(D) In those cases where the tax commissioner determines that the collection of the taxes due under this article from the person severing the natural gas, or severing and processing the natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the tax commissioner shall set out his or her determination in writing, stating his or her reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which the commissioner’s determination is effective.

(2) On or before the last day of the month following each taxable calendar month, the person first purchasing natural gas,
as described in subdivision (1) of this subsection, shall report
purchases of natural gas during the taxable month, showing the
quantities of gas purchased, the price paid, the date of purchase,
and any other information considered necessary by the tax
commissioner for the administration of the tax imposed by this
article, and shall pay the amount of tax due, on forms pre-
scribed by the tax commissioner.

(3) On or before the last day of the month following each
taxable calendar month, each person severing (or severing and
processing) natural gas, shall report the sales of natural gas,
showing the name and address of the person to whom sold, the
quantity of gas sold, the date of sale and the sales price on
forms prescribed by the tax commissioner.


(a) General. — Every person liable for reporting or paying
tax under this article shall keep records, receipts, invoices and
other pertinent papers in the form required by the tax commis-

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

(c) Special rule for purchasers of standing timber or of
logs. — In addition to the records required by subsection (a) of
this section, every person purchasing standing timber, logs or
wood products sawn or chipped in conjunction with a timber
harvesting operation in this state shall obtain from the person
from whom the standing timber, logs or wood products sawn or
chipped in conjunction with a timbering harvest operation are
purchased a true copy of the seller’s then current business registration certificate issued under article twelve of this chapter or a copy of federal form 1099 for the year of the purchase. When the seller is a person not required by this chapter to have a business registration certificate, the purchaser shall obtain an affidavit from the seller:

(1) Stating that the seller does not have a business registration certificate and that the seller is not required by this chapter to have a business registration certificate;

(2) Listing the seller’s social security number or federal employer identification number; and

(3) Listing the seller’s current mailing address. The tax commissioner may develop a form for this affidavit.


Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

§11-13V-17. Crimes and penalties.

Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter applies to the taxes imposed by this article with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.
(a) There is hereby dedicated an annual amount of forty-five million dollars from annual collections of the tax imposed by this article for payment of the unfunded liability of the current workers compensation fund. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning in January of two thousand six, forty-five million dollars from collections of the tax imposed by this article shall be deposited each calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this code, in accordance with the following schedule. Each calendar month, except for July, August and September each year, five million dollars shall be transferred, on or before the twenty-eighth day of the month, to the workers’ compensation debt reduction fund created in article two-d, chapter twenty-three of this code.

(c) Expiration. — The transfers required by this section shall continue to be made until the governor certifies to the Legislature that an independent actuary study determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. No transfer pursuant to this section shall be made thereafter.

CHAPTER 23. WORKERS’ COMPENSATION.
4. Disability and Death Benefits.
4A. Disabled Workers' Relief Fund.
4B. Coal-Workers' Pneumoconiosis Fund.
4C. Employees Excess Compensation Fund.
5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' compensation commission created; findings.
§23-1-1a. Workers' compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.
§23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.
§23-1-1c. Payment withholding; interception; penalty.
§23-1-1e. Transfer of assets and contracts; ability to acquire, own, lease and otherwise manage property.
§23-1-1g. Legislative intent to create a quasi-public entity.
§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
§23-1-17. Annual report by the insurance commissioner and occupational pneumoconiosis board.

§23-1-1. Workers' compensation commission created; findings.

(a) The Legislature finds that a deficit exists in the workers' compensation fund of such critical proportions that it constitutes an imminent threat to the immediate and long-term solvency of the fund and constitutes a substantial deterrent to the economic development of this state. The Legislature further finds that addressing the workers' compensation crisis requires the efforts of all persons and entities involved and resolution of the crisis is in the best interest of the public. Modification to the rate system, alteration of the benefit structure, improvement of current management practices and changes in perception must be merged into a unified effort to make the workers' compensation system viable and solvent through the
mutualization of the system and the opening of the market to
private workers' compensation insurance carriers. It was and
remains the intent of the Legislature that the amendments to
this chapter enacted in the year two thousand three be applied
from the date upon which the enactment was made effective by
the Legislature. The Legislature finds that an emergency exists
as a result of the combined effect of this deficit, other state
budgetary deficits and liabilities and other grave social and
economic circumstances currently confronting the state and that
unless the changes provided by the enactment of the amend-
ments to this chapter, as well as other legislation designed to
address the problem are made effective immediately, the fiscal
stability of this state will suffer irreparable harm. Accordingly,
the Legislature finds that the need of the citizens of this state
for the protection of the state treasury and the solvency of the
workers' compensation funds requires the limitations on any
expectations that may have arisen from prior enactments of this
chapter.

(b) It is the further intent of the Legislature that this chapter
be interpreted so as to assure the quick and efficient delivery of
indemnity and medical benefits to injured workers at a reason-
able cost to the employers who are subject to the provisions of
this chapter. It is the specific intent of the Legislature that
workers' compensation cases shall be decided on their merits
and that a rule of "liberal construction" based on any "reme-
dial" basis of workers' compensation legislation shall not affect
the weighing of evidence in resolving such cases. The workers'
compensation system in this state is based on a mutual renunci-
ation of common law rights and defenses by employers and
employees alike. Employees' rights to sue for damages over
and above medical and health care benefits and wage loss
benefits are to a certain degree limited by the provisions of this
chapter and employers' rights to raise common law defenses
such as lack of negligence, contributory negligence on the part
of the employee, and others, are curtailed as well. Accordingly,
the Legislature hereby declares that any remedial component of
the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by section one-g, article four of this chapter.

(c) The "workers' compensation division of the bureau of employment programs" is, on or after the first day of October, two thousand three, reestablished, reconstituted and continued as the workers' compensation commission, an agency of the state. The purpose of the commission is to ensure the fair, efficient and financially stable administration of the workers' compensation system of the state of West Virginia. The powers and duties heretofore imposed upon the workers' compensation division and the commissioner of the bureau of employment programs as they relate to workers' compensation are hereby transferred to and imposed upon the workers' compensation commission and its executive director in the manner prescribed by this chapter.

(d) It is the intent of the Legislature that the transfer of the administration of the workers' compensation system of this state from the workers' compensation division under the commissioner of the bureau of employment programs to the workers' compensation commission under its executive director and the workers' compensation board of managers is to become effective the first day of October, two thousand three. Any provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to the transfer of the administration of the workers' compensation system of this state that conflict with the intent of the Legislature as described in this subsection shall, to that extent, become operative on the first day of October, two thousand three, and until that date, prior enactments of this code in effect on the effective date of Enrolled Senate Bill No. 2013 relating to the administration of the workers' compensation system of this state, whether
amended and reenacted or repealed by the passage of Enrolled Senate Bill No. 2013, have full force and effect. All provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to matters other than the transfer of the administration of the workers’ compensation system of this state shall become operative on the effective date of that enactment, unless otherwise specifically provided in that enactment.

§23-1-1a. Workers’ compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.

(a) On the first day of October, two thousand three, the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code is hereby abolished and there is hereby created the “workers’ compensation board of managers”, which may also be referred to as “the board of managers” or “the board”.

(b)(1) The board shall consist of eleven voting members as follows:

(A) The governor or his or her designee;

(B) The chief executive officer of the West Virginia investment management board; if required to attend more than one meeting per month, he or she may send a designee to the additional meetings;

(C) The executive director of the West Virginia development office; if required to attend more than one meeting per month, he or she may send a designee to the additional meetings; and
(D) Eight members appointed by the governor with the advice and consent of the Senate who meet the requirements and qualifications prescribed in subsections (c) and (d) of this section: Provided, That the members serving on the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code on the effective date of the enactment of this section in two thousand three are hereby appointed as members of the board of managers subject to the provisions of subdivision (1), subsection (c) of this section.

(2) Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory members of the board and are not voting members. The governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party.

(c) (1) The initial eight appointed voting members of the board of managers shall consist of the members appointed under the provisions of paragraph (D), subdivision (1), subsection (a) of this section and the remaining members appointed pursuant to the provisions of subsection (d) of this section. The term of each of the initial appointed members shall expire on the thirty-first day of December, two thousand five.

(2) Effective the first day of January, two thousand six, if the commission continues, eight members shall be appointed by the governor with the advice and consent of the Senate for terms that begin the first day of January, two thousand six, and expire as follows:

Two members shall be appointed for a term ending the thirtieth day of June, two thousand seven;

Three members shall be appointed for a term ending the thirtieth day of June, two thousand eight; and
Three members shall be appointed for a term ending the thirtieth day of June, two thousand nine.

(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the board may be removed from office by the governor except for official misconduct, incompetency, neglect of duty or gross immorality.

(4) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(d) Except for those initially appointed under the provisions of paragraph (D), subdivision (1), subsection (b) of this section, each of the appointed voting members of the board shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

(1) Each shall hold a baccalaureate degree from an accredited college or university: Provided, That no more than three of the appointed voting members may serve without a baccalaureate degree from an accredited college or university if the member has a minimum of fifteen years’ experience in his or her field of expertise as required in subdivision (2) of this subsection;

(2) Each shall have a minimum of ten years’ experience in his or her field of expertise. The governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise
in insurance claims management; expertise in insurance
underwriting; expertise in the financial management of pen-
sions or insurance plans; expertise as a trustee of pension or
trust funds of more than two hundred beneficiaries or three
hundred million dollars; expertise in workers' compensation
management; expertise in loss prevention and rehabilitation;
expertise in occupational medicine demonstrated by licensure
as a medical doctor in West Virginia and experience, board
certification or university affiliation; or expertise in similar
areas of endeavor;

(3) At least one shall be a certified public accountant with
financial management or pension or insurance audit expertise;
at least one shall be an attorney with financial management
experience; and one shall be an academician holding an
advanced degree from an accredited college or university in
business, finance, insurance or economics.

(e) Each member of the board shall have a fiduciary
responsibility to the commission and all workers' compensation
funds and shall assure the proper administration of the funds in
a fiscally responsible manner.

(f) The board shall elect one member to serve as chairper-
son. The chairperson shall serve for a one-year term and may
serve more than one consecutive term. The board shall hold
meetings at the request of the chairperson or at the request of at
least three of the members of the board, but no less frequently
than once every three months. The chairperson shall determine
the date and time of each meeting. Six members of the board
constitute a quorum for the conduct of the business of the
board. No vacancy in the membership of the board shall impair
the right of a quorum to exercise all the rights and perform all
the duties of the board. No action shall be taken by the board
except upon the affirmative vote of six members of the board.
(g) Notwithstanding any provision of article seven, chapter six of this code to the contrary, the board shall establish the salary of the executive director. The board shall establish a set of performance measurements to evaluate the performance of the executive director in fulfilling his or her duties as prescribed in this chapter and shall annually rate the executive director's performance according to the established measurements and may adjust his or her annual salary in accordance with that performance rating.

(h) (1) Each voting appointed member of the board shall receive compensation of not more than three hundred fifty dollars per day for each day during which he or she is required to and does attend a meeting of the board.

(2) Each voting appointed member of the board is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(i) Each member of the board shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

(j) The board of managers shall:

(1) Review and approve, reject or modify recommendations from the executive director for the development of overall policy for the administration of this chapter;

(2) In consultation with the executive director, propose legislation and establish operating guidelines and policies designed to ensure the effective administration and financial
viability of the workers' compensation system of West Virginia;

(3) Review and approve, reject or modify rules that are proposed by the executive director for operation of the workers' compensation system before the rules are filed with the secretary of state. The rules adopted by the board are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The board shall follow the remaining provisions of said chapter for giving notice to the public of its actions and for holding hearings and receiving public comments on the rules;

(4) In accordance with the laws, rules and regulations of West Virginia and the United States government, establish and monitor performance standards and measurements to ensure the timeliness and accuracy of activities performed under the workers' compensation laws and rules;

(5) Review and approve, reject or modify all classifications of occupations or industries, premium rates and taxes, administrative charges, rules and systems of rating, rating plans, rate revisions, deficit management and deficit reduction assessments and merit rating for employers covered by this chapter. The executive director shall provide all information required for the board's review;

(6) In conjunction with the executive director initiate, oversee and review all independent financial and actuarial reviews of the commission. The board shall employ an internal auditor for the purpose of examining internal compliance with the provisions of this chapter. The internal auditor shall be employed directly by the board. The internal auditor shall submit copies of all reports prepared by the internal auditor for the board to the joint committee on government and finance within five days of submitting or making the report to the board, by filing the report with the legislative librarian;
(7) Approve the allocation of sufficient administrative resources and funding to efficiently operate the workers’ compensation system of West Virginia. To assure efficient operation, the board shall direct the development of a plan for the collections performed under section five-a, article two of this chapter. The plan for collections shall maximize ratio of dollars potentially realized by the collection proceeding to the dollars invested in collection activity;

(8) Review and approve, reject or modify the budget prepared by the executive director for the operation of the commission. The budget shall include estimates of the costs and necessary expenditures of the commission in the discharge of all duties imposed by this chapter as well as the cost of providing offices, furniture, equipment and supplies to all commission officers and employees;

(9) In consultation with the executive director, approve the designation of health care providers to make decisions for the commission regarding appropriateness of medical services;

(10) Require the workers’ compensation commission to develop, maintain and use an effective program of return-to-work services for employers and workers;

(11) Require the workers’ compensation commission to develop, maintain and use thorough and efficient claims management procedures and processes and fund management in accordance with the generally accepted practices of the workers’ compensation insurance industry;

(12) Consider such other matters regarding the workers’ compensation system as the governor, executive director or any member of the board may desire;

(13) Review and approve, reject or modify standards recommended by the executive director to be considered by the
commission in making decisions on all levels of disability awards. The standards should be established as an effective means to make prompt, appropriate decisions relating to medical care and methods to assist employees to return to work as quickly as possible;

(14) Appoint, if necessary, a temporary executive director;

(15) Employ sufficient professional and clerical staff to carry out the duties of the board. Employees of the board shall serve at the will and pleasure of the board. The board’s employees are exempt from the salary schedule or pay plan adopted by the division of personnel;

(16) Study the feasibility of, provide a plan for and provide a proposal for a request for proposals from the private sector for privatizing the workers’ compensation system of this state, including, but not limited to, a plan for privatizing the administration of the workers’ compensation system of this state and a plan for allowing employers to obtain private insurance to insure their obligations under the workers’ compensation system of this state; study the effect, if any, of attorneys fees on the cost of administering the workers’ compensation system; study the extent to which fraud or abuse on the part of employers, providers and others have an effect on the cost of administering the workers’ compensation system; study the extent, if any, that the rates and amounts of disability awards exceed the rates and amounts of such awards in other states; study the comparative desirability of alternative permanent disability administration in those other states, and alternative deficit management strategies, including nontraditional funding; study the feasibility of authorizing a plan of multiple rate classifications by individual employers for employers who have different or seasonally diverse job classifications and duties: Provided, That no such plan may be implemented until adopted by the Legislature; and, in consultation with the director of the
division of personnel, study the feasibility of establishing a
work incentive program to place unemployed qualified recipi-
ents of workers' compensation benefits in state or local
government employment. On or before the first day of January,
two thousand six, the commission shall report the findings and
conclusions of each study, the plans and proposals, and any
recommendations the commission may have as a result of the
study to the joint committee on government and finance; and

(17) Complete all duties set forth in article two-c of this
chapter.

(k) The board of managers shall continue to exist pursuant
to this article until the commission is terminated pursuant to the
provisions of this chapter.

§23-1-1b. Executive director; qualifications; oath; seal; removal;
powers and duties.

(a) The executive director shall be hired by the board of
managers for a term not to exceed five years and may be
retained based on overall performance for additional terms:
Provided, That the executive director of the division of work-
ers' compensation on the date of the enactment of this section
in the year two thousand three shall serve as the initial execu-
tive director of the commission and shall receive the same
salary and benefits as received as the executive director of the
division of workers' compensation through and until the board
of managers establishes his or her salary and benefits as the
executive director of the commission. The position of execu-
tive director shall be full-time employment. Except for the
initial executive director, candidates for the position of execu-
tive director shall have a minimum of a bachelor of arts or
science degree from an accredited four-year college or univer-
sity in one or more of the following disciplines: Finance;
economics; insurance administration; law; public administra-
Candidates for the position of executive director will be considered based on their demonstrated education, knowledge and a minimum of ten years' experience in the areas of workers' compensation, insurance company management, administrative and management experience with an organization comparable in size to the workers' compensation commission or any relevant experience which demonstrates an ability to effectively accomplish the purposes of this chapter.

(b) The executive director shall not be a candidate for or hold any other public office or trust, nor shall he or she be a member of a political committee. If he or she becomes a candidate for a public office or becomes a member of a political committee, his or her office as executive director shall be immediately vacated.

(c) The executive director, before entering upon the duties of his or her office, shall take and subscribe to the oath prescribed by section five, article IV of the state constitution. The oath shall be filed with the secretary of state.

(d) The executive director shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Workers' Compensation Commission" and any other design prescribed by the board of managers. The courts in this state shall take judicial notice of the seal of the commission and in all cases copies of orders, proceedings or records in the office of the West Virginia workers' compensation commission are equal to the original in evidence.

(e) The executive director shall not be a member of the board of managers.

(f) The executive director shall serve until the expiration of his or her term, resignation or until removed by a two-thirds
vote of the full board of managers. The board of managers and
the executive director may, by agreement, terminate the term of
employment at any time.

(g) The executive director shall have overall management
responsibility and administrative control and supervision within
the workers' compensation commission and has the power and
duty to:

(1) Establish, with the approval of the board of managers,
the overall administrative policy of the commission for the
purposes of this chapter;

(2) Employ, direct and supervise all employees required in
the connection with the performance of the duties assigned to
the commission by this chapter and fix the compensation of the
employees in accordance with the provisions of article six,
chapter twenty-nine of this code: Provided, That the executive
director shall identify which members of the staff of the
workers' compensation commission shall be exempted from the
salary schedules or pay plan adopted by the state personnel
board and further identify such staff members by job classifica-
tion or designation, together with the salary or salary ranges for
each such job classification or designation and shall file this
information with the director of the division of personnel no
later than the thirty-first day of December, two thousand three,
and thereafter as changes are made or at least annually: Pro-
vided, however, That, effective the first day of July, two
thousand six, if the commission has not been terminated or
otherwise discontinued, all employees of the commission shall
be exempt and otherwise not under the jurisdiction of the
provisions of the statutes, rules and regulations of the classified
service set forth in article six, chapter twenty-nine of this code
and article six-a of said chapter and are afforded no protections,
rights or access to procedures set forth in said provision. All
commission employees shall be employees at will unless his or
her employment status is altered by an express, written employ-
ment contract executed on behalf of the commission and the
employee. The commission and its employees shall be exempt
and otherwise not under the jurisdiction of the state personnel
board, the department of personnel, or any other successor
agency, and their statutes, rules and regulations;

(3) Reorganize the work of the commission, its divisions,
sections and offices to the extent necessary to achieve the most
efficient performance of its functions. All persons employed by
the workers' compensation division in positions that were
formerly supervised and directed by the commissioner of the
bureau of employment programs under chapter twenty-one-a of
this code are hereby assigned and transferred in their respective
classifications to the workers' compensation commission
effective the first day of October, two thousand three. Further,
the executive director may select persons that are employed by
the bureau of employment programs on the effective date of the
enactment of this section in the year two thousand three to be
assigned and transferred to the workers' compensation commis-
sion in their respective classifications, such assignment and
transfer to take effect no later than the thirty-first day of
December, two thousand three. Employees in the classified
service who have gained permanent status as of the effective
date of this article will not be subject to further qualifying
examination in their respective classifications by reason of any
transfer required by the provisions of this subdivision. Due to
the emergency currently existing at the commission and the
urgent need to develop fast, efficient claims processing,
management and administration, the executive director is
hereby granted authority to reorganize internal functions and
operations and to delegate, assign, transfer, combine, establish,
eliminate and consolidate responsibilities and duties to and
among the positions transferred under the authority of this
subdivision. The division of personnel shall cooperate fully by
assisting in all personnel activities necessary to expedite all
changes for the commission. The executive director is hereby
granted authority to reorganize internal functions and opera-
tions and to delegate, assign, transfer, combine, establish,
eliminate and consolidate responsibilities and duties to and
among the positions transferred under the authority of this
subdivision. The division of personnel shall cooperate fully by
assisting in all personnel activities necessary to expedite all
changes for the commission and shall otherwise continue to
provide all necessary administrative support to the commission
in connection with the commission’s personnel needs until the
company established in article two-c of this chapter becomes
operational. Nothing contained in this subdivision shall be
construed to either abridge the rights of employees within the
classified service of the state to the procedures and protections
set forth in article six, chapter twenty-nine of this code or to
preclude the reclassification or reallocation of positions in
accordance with procedures set forth in said article;

(4) Exempt no more than twenty-five of any of the newly
created positions from the classified service of the state, the
employees of which positions shall serve at the will and
pleasure of the executive director. The executive director shall
report all exemptions made under this subdivision to the
director of the division of personnel no later than the first day
of January, two thousand four, and thereafter as the executive
director determines to be necessary;

(5) With the advice and approval of the board of managers,
propose operating guidelines and policies to standardize
administration, expedite commission business and promote the
efficiency of the services provided by the commission;

(6) Prepare and submit to the board of managers informa-
tion the board requires for classifications of occupations or
industries; the basis for premium rates, taxes, surcharges and
assessment for administrative charges, for assessments related
to loss experience, for assessments of prospective risk exposure, for assessments of deficit management and deficit reduction costs incurred, for other deficit management and deficit reduction assessments, for rules and systems of rating, rate revisions and merit rating for employers covered by this chapter; and information regarding the extent, degree and amount of subsidization between the classifications. The executive director shall obtain, prepare and submit any other information the board of managers requires for the prompt and efficient discharge of its duties;

(7) Keep accurate and complete accounts and records necessary to the collection, administration and distribution of the workers’ compensation funds;

(8) Sign and execute in the name of the state, by “The Workers’ Compensation Commission”, any contract or agreement;

(9) Make recommendations and an annual report to the governor concerning the condition, operation and functioning of the commission;

(10) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(11) Prepare and submit for approval to the board of managers a budget for each fiscal year, including estimates of the costs and necessary expenditures of the commission in the discharge of all duties imposed by this chapter as well as the costs of furnishing office space to the officers and employees of the commission;

(12) Ensure that all employees of the commission follow the orders, operating guidelines and policies of the commission as they relate to the commission’s overall policymaking, management and adjudicatory duties under this chapter;
(13) Delegate all powers and duties vested in the executive director to his or her appointees and employees; but the executive director is responsible for their acts;

(14) Provide at commission expense a program of continuing professional, technical and specialized instruction for the personnel of the commission. The executive director shall consult with and report at least annually to the legislative oversight commission on workforce investment for economic development to obtain the most appropriate training using all available resources;

(15) (A) Contract or employ counsel to perform all legal services for the commission including, but not limited to, representing the executive director, board of managers and commission in any administrative proceeding and in any state or federal court. Additionally, the commission may, but shall not be required to, call upon the attorney general for legal assistance and representation as provided by law. The attorney general shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the executive director and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the commission or the office of the attorney general to represent the commission, the executive director or the board of managers in any matter arising from the performance of its duties or the execution of its powers under this chapter. In addition, the executive director, with the approval of the board of managers, may retain counsel for any purpose in the administration of this chapter relating to the collection of any amounts due from employers to the commission: Provided, That the allocation of resources for the purpose of any collections shall be pursuant to the plan developed by the board of managers. The board of managers shall solicit proposals from
counsel who are interested in representing the commission under the terms of this subdivision. Thereafter, the board of managers shall select any attorneys it determines necessary to pursue the collection objectives of this subdivision:

(i) Payment to retained counsel may either be hourly or by other fixed fee, or as determined by the court or administrative law judge as provided in this section. A contingency fee payable from the amount recovered by judgment or settlement for the commission is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys’ fees is not possible;

(ii) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commission results in a judgment or settlement in favor of the commission, the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys’ fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commission. If the court is to determine the amount of attorneys’ fees, it shall include in its determination the amount of fee that should be paid for the representation of the commission in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys’ fees shall be determined by use of the following factors:

(I) The counsel’s normal hourly rate or, if the counsel is an employee of the commission or is an employee of the office of the attorney general, an hourly rate the court or the administrative law judge determines to be customary based upon the attorney’s experience and skill level;
(II) The number of hours actually expended on the action;

(III) The complexity of the issues involved in the action;

(IV) The degree of risk involved in the case with regard to the probability of success or failure;

(V) The overhead costs incurred by counsel with regard to the use of paralegals and other office staff, experts and investigators; and

(VI) The public purpose served or public objective achieved by the attorney in obtaining the judgment or settlement on behalf of the commission;

(iii) Notwithstanding the provisions of paragraph (B) of this subdivision, if the commission and the defendants or respondents to any administrative or judicial action settle the action, the parties may negotiate a separate settlement of attorneys' fees to be paid by the defendants or respondents above and beyond the amount recovered by the commission. In the event that a settlement of attorneys' fees is made, it must be submitted to the court or administrative law judge for approval;

(iv) Any attorney regularly employed by the commission or by the office of the attorney general may not receive any remuneration for his or her services other than the attorney's regular salary. Any attorneys' fees awarded for an employed attorney are payable to the commission;

(16) Propose rules for promulgation by the board of managers under which agencies of this state shall revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the commission with regard to the administration of this chapter. The term “agency” includes any unit of state
government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the commission and remains in compliance with its obligations under the repayment agreements;

(A) The rules shall provide that, before granting, issuing or renewing any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit, the designated agencies shall review a list or lists provided by the commission of employers that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with the commission, may grant, issue or renew the contract, license, permit, certificate or other authority to conduct a trade, profession or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The prohibition against granting, issuing or renewing any contract, license, permit, certificate or other authority under this subdivision shall remain in full force and effect as promulgated under section six, article two, chapter twenty-one-a of this code until the rules required by this subsection are promulgated and in effect;

(B) The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the commission to be exempt from the provisions of the rules;

(17) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest and penalties thereon and attorneys’ fees and costs collected under the
provisions of this chapter. The amounts collected shall not be
treated by the auditor or treasurer as part of the general revenue
of the state;

(18) Recommend for approval of the board of managers
rules for the administration of claims management by self-
insured employers and third-party administrators including
regulation and sanctions for the rejection of claims and for
maintaining claim records and ensuring access to all claim
records by interested claimants, claimant representatives, the
commission and the office of judges;

(19) Recommend for approval of the board of managers,
rules to eliminate the ability of an employer to avoid an
experience modification factor by virtue of a reorganization of
a business;

(20) Submit for approval of the board of managers rules
setting forth procedures for auditing and investigating employ-
ers, including employer premium audits and including auditing
and investigating programs of self-insured employers and third-
party administrators, employees, health care providers and
medical and vocational rehabilitation service providers;

(21) Regularly audit and monitor programs established by
self-insured or third-party administrators under this chapter to
ensure compliance with the commission’s rules and the law;

(22) Facilitate the transfer of the fraud investigation and
prosecution unit, along with the assets necessary to support the
functions being performed, to the insurance commissioner.
This transfer shall be to be completed by the first day of July,
two thousand five. This unit has the responsibility and author-
ity for investigating and controlling fraud of the workers’
compensation system of the state of West Virginia. The fraud
unit shall be under the supervision of an inspector general, who
shall be appointed by the insurance commissioner. Nothing in
this section shall preclude the commission or, when applicable, the company created in article two-c of this chapter and other private carriers, from independently investigating and controlling abuse and exercising the powers granted to the commission to address and eliminate abuse under this chapter. The executive director may select persons that are assigned to the fraud and abuse unit on the effective date of the enactment of this section to be assigned and remain employees of the workers’ compensation commission. The commission shall determine its fiscal year two thousand six budget for the fraud investigation and prosecution unit and shall make advanced quarterly payments to the insurance commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer: Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter’s payment. This reimbursement methodology shall repeat for fiscal year two thousand seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. The commission’s inspector general shall serve as the initial inspector general for the insurance commissioner;

(A) The inspector general shall, with the consent and advice of the executive director, employ all personnel as necessary for the institution, development and finalization of procedures and investigations which serve to ensure that only necessary and proper workers’ compensation benefits and expenses are paid to or on behalf of injured employees and to insure employers subscribe to and pay the proper premium to the West Virginia workers’ compensation commission. Qualification, compensation and personnel practice relating to the employees of the fraud and abuse unit, including that of the position of inspector general, shall be governed by the provisions of the statutes and rules of the classified service pursuant to article six, chapter twenty-nine of this code. The inspector general shall supervise
all personnel, which collectively shall be referred to in this chapter as the fraud and abuse unit;

(B) The fraud and abuse unit shall have the following powers and duties:

(i) The fraud and abuse unit shall propose for promulgation by the board of managers rules for determining the existence of fraud and abuse as it relates to the workers’ compensation system in West Virginia;

(ii) The fraud and abuse unit will be responsible for the initiation, development, review and proposal for promulgation by the board of managers of rules regarding the existence of fraud and abuse as it relates to the workers’ compensation system in West Virginia;

(iii) The fraud and abuse unit will take action to identify and prevent and discourage any and all fraud and abuse;

(iv) The fraud and abuse unit, in cases of criminal fraud, has the authority to review and prosecute those cases for violations of sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, article three, chapter sixty-one of this code, as well as any other criminal statutes that may be applicable. In addition the fraud and abuse unit not only has the authority to prosecute and refer cases involving criminal fraud to appropriate state authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the appropriate federal authorities for review and possible prosecution, by either state or federal agencies, of cases involving criminal fraud concerning the workers’ compensation system in West Virginia;

(v) The fraud and abuse unit, in cases which do not meet the definition of criminal fraud, but would meet a reasonable person’s definition of an abuse of the workers’ compensation
system, shall take the appropriate action to discourage and prevent such abuse. Furthermore, the fraud and abuse unit shall assist the commission to develop evidence of fraud or abuse which can be used pursuant to the provisions of this chapter to suspend, and where appropriate, terminate, a claimant’s benefits. In addition, evidence developed pursuant to these provisions can be used in hearings before the office of judges on protests to commission decisions terminating, or not terminating, temporary total disability benefits; and

(vi) The fraud and abuse unit, is expressly authorized to initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, alleged to have violated the provisions of section three-c, article four of this chapter;

(C) Specific personnel, designated by the inspector general, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(D) Notwithstanding any provision of this code to the contrary, specific personnel designated by the inspector general may carry handguns in the course of their official duties after meeting specialized qualifications established by the governor’s committee on crime, delinquency and correction, which qualifications 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 the personnel so designated by the inspector general to carry handguns within the meaning of the term law–enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(E) The fraud and abuse unit is not subject to any requirement of article nine-a, chapter six of this code and the investi-
gations conducted by the fraud and abuse unit and the materials
placed in the files of the unit as a result of any such investiga-
tion are exempt from public disclosure under the provisions of
chapter twenty-nine-b of this code;

(F) In the event that a final judicial decision adjudges that
the statewide prosecutorial powers vested by this subdivision in
the fraud and abuse unit may only be exercised by a public
official other than an employee of the fraud and abuse unit, then
to that extent the provisions of this subdivision vesting state-
wide prosecutorial power shall thenceforth be of no force and
effect, the remaining provisions of this subdivision shall
continue in full force and effect and prosecutions hereunder
may only be exercised by the prosecuting attorneys of this state
and their assistants or special assistant prosecuting attorneys
appointed as provided by law;

(23) Enter into interagency agreements to assist in exchang-
ing information and fulfilling the default provisions of this
chapter;

(24) Notwithstanding any provision of this code to the
contrary, the executive director, under emergency authorization:

(A) May expend up to fifty thousand dollars for purchases
of and may contract for goods and services without securing
competitive bids. This emergency spending authority expires
on the first day of July, two thousand five; and

(B) May expend such sums as the executive director
determines are necessary for professional services, contracts for
the purchase of an automated claims administration system and
associated computer hardware and software in the administra-
tion of claims for benefits made under provisions of this chapter
and contracts for technical services and related services
necessary to develop, implement and maintain the system and
associated computer hardware and software. The provisions of
(25) Establish an employer violator system to identify individuals and employers who are in default or are delinquent on any premium, assessment, surcharge, tax or penalty owed to the commission. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the commission, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the commission or has entered into and remains in compliance with a repayment agreement;

(26) Propose the designation of health care providers to make decisions for the commission regarding appropriateness of medical services;

(27) Study the correlation between premium tax merit rating for employers and the safety performance of employers. This study shall be completed prior to the first day of July, two thousand four, and the results thereof provided to the board of managers;

(28) Upon termination of the commission, accomplish the transfer to the insurance commissioner established in article two-c of this chapter, the insurance commissioner, and any other applicable state agency or department, of the functions necessary for the regulation of the workers’ compensation insurance industry, including, but not limited to, the following commission functions: rate-making, self-insurance, office of
judges and board of review. The executive director may select persons that are assigned to these functions on the effective date of the enactment of this section to be assigned and become employees of the company as established in article two-c of this chapter. The executive director may, in consultation with the insurance commissioner, select persons that are assigned to the insurance commissioner. The commission shall determine its fiscal year two thousand six budget for each of these functions, reduce the budget amount attributable to self-insured employers for these functions and shall make advanced quarterly payments to the insurance commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer. The amount shall include the funds necessary to operate the industrial council and the insurance commissioner shall be administratively responsible for the industrial council's budget: Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter's payment. This reimbursement methodology shall repeat for fiscal year two thousand and seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. For the final calendar quarter of two thousand five and the first and second calendar quarters of the year two thousand six, all self-insured employers shall remit to the insurance commissioner on a quarterly basis the administrative component of their fiscal year two thousand six rate. For the fiscal year beginning the first day of July, two thousand six, self-insured employers shall remit an administrative charge to the insurance commissioner in an amount determined by the commissioner. All self-insured employer advance deposits shall transfer from the commission to the insurance commissioner upon termination of the commission; and

(29) Perform all duties set forth in article two-c of this chapter.
§23-1-1c. Payment withholding; interception; penalty.

(a) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commission or the company created in article two-c of this chapter to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter as of the termination of the commission have been paid or that provisions satisfactory to the commission or company created in article two-c of this chapter have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section five-a, article two of this chapter, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter, shall assist the commission or company created in article two-c of this chapter in collecting the payment that is due under subsection (a) of this section. For this purpose, disclosure of joint delinquency and default lists of employers with respect to unemployment compensation as provided in section six-c, article one, chapter twenty-one-a of this code and workers' compensation contributions, premiums, interest, deposits or penalties is authorized. The commission and the bureau of employment programs may enter into an interagency agreement to effect the provisions of this section. The lists may be in the form of a computerized database to be accessed by the auditor, the department of tax and revenue, the department of administration, the division of highways or other appropriate state agency or officer.
§23-1-le. Transfer of assets and contracts; ability to acquire, own, lease and otherwise manage property.

(a) With the establishment of the workers' compensation commission, all assets and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the workers' compensation division of the bureau of employment programs in furtherance of the purposes of this chapter, are hereby transferred and assigned to the workers' compensation commission.

(b) From the termination of the commission through the thirtieth day of June, two thousand eight, the company may continue to contract and exchange data and information with the office of information, services and communication, the bureau of employment programs, the division of motor vehicles, various child support enforcement agencies and other similar state agencies and entities in a manner similar to the commission to accomplish the intent of this chapter.

§23-1-lg. Legislative intent to create a quasi-public entity.

In recognition of the impact a state's workers' compensation premium levels may have on the state's ability to conduct economic development and the resulting need to operate the state's workers' compensation system in such a manner that will enable the lowest premiums to be charged employers while at the same time ensuring adequate benefit levels are provided to injured workers, it is the intent of the Legislature that the workers' compensation commission remain a commission of the state as provided in article two, chapter five-f of this code until the company created in article two-c of this chapter is created and operational and the New Fund created in article two-c of this chapter has been funded. Until the termination of the commission and in order for the commission to be able to capture the efficiencies associated with private sector operations, the workers' compensation commission is exempt from

(a) In an investigation into any matter arising under articles one through five, inclusive, of this chapter, the commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in the circuit court, but the depositions shall be upon reasonable notice to claimant and employer or other affected persons or their respective attorneys. The commission shall designate the person to represent it for the taking of the deposition.

(b) The commission also has discretion to accept and consider depositions taken within or without the state by either the claimant or employer or other affected person, provided due and reasonable notice of the taking of the depositions was given to the other parties or their attorneys, if any: Provided, That the commission, upon due notice to the parties, has authority to refuse or permit the taking of depositions or to reject the depositions after they are taken, if they were taken at a place or under circumstances which imposed an undue burden or hardship upon the other parties. The commission's discretion to accept, refuse to approve or reject the depositions is binding in the absence of abuse of the discretion.

(c) The powers and duties set forth in the section shall be transferred from the workers' compensation commission to the insurance commissioner upon termination of the commission.
§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

(a) The workers' compensation commission shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service of the notices, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, the method of taking and furnishing of evidence to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, and the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made.

(b) At hearings and other proceedings before the commission or before the duly authorized representative of the commission, an employer who is a natural person may appear, and a claimant may appear, only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0 - admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a representative from a labor organization who has been recognized by the commission as being qualified to represent a claimant or who is an individual otherwise found to be qualified by the commission to act as a representative. The representative shall participate in the presentation of facts,
(4) Pro se.

(c) At hearings and other proceedings before the commission or before the duly authorized representative of the commission, an employer who is not a natural person may appear only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0 - admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a member of the board of directors of a corporation or by an officer of the corporation for purposes of representing the interest of the corporation in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures; or

(4) By a representative from an employer service company who has been recognized by the commission as being qualified to represent an employer or who is an individual otherwise found to be qualified by the commission to act as a representative. The representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures.
(d) The commission or its representative may require an individual appearing on behalf of a natural person or corporation to produce satisfactory evidence that he or she is properly qualified and authorized to appear pursuant to this section.

(e) Subsections (b), (c) and (d) of this section shall not be construed as being applicable to proceedings before the office of judges pursuant to the provisions of article five of this chapter.

(f) At the direction of a treating or evaluating psychiatrist or clinical doctoral-level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral-level psychologist. The summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide the claimant with only the summary before the full report is provided to the representative or attorney for his or her use in preparing the claimant’s case. The report shall only be withheld from the claimant in those instances where the treating or evaluating psychiatrist or clinical doctoral-level psychologist certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a serious threat of harm to a third party.

(g) In any matter arising under articles one through five, inclusive, of this chapter in which the commission is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative is sufficient notice to the party represented.

(h) The powers and duties set forth in the section shall be transferred from the workers’ compensation commission to the insurance commissioner upon termination of the commission.

The commission shall prepare and furnish free of cost forms (and provide in his or her rules for their distribution so that they may be readily available) of applications for benefits for compensation from the workers’ compensation fund, or directly from employers, as the case may be, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings and any other forms considered proper and advisable. It is the duty of employers to constantly keep on hand a sufficient supply of the forms. The powers and duties set forth in the section shall be transferred from the workers’ compensation commission to the insurance commissioner as of the termination of the commission.


The commission, and the insurance commissioner effective upon termination of the commission, are not bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in a manner that in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter.

§23-1-17. Annual report by the insurance commissioner and occupational pneumoconiosis board.

Annually, on or about the fifteenth day of September in each year, the insurance commissioner and the occupational pneumoconiosis board shall make a report as of the thirtieth day of June addressed to the governor, which shall include a statement of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the occupational pneumoconiosis board and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific
support for the diagnostic techniques and a summary of public
and private research relating to problems and prevention of
occupational diseases. The report shall include a detailed
statement of all disbursements, and the condition of the fund,
together with any specific recommendations for improvements
in the workers' compensation law and for more efficient and
responsive administration of the workers' compensation law,
which the executive director considers appropriate. Copies of
all annual reports shall be filed with the secretary of state and
shall be made available to the Legislature and to the public at
large.


(a) Any person, firm, corporation or other entity which
willfully, by means of false statement or representation, or by
concealment of any material fact, or by other fraudulent
scheme, device or artifice on behalf of himself, itself or others,
obtains or attempts to obtain benefits, payments, allowances or
reduced premium costs or other charges, including workers'
compensation coverage under the programs of the workers'
compensation commission, the company, a private carrier or
self-insured employer, to which he or it is not entitled, or in a
greater amount than that to which he or it is entitled, shall be
liable to the workers' compensation commission, the company,
the private carrier or self-insured employer, in an amount equal
to three times the amount of such benefits, payments or
allowances to which he or it is not entitled and shall be liable
for the payment of reasonable attorney fees and all other fees
and costs of litigation.

(b) No criminal action or indictment need be brought
against any person, firm, corporation or other entity as a
condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted and
maintained on behalf of the workers' compensation commis-
sion, the insurance commissioner, the company, a private
carrier or self-insured employer by any attorney in contract with
or employed by the workers’ compensation commission, the
insurance commissioner, the company, a private carrier or self-
insured employer to provide such representation.

(d) Venue for a civil action under this section shall be either
in the county in which the defendant resides or in Kanawha
County as selected by the commission or insurance commis-
sioner. Upon creation of the company pursuant to article two-c
of this chapter, venue for a civil action under this section for the
company, private carriers and self-insured employers shall be
either in the county in which the defendant resides or the county
in which the injured worker was employed, as selected by the
company, the private carrier or self-insured employer.

(e) The remedies and penalties provided in this section are
in addition to those remedies and penalties provided elsewhere
by law.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages;
notices; filing of business registration certificates.
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sioner and division of unemployment compensation; secrecy of
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§23-2-9. Election of employer or employers' group to be self-insured and to
provide own system of compensation; exceptions; catastrophe
coverage; self administration; rules; penalties; regulation of self-
insurers.

§23-2-1. Employers subject to chapter; elections not to provide
certain coverages; notices; filing of business regis-
tration certificates.

(a) The state of West Virginia and all governmental
agencies or departments created by it, including county boards
of education, political subdivisions of the state, any volunteer
fire department or company and other emergency service
organizations as defined by article five, chapter fifteen of this
code, and all persons, firms, associations and corporations
regularly employing another person or persons for the purpose
of carrying on any form of industry, service or business in this
state, are employers within the meaning of this chapter and are
required to subscribe to and pay premium taxes into the
workers' compensation fund for the protection of their employ-
ees and are subject to all requirements of this chapter and all
rules prescribed by the workers' compensation commission
with reference to rate, classification and premium payment:
Provided, That rates will be adjusted by the commission to
reflect the demand on the compensation fund by the covered
employer.

(b) The following employers are not required to subscribe
to the fund, but may elect to do so:

(1) Employers of employees in domestic services;

(2) Employers of five or fewer full-time employees in
agricultural service;
(3) Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;

(4) Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter;

(5) Churches;

(6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing; or

(7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality or other government entity or political subdivision; volunteer organizations created or sponsored by government entities, political subdivisions; or area or regional emergency medical services boards of directors in furtherance of the purposes of the emergency medical services act of article four-c, chapter sixteen of this code: Provided, That if any of the employers described in this subdivision have paid employees, to the extent of those paid employees, the employer shall subscribe to and pay premium taxes into the workers' compensation fund based upon the gross wages of the paid employees but with regard to the volunteers, the coverage remains optional.

(8) Any employer whose employees are eligible to receive benefits under the federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, et seq., but only for those employees eligible for those benefits.
(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to the clergyman from the churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer for the purpose of premium payment into the workers’ compensation fund.

(d) Employers who are not required to subscribe to the workers’ compensation fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in that case are subject to all requirements of this chapter and all rules and regulations prescribed by the commission with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than any liability that would exist notwithstanding the provisions of this chapter.

(e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered “regularly employing” within the meaning of this section may choose to pay into the workers’ compensation fund the premiums provided for in this section, and at the time of making application to the workers’ compensation commission, the employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commission. At the time of making application the employer shall deposit with the commission to the credit of the workers’ compensation fund the amount required by section five of this article. That amount shall be returned to the employer if the employer’s application is rejected by the commission. Upon
notice to the employer of the acceptance of his or her application by the commission, he or she is an employer within the meaning of this chapter and subject to all of its provisions.

(f) Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits under this chapter shall, at the time of making application to the commission in addition to other requirements of this chapter, furnish the commission with a certificate from the secretary of state, where the certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of a foreign corporation employer shall be accepted by the commission until the certificate is filed.

(g) The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association or corporation, the employer may elect not to include as an "employee" within this chapter, any member of the partnership, the owner of the sole proprietorship or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the
bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed or chosen, the employer may elect not to include the officer or assistant officer as an "employee" within the meaning of this chapter: Provided, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice president, secretary and treasurer and who may be excluded by reason of their positions from the benefits of this chapter even though their duties, responsibilities, activities or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied the benefits of this chapter merely because he or she is an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator or an employee who is not an officer and receives pay for performing the duties in the capacity of an employee; or

(C) He or she is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation;

(3) If an employer is a limited liability company, the employer may elect not to include as an "employee" within this chapter a total of no more than four persons, each of whom are
(h) In the event of election under subsection (g) of this section, the employer shall serve upon the commission written notice naming the positions not to be covered and shall not include the "employee's" remuneration for premium purposes in all future payroll reports, and the partner, proprietor or corporate or executive officer is not considered an employee within the meaning of this chapter after the notice has been served. Notwithstanding the provisions of subsection (g), section five of this article, if an employer is delinquent or in default or has not subscribed to the fund even though it is obligated to do so under the provisions of this article, any partner, proprietor or corporate or executive officer shall not be covered and shall not receive the benefits of this chapter.

(i) "Regularly employing" or "regular employment" means employment by an employer which is not a casual employer under this section.

(j) Upon the termination of the commission, the criteria governing which employer shall or may subscribe to the workers' compensation commission shall also govern which employers shall or may purchase workers' compensation insurance under article two-c of this chapter.

§23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.

(a) For the exclusive purposes of this section, the term "employer" as defined in section one of this article includes any primary contractor who regularly subcontracts with other employers for the performance of any work arising from or as a result of the primary contractor's own contract: Provided,
That a subcontractor does not include one providing goods rather than services. For purposes of this subsection, extraction of natural resources is a provision of services. In the event that a subcontracting employer defaults on its obligations to make payments to the commission, then the primary contractor is liable for the payments. However, nothing contained in this section shall extend or except to a primary contractor or subcontractors the provisions of section six, six-a or eight of this article. This section is applicable only with regard to subcontractors with whom the primary contractor has a contract for any work or services for a period longer than thirty days: Provided, however, That this section is also applicable to contracts for consecutive periods of work that total more than thirty days. It is not applicable to the primary contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts. It is the intent of the Legislature that no contractor, whether a primary contractor, subcontractor or sub-subcontractor, escape or avoid liability for any workers' compensation premium, assessment or tax. The executive director shall propose for promulgation a rule to effect this purpose on or before the thirty-first day of December, two thousand three.

(b) A primary contractor may avoid initial liability under subsection (a) of this section if it obtains from the executive director, prior to the initial performance of any work by the subcontractor's employees, a certificate that the subcontractor is in good standing with the workers' compensation fund.

(1) Failure to obtain the certificate of good standing prior to the initial performance of any work by the subcontractor results in the primary contractor being equally liable with the subcontractor for all delinquent and defaulted premium taxes, premium deposits, interest and other penalties arising during the
life of the contract or due to work performed in furtherance of the contract: *Provided*, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commission may impose other penalties on the primary contractor or on the subcontractor, or both.

(2) In order to continue avoiding liability under this section, the primary contractor shall request that the commission inform the primary contractor of any subsequent default by the subcontractor. In the event that the subcontractor does default, the commission shall notify the primary contractor of the default by placing a notice in the first-class United States mail, postage prepaid, and addressed to the primary contractor at the address furnished to the commission by the primary contractor. The mailing is good and sufficient notice to the primary contractor of the subcontractor's default. However, the primary contractor is not liable under this section until the first day of the calendar quarter following the calendar quarter in which the notice is given and then the liability is only for that following calendar quarter and thereafter and only if the subcontract has not been terminated: *Provided*, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commission may impose other penalties on the primary contractor or on the subcontractor, or both.

(c) In any situation where a subcontractor defaults with regard to its payment obligations under this chapter or fails to provide a certificate of good standing as provided in this section, the default or failure is good and sufficient cause for a primary contractor to hold the subcontractor responsible and to seek reimbursement or indemnification for any amounts paid on behalf of the subcontractor to avoid or cure a workers' compensation default, plus related costs, including reasonable attorneys' fees, and to terminate its subcontract with the subcontract-
tor notwithstanding any provision to the contrary in the contract.

(d) The provisions of this section are applicable only to those contracts entered into or extended on or after the first day of January, one thousand nine hundred ninety-four.

(e) The commission may take any action authorized by section five-a of this article in furtherance of its efforts to collect amounts due from the primary contractor under this section.

(f) Effective upon termination of the commission, this section shall be applicable only to unpaid premiums due the commission or the old fund as provided in article two-c of this chapter.

§23-2-2. Commission to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.

(a) Every employer shall furnish the executive director, upon request, all information required by him or her to carry out the purposes of this chapter. Every employer shall have a continuous and ongoing duty to maintain current information about its activities, risks and rates on the books of the commission. The executive director, or any person employed by the commission for that purpose, may examine under oath any employer or officer, agent or employee of any employer.

(b) Notwithstanding the provisions of any other statute to the contrary, specifically, but not exclusively, sections five and five-b, article ten, chapter eleven of this code and section eleven, article ten, chapter twenty-one-a of this code, the executive director of the workers' compensation commission may receive the following information:
(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses’ workers and employees, if otherwise collected, and the quarterly or other applicable reporting period and annual gross wages or other compensation paid to the workers and employees of businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to the division of unemployment compensation: In addition to the information that may be released to the workers’ compensation commission for the purposes of this chapter under the provisions of chapter twenty-one-a of this code, the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number and names, addresses and social security numbers of employees employed and the gross quarterly or other applicable reporting period wages paid by each employing unit to each identified employee.

(c) All information acquired by the workers’ compensation commission pursuant to subsection (b) of this section shall be used only for auditing premium payments, assisting in a wage determination, assisting in the determination of employment status and registering businesses under the single point of registration program as set forth in article twelve, chapter eleven of this code. The workers’ compensation commission, upon receiving the business franchise registration certificate information made available pursuant to subsection (b) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of this article. Any
officer or employee of this state who uses the information obtained under this section in any manner other than the one stated in this section or elsewhere authorized in this code, or who divulges or makes known in any manner any of the information obtained under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or incarcerated in the county or regional jail for not more than one year, or both together with cost of prosecution.

(d) Reasonable costs of compilation and production of any information made available pursuant to subsection (b) of this section shall be charged to the workers' compensation commission.

(e) Information acquired by the commission pursuant to subsection (b) of this section is not subject to disclosure under the provisions of chapter twenty-nine-b of this code.

(f) The right to request, gather and maintain information set forth in this section shall transfer to the insurance commissioner and the industrial council upon termination of the commission.


The commission, and effective upon termination of the commission, the insurance commissioner, shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the commission any form or forms with direction for completion and returning to the commission shall return the form, within the period fixed by the commission, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the failure. Every employer subject to the provisions of this chapter shall make application to the commission on the forms prescribed by the
commission for that purpose; and any employer who terminates
his or her business or for any other reason is no longer subject
to this chapter shall immediately notify the commission on
forms to be furnished by the commission for that purpose.

§23-2-4. Classification of industries; rate of premiums; authority
to adopt various systems; accounts.

(a) The executive director with approval of the board of
managers is authorized to establish by rule a system for
determining the classification and distribution into classes of
employers subject to this chapter, a system for determining
rates of premium taxes applicable to employers subject to this
chapter, a system of multiple policy options with criteria for
subscription and criteria for an annual employer’s statement
providing both benefits liability information and rate determina-
tion information.

(1) In addition, the rule shall provide for, but not be limited
to:

(A) Rate adjustments by industry or individual employer,
including merit rate adjustments;

(B) Notification regarding rate adjustments prior to the
quarter in which the rate adjustments will be in effect;

(C) Chargeability of claims; and

(D) Any further matters that are necessary and consistent
with the goals of this chapter;

(2) The rule shall require the establishment of a program
under which the commissioner may grant discounts on premium
rates for employers who meet either of the following require-
ments:
(A) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization and make periodic safety inspections of the workplace;

(B) Successfully complete a loss prevention program, including establishment of a drug-free workplace, prescribed by the commission's safety and loss control office and conducted by the commission or by any other person approved by the commission;

(3) The rule shall be consistent with the duty of the executive director and the board of managers to fix and maintain the lowest possible rates of premium taxes consistent with the maintenance of a solvent workers' compensation fund and the reduction of any deficit that may exist in the fund and in keeping with their fiduciary obligations to the fund;

(4) The rule shall be consistent with generally accepted accounting principles;

(5) The rule shall be consistent with classification and rate-making methodologies found in the insurance industry; and

(6) The rule shall be consistent with the principles of promoting more effective workplace health and safety programs as contained in article two-b of this chapter.

(b) In accordance with generally accepted accounting principles, the workers' compensation commission shall keep an accurate accounting of all money or moneys earned, due and received by the workers' compensation fund and of the liability incurred and disbursements made against the fund; and an accurate account of all money or moneys earned, due and received from each individual subscriber and of the liability incurred and disbursements made against the same.
(c) Prospective rates set in accordance with the provisions of this article shall at all times be financially sound in accordance with generally accepted accounting principles and fully fund the prospective claim obligations for the year in which the rates were made. Rates, surcharges or assessments for deficit management and deficit reduction purposes shall be fair and equitable, financially sound in accordance with generally accepted accounting principles and sufficient to meet the payment obligations of the fund.

(d) Notwithstanding any provision of subsection (c) of this section to the contrary, except for those increases made effective for fiscal year two thousand four by action of the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code taken prior to the effective date of the amendment and reenactment of this section, base rates, assessments and surcharges, except for individual employer merit rate adjustments, shall not be increased during fiscal years two thousand four and two thousand five: Provided, That the portion of the rate increase attributable to claims management incentive adjustments, as determined by the compensation programs performance council for fiscal year two thousand four prior to the effective date of the amendment and reenactment of this section by the Legislature in the year two thousand three, shall not be considered a part of the employer’s premium taxes and shall not be subject to collection by the commission.

(e) Claims management incentive adjustments, whether imposed in a manner that would result in either a debit or a credit to any employer’s account, shall not be considered by the board of managers in its future rate determinations.

§23-2-5. Application; payment of premium taxes; gross wages; payroll report; deposits; delinquency; default;
reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

(a) For the purpose of creating a workers’ compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premium taxes calculated as a percentage of the employer’s gross wages payroll as defined by the commission at the rate determined by the commission and then in effect plus any additional premium taxes developed from rates, surcharges or assessments as determined by the commission. At the time each employer subscribes to the fund, the application required by the commission shall be filed and a premium deposit equal to the first quarter’s estimated premium tax payment shall be remitted. The minimum quarterly or other reporting period premium to be paid by any employer is twenty-five dollars.

(1) Thereafter, the premium taxes shall be paid quarterly or at other payment intervals established by the commission on or before the last day of the month following the end of the quarter or designated payment interval and shall be the prescribed percentage of the entire gross wages of all employees, from which net payroll is calculated and paid, during the preceding quarter or other designated payment interval. The commission may require employers, in accordance with the provisions of rules proposed by the executive director and promulgated by the board of managers, to report gross wages and pay premium taxes monthly or at other intervals.

(2) Every subscribing employer shall make a gross wages payroll report to the commission for the preceding reporting period. The report shall be on the form or forms prescribed by the commission and shall contain all information required by the commission.

(3) After subscribing to the fund, each employer shall remit with each premium tax payment an amount calculated to be
sufficient to maintain a premium deposit equal to the premium payment for the previous reporting period. The commission may reduce the amount of the premium deposit required from seasonal employers for those reporting periods during which employment is significantly reduced. If the employer pays premium tax on a basis other than quarterly, the commission may require the deposit to be based upon some other time period. The premium deposit shall be credited to the employer’s account on the books of the commission and used to pay premium taxes and any other sums due the fund when an employer becomes delinquent or in default as provided in this article.

(4) All premium taxes and premium deposits required by this article to be paid shall be paid by the employers to the commission, which shall maintain a record of all sums so received. Any sum mailed to the commission is considered to be received on the date the envelope transmitting it is postmarked by the United States postal service. All sums received by the commission shall be deposited in the state treasury to the credit of the workers’ compensation commission in the manner now prescribed by law.

(5) The commission shall encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs and to encourage employer-provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the executive director and the board of managers.

(b) Failure of an employer to timely pay premium taxes as provided in subsection (a) of this section, to timely file a payroll report or to maintain an adequate premium deposit shall cause the employer’s account to become delinquent. No
employer will be declared delinquent or be assessed any penalty
for the delinquency if the commission determines that the
delinquency has been caused by delays in the administration of
the fund. The commission shall, in writing, within sixty days
of the end of each reporting period notify all delinquent
employers of their failure to timely pay premium taxes, to
timely file a payroll report or to maintain an adequate premium
deposit. Each employer who fails to timely file any payroll
report or timely pay the premium tax due with the report, or
both, for any reporting period commencing on and after the first
day of July, one thousand nine hundred ninety-five, shall pay a
late reporting or payment penalty of the greater of fifty dollars
or a sum obtained by multiplying the premium tax due with the
report by the penalty rate applicable to that reporting period.
The penalty rate to be used in a workers' compensation
commission's fiscal year is calculated annually on the first day
of each fiscal year. The penalty rate used to calculate the
penalty for each reporting period in a fiscal year is the quotient,
rounded to the nearest higher whole number percentage rate,
obtained by dividing the sum of the prime rate plus four percent
by four. The prime rate is the rate published in the *Wall Street
Journal* on the last business day of the commission's prior
fiscal year reflecting the base rate on corporate loans posted by
at least seventy-five percent of the nation's thirty largest banks.
The late penalty shall be paid with the most recent reporting
period's report and payment and is due when that reporting
period's report and payment are filed. If the late penalty is not
paid when due, it may be charged to and collected by the
commission from the employer's premium deposit account or
otherwise as provided by law. The notification shall demand
the filing of the delinquent payroll report and payment of
delinquent premium taxes, the penalty for late reporting or
payment of premium taxes or premium deposit, the interest
penalty and an amount sufficient to maintain the premium
deposit before the end of the third month following the end of
the preceding reporting period. Interest shall accrue and be
101 charged on the delinquent premium payment and premium
102 deposit pursuant to section thirteen of this article.

103 (c) Whenever the commission notifies an employer of the
104 delinquent status of its account, the notification shall explain
105 the legal consequence of subsequent default by an employer
106 required to subscribe to the fund and the legal consequences of
107 termination of an electing employer’s account.

108 (d) Failure by the employer, who is required to subscribe to
109 the fund and who fails to resolve the delinquency within the
110 prescribed period, shall place the account in default and shall
111 deprive the default employer of the benefits and protection
112 afforded by this chapter, including section six of this article,
113 and the employer is liable as provided in section eight of this
114 article. The default employer’s liability under these sections is
115 retroactive to midnight of the last day of the month following
116 the end of the reporting period for which the delinquency
117 occurs. The commission shall notify the default employer of
118 the method by which the employer may be reinstated with the
119 fund. The commission shall also notify the employees of the
120 employer by written notice as hereinafter provided in this
121 section.

122 (e) Failure by any employer, who voluntarily elects to
123 subscribe, to resolve the delinquency within the prescribed
124 period shall place the account in default and shall automatically
125 terminate the election of the employer to pay into the workers’
126 compensation fund and shall deprive the employer and the
127 employees of the default elective employer of the benefits and
128 protection afforded by this chapter, including section six of this
129 article, and the employer is liable as provided in section eight
130 of this article. The default employer’s liability under that
131 section is retroactive to midnight of the last day of the month
132 following the end of the payment period for which the delin-
133 quency occurs. Employees who were the subject of the default
employer’s voluntary election to provide them the benefits afforded by this chapter shall have the protection terminated at the time of their employer’s default.

(f) (1) Except as provided in subdivision (3) of this subsection, any employer who is required to subscribe to the fund and who is in default on the effective date of this section or who subsequently defaults, and any employer who has elected to subscribe to the fund and who defaults and whose account is terminated prior to the effective date of this section or whose account is subsequently terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all delinquent payroll and other reports required by the commission and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and the penalty for late reporting and payment. Interest is calculated as provided by section thirteen of this article.

The commission shall not have the authority to waive either premium or accrued interest: Provided, That until termination of the commission, the commissioner shall have the authority to waive either premium or accrued interest if the waiver is part of the full and final resolution of administrative or civil litigation. The provisions of section seventeen of this article apply to any action or decision of the commission under this section.

(2) The commission may restore a defaulted or terminated employer through a reinstatement agreement. The reinstatement agreement shall require the payment in full of all premium taxes, premium deposits, the penalty for late reporting and payment, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the commission is authorized to file a lien against the employer as provided by
section five-a of this article. In addition, entry into a reinstatement agreement is discretionary with the commission. Its discretion shall be exercised in keeping with the fiduciary obligations owed to the workers' compensation fund. If the commission declines to enter into a reinstatement agreement and if the employer does not comply with the provisions of subdivision (1) of this subsection, the commission may proceed with any of the collection efforts provided by section five-a of this article or as otherwise provided by this code. Applications for reinstatement shall: (A) Be made upon forms prescribed by the commission; (B) include a report of the gross wages payroll of the employer which had not been reported to the commission during the entire period of delinquency and default. The gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of delinquency and default or equal to another portion of the liability determined by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement is entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the commission: Provided, That if the commission reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current reports and to pay current premiums within the month following the end of the period for which the report and payment are due, or to otherwise maintain its account in good standing or, if the reinstatement agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application and the reinstatement agreement to be null, void and of no effect,
and the employer is denied the benefits and protection of this chapter effective from the date that the employer’s account originally became delinquent.

(3) Any employer who fails to maintain its account in good standing with regard to subsequent premium taxes and premium deposits after filing an application for reinstatement and prior to the final resolution of an application for reinstatement by entering into a reinstatement agreement or by payment of the liability in full as provided in subdivision (1) of this subsection shall cause the reinstatement application to be null, void and of no effect and the employer shall be denied the benefits and protection of this chapter effective from the date that the employer’s account originally became delinquent.

(4) Following any failure of an employer to comply with the provisions of a reinstatement agreement, the commission may make and continue with any of the collection efforts provided by this chapter or elsewhere in this code even if the employer files another reinstatement application.

(g) With the exception noted in subsection (h), section one of this article, no employee of an employer required by this chapter to subscribe to the workers’ compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer’s account is either delinquent or in default.

(h) (1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the
balance due the employer of its deposit, after deducting all
amounts owed by the employer to the workers’ compensation
fund and other agencies of this state, and the commission shall
notify the employees of the employer of the termination in the
manner as the commission may consider best and sufficient.

(3) Notice to employees provided in this section shall be
given by posting written notice that the employer is defaulted
under the compensation law of West Virginia and in the case of
employers required by this chapter to subscribe and pay
premiums to the fund, that the defaulted employer is liable to its
employees for injury or death, both in workers’ compensation
benefits and in damages at common law or by statute; and in the
case of employers not required by this chapter to subscribe and
pay premiums to the fund, but voluntarily electing to do so as
provided in this article, that neither the employer nor the
employees are protected by the law as to any injury or death
sustained after the date specified in the notice. The notice shall
be in the form prescribed by the commission and shall be
posted in a conspicuous place at the chief works of the em-
ployer, as it appears in records of the commission. If the chief
works of the employer cannot be found or identified, the notices
shall be posted at the front door of the courthouse of the county
in which the chief works are located, according to the commis-
sion’s records. Any person who shall, prior to the reinstatement
of the employer, as provided in this section, or prior to sixty
days after the posting of the notice, whichever shall first occur,
remove, deface or render illegible the notice, shall be guilty of
a misdemeanor and, upon conviction thereof, shall be fined one
thousand dollars. The notice shall state this provision upon its
face. The commission may require any sheriff, deputy sheriff,
constable or other official of the state of West Virginia,
authorized to serve civil process, to post the notice and to make
return thereof of the fact of the posting to the commission. Any
failure of the officer to post any notice within ten days after he
or she has received the notice from the commission, without
just cause or excuse, constitutes a willful failure or refusal to
perform a duty required of him or her by law within the
meaning of section twenty-eight, article five, chapter sixty-one
of this code. Any person actually injured by reason of the
failure has an action against the official, and upon any official
bond he or she may have given, for the damages as the person
may actually have incurred, but not to exceed, in the case of any
surety upon the bond, the amount of the penalty of the bond.
Any official posting the notice as required in this subdivision is
entitled to the same fee as is now or may hereafter be provided
for the service of process in suits instituted in courts of record
in the state of West Virginia. The fee shall be paid by the
commission out of any funds at its disposal, but shall be
charged by the commission against the account of the employer
to whose delinquency the notice relates.

§23-2-5a. Collection of premiums from defaulting employers;
interest and penalties; civil remedies; creation and
enforcement of lien against employer and pur-
chaser; duty of secretary of state to register liens;
distraint powers; insolvency proceedings; secretary
of state to withhold certificates of dissolution;
injunctive relief; bond; attorney fees and costs.

(a) The workers’ compensation commission in the name of
the state may commence a civil action against an employer
who, after due notice, defaults in any payment required by this
chapter. If judgment is against the employer, the employer
shall pay the costs of the action. A civil action under this
section shall be given preference on the calendar of the court
over all other civil actions. Upon prevailing in a civil action,
the commission is entitled to recover its attorneys’ fees and
costs of action from the employer.

(b) In addition to the provisions of subsection (a) of this
section, any payment, interest and penalty due and unpaid under
this chapter is a personal obligation of the employer immedi-
ately due and owing to the commission and shall, in addition,
be a lien enforceable against all the property of the employer:
Provided, That the lien shall not be enforceable as against a
purchaser (including a lien creditor) of real estate or personal
property for a valuable consideration without notice, unless
docketed as provided in section one, article ten-c, chapter
thirty-eight of this code: Provided, however, That the lien may
be enforced as other judgment liens are enforced through the
provisions of said chapter and the same is considered deemed
by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed, the
commission may in the name of the state, after giving appropria-
te notice as required by due process, restrain upon any
personal property, including intangible property, of any
employer delinquent for any payment, interest and penalty
thereon. If the commission has good reason to believe that the
property or a substantial portion of the property is about to be
removed from the county in which it is situated, upon giving
appropriate notice, either before or after the seizure, as is proper
in the circumstances, the commission may likewise restrain in
the name of the state before the delinquency occurs. For that
purpose, the commission may require the services of a sheriff
of any county in the state in levying the distress in the county
in which the sheriff is an officer and in which the personal
property is situated. A sheriff collecting any payment, interest
and penalty thereon is entitled to the compensation as provided
by law for his or her services in the levy and enforcement of
executions. Upon prevailing in any distraint action, the
commission is entitled to recover its attorneys' fees and costs
of action from the employer.

(d) In case a business subject to the payments, interest and
penalties thereon imposed under this chapter is operated in
connection with a receivership or insolvency proceeding in any
state court in this state, the court under whose direction the
business is operated shall, by the entry of a proper order or
decree in the cause, make provisions, so far as the assets in
administration will permit, for the regular payment of the
payments, interest and penalties as they become due.

(e) The secretary of state of this state shall withhold the
issuance of any certificate of dissolution or withdrawal in the
case of any corporation organized under the laws of this state or
organized under the laws of any other state and admitted to do
business in this state, until notified by the commission that all
payments, interest and penalties thereon against the corporation
which is an employer under this chapter have been paid or that
provision satisfactory to the commission has been made for
payment.

(f) In any case when an employer required to subscribe to
the fund defaults in payments of premium, premium deposits,
penalty or interest thereon, for as many as two reporting
periods, which reporting periods need not be consecutive, and
remains in default after due notice, the commission may bring
action in the circuit court of Kanawha County to enjoin the
employer from continuing to carry on the business in which the
liability was incurred: Provided, That the commission may as
an alternative to this action require the delinquent employer to
file a bond in the form prescribed by the commission with
satisfactory surety in an amount not less than fifty percent more
than the payments, interest and penalties due.

§23-2-9. Election of employer or employers' group to be self-
insured and to provide own system of compensation;
exceptions; catastrophe coverage; self administra-
tion; rules; penalties; regulation of self-insurers.

(a) Notwithstanding any provisions of this chapter to the
contrary, the following types of employers or employers'
groups may apply for permission to self-insure their workers' compensation risk including their risk of catastrophic injuries.

(1) The types of employers are:

(A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided for in this chapter at least equal in value to the compensation provided for in this chapter;

(B) Any employer or group of employers as provided for subdivision (c) of such capability and financial responsibility who maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided for in this chapter; or

(C) Any employer who is signatory to a collective bargaining agreement that allows for participation in a group workers' compensation insurance program may join with any other employer or employers that are signatory to a collective bargaining agreement or agreements that allow for participation in a group workers' compensation program and jointly apply to the commission to collectively self-insure their obligations under this chapter. The employers must collectively meet the conditions set forth in paragraph (A) or (B) of this subdivision. There shall be joint and several liability for all employers who choose to jointly self-insure under the provisions of this article.

(2) In order to be approved for self-insurance status, the employer shall:

(A) Have an effective health and safety program at its workplaces; and

(B) Provide security or bond in an amount and form determined by the executive director with the approval of the
board of managers which shall balance the employer’s financial
county on an analysis of its audited financial
statements and the full accrued value of current liability for
future claim payments based upon generally accepted actuarial
and accounting principles of the employer’s existing and
expected liability.

(3) Any employer whose record upon the books of the
commission shows a liability, as determined on an accrued
basis against the workers’ compensation fund incurred on
account of injury to or death of any of the employer’s employ-
ees, in excess of premiums paid by the employer, shall not be
granted the right, individually and directly or from the benefit
funds or system of compensation, to be self-insured until the
employer has paid into the workers’ compensation fund the
amount of the excess of liability over premiums paid, including
the employer’s proper proportion of the liability incurred on
account of catastrophes or second injuries as defined in section
one, article three of this chapter and charged against such fund.

(4) Upon a finding that the employer has met all of the
requirements of this section, the employer may be permitted
self-insurance status. An annual review of each self-insurer’s
continuing ability to meet its obligations and the requirements
of this section shall be made by the workers’ compensation
commission. This review shall include a redetermination of the
amount of security or bond which shall be provided by the
employer. Failure to provide any new amount or form of
security or bond may cause the employer’s self-insurance status
to be terminated by the workers’ compensation commission.
The security or bond provided by employers prior to the second
day of February, one thousand nine hundred ninety-five, shall
continue in full force and effect until the performance of the
employer’s annual review and the entry of any appropriate
decision on the amount or form of the employer’s security or
bond.
Whenever a self-insured employer furnishes security or bond, including replacement and amended bonds and other securities, as surety to ensure the employer's or guarantor's payment of all obligations under this chapter for which the security or bond was furnished, the security or bond shall be in the most current form or forms approved and authorized by the commission for use by the employer or its guarantors, surety companies, banks, financial institutions or others in its behalf for that purpose.

(b) (1) Notwithstanding any provision in this chapter to the contrary, self-insured employers shall, effective the first day of July, two thousand four, administer their own claims. The executive director shall, pursuant to rules promulgated by the board of managers, regulate the administration of claims by employers granted permission to self-insure their obligations under this chapter. Such rules shall be promulgated at least thirty days prior to the first day of July, two thousand four. A self-insured employer shall comply with rules promulgated by the board of managers governing the self-administration of its claims.

(2) An employer or employers' group who self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the
provisions of this chapter and such rules relating to this chapter as may be approved by the board of managers may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter. Claim notices currently generated by the commission on behalf of self-insured employers must be generated and sent by the self-insured employer or its third-party administrator.

(c) Each self-insured employer shall, on or before the last day of the first month of each quarter or other assigned reporting period, file with the commission a certified statement of the total gross wages and earnings of all of the employer’s employees subject to this chapter for the preceding quarter or other assigned reporting period. Each self-insured employer shall pay into the workers’ compensation fund as portions of its self-insured employer premium tax:

1. A sum sufficient to pay the employer’s proper portion of the expense of the administration of this chapter;
2. A sum sufficient to pay the employer’s proper portion of the expense of claims for those employers who are in default in the payment of premium taxes or other obligations;
3. A sum sufficient to pay the employer’s fair portion of the expenses of the disabled workers’ relief fund;
4. A sum sufficient to maintain as an advance deposit an amount equal to the previous quarter or other assigned reporting period’s payment of each of the foregoing three sums;
5. A sum as determined by the commission to be sufficient to pay the employer’s portion of rates, surcharges or deficit management and deficit reduction assessments; and
6. A sum as determined by the commission to pay the employer’s portion of self-insured catastrophic injury benefits,
and second injury payments on all self-insured second injury
claims other than second injury claims for those employers self-
insured for second injury. Any employer previously self-
insured for second injury benefits shall continue to be responsi-
ble for payment of those benefits.

(d) The required payments to the employer’s injured
employees or dependents of fatally injured employees as
benefits provided for by this chapter including second injury
benefits and catastrophic injury benefits, if applicable, shall
constitute the remaining portion of the self-insurer’s premium
tax.

(e) Notwithstanding any provision of subsection (d) of this
section to the contrary, except for those increases made
effective for fiscal year two thousand four by action of the
compensation programs performance council heretofore
established in article three, chapter twenty-one-a of this code
taken prior to the effective date of the amendment and
reenactment of this section, the portion of the premium taxes
for each self-insured employer as determined under subdivi-
sions (1) through (6), inclusive, subsection (c) of this section
shall not be increased during fiscal years two thousand four,
two thousand five and two thousand six.

(f)(1) If an employer defaults in the payment of any portion
of its self-insured employer premium taxes, surcharges or
assessments, the commission shall, in an appropriate case,
determine the full accrued value based upon generally accepted
actuarial and accounting principles of the employer’s liability
including the costs of all awarded claims and of all incurred but
not reported claims. The amount determined may, in an
appropriate case, be assessed against the employer. The
commission may demand and collect the present value of the
defaulted tax liability. Interest shall accrue upon the demanded
amount as provided for in section thirteen of this article until
the premium tax is fully paid. Payment of all amounts then due
to the commission and to the employer’s employees is a
sufficient basis for reinstating the employer to good standing
with the fund. In addition, any self-insured employer who,
without good cause, ceases to make required payments to the
employer’s injured employees or dependents of fatally injured
employees as benefits provided for by this chapter including
second injury benefits and catastrophic injury benefits, if
applicable, is in default. The board of managers shall establish
by rule the procedures by which the existence or nonexistence
of good cause is to be determined by the commission.

(2) Premium tax assessments are special revenue taxes
under and according to the provisions of state workers’ com-
pen-sation law and are considered to be tax claims, as priority
claims or administrative expense claims according to those
provisions under the law provided in the United States bank-
ruptcy code, Title 11 of the United States Code. In addition, as
the same was previously intended by the prior provisions of this
section, this amendment and reenactment is for the purpose of
clarification of the taxing authority of the workers’ compen-
sation commission.

(g) Each self-insured employer shall elect whether or not to
self-insure its catastrophic injury risk as defined in subsection
(c), section one, article three of this chapter. A self-insured
employer who elects to insure its catastrophic risk through a
policy of excess insurance obtained through a private insurance
carrier approved by the commission shall provide a copy of the
policy to the commission. Upon termination of the commis-
son, self-insured employers shall either self-insure their
catastrophic risk or insure their catastrophic risk through a
policy of excess insurance obtained through a private insurance
carrier approved by the insurance commissioner. Self-insured
employers shall also reinsure their catastrophic risks.
(1) If the employer does not elect to self-insure its catastrophic risk, the employer shall pay premium taxes for this coverage in the same manner as is provided for in section four of this article and in rules adopted to implement that section. As stated in this subsection, this option shall expire upon termination of the commission. If the employees of that employer suffer injury or death from a catastrophe, the payment of the resulting benefits shall be made from the catastrophe reserve of the surplus fund provided for in subsection (b), section one, article three of this chapter. Any portion of an employer’s catastrophic liability insured and paid under a policy of insurance purchased by the employer shall not be included in the liabilities upon which the employer’s security or bond is determined in subsection (a) of this section.

(2) If an otherwise self-insured employer elects to self-insure its catastrophic risk, the security or bond required in subsection (a) of this section shall include the liability for the catastrophic risk.

(h) For those employers previously permitted to self-insure their second injury risks, the amount of the security or bond required in subsection (a) of this section shall include the liability for that risk. All benefits provided for by this chapter which are awarded to the employer’s employees which constitute second injury life awards shall be paid by the employer and not the commission.

(i) The commission may create, implement, establish and administer a perpetual self-insurance security risk pool of funds, sureties, securities, insurance provided by private insurance carriers or other states’ programs, and other property, of both real and personal properties, to secure the payment of obligations of self-insured employers. If a pool is created, the board of managers shall adopt rules for the organizational plan, participation, contributions and other payments which may be
required of self-insured employers under this section. The
board of managers may adopt a rule authorizing the commis-
sion to assess each self-insured employer in proportion accord-
ing to each employer's portion of the unsecured obligation and
liability or to assess according to some other method provided
for by rule which shall properly create and fund the risk pool to
serve the needs of employees, employers and the workers'
compensation fund by providing adequate security. The board
of managers, in establishing a security risk pool, may authorize
the executive director to use any assessments, premium taxes
and revenues and appropriations as may be made available to
the commission. Effective upon termination of the commis-
sion, all statutory and regulatory authority provided to the
commission and board of managers over pools created pursuant
to this section shall transfer to the insurance commissioner:
Provided, That the funds contained in the security pool shall be
deposited into the old fund and the funds contained in the
guaranty pool shall be deposited in the self-insured employer
guaranty risk pool created in article two-c of this chapter. All
assets held by the commission for security pursuant to 85 CSR
§19 (2004) shall transfer to the insurance commissioner.

(j) Any self-insured employer which has had a period of
inactivity due to the nonemployment of employees which
results in its reporting of no wages on reports to the commission
for a period of four or more consecutive quarters shall have its
status at the commission inactivated and shall apply for
reactivation to status as a self-insured employer prior to its
reemployment of employees. Despite the inactivation, the self-
insured employer shall continue to make payments on all
awards for which it is responsible. Upon application for
reactivation of its status as an operating self-insured employer,
the employer shall document that it meets the eligibility
requirements needed to maintain self-insured employer status
under this section and any rules adopted to implement it. If the
employer is unable to requalify and obtain approval for
reactivation, the employer shall, effective with the date of employment of any employee, become a subscriber to the workers' compensation fund and, upon termination of the commission, shall purchase workers' compensation insurance as provided for in article two-c of this chapter, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(k) In any case under the provisions of this section that require the payment of compensation or benefits by an employer in periodical payments and the nature of the case makes it possible to compute the present value of all future payments, the commission may, in its discretion, at any time compute and permit to be paid into the workers' compensation fund an amount equal to the present value of all unpaid future payments on the award or awards for which liability exists in trust. Thereafter, the employer shall be discharged from any further portion of premium tax liability upon the award or awards and payment of the award or awards shall be assumed by the commission. Upon termination of the commission, those self-insured employers may thereafter purchase workers' compensation insurance as provided for in article two-c of this chapter, but said self-insured employers shall remain liable for their self-insured employer claims liabilities.

(l) Any employer subject to this chapter, who elects to carry the employer's own risk by being a self-insured employer and who has complied with the requirements of this section and of any applicable rules, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after the election's approval and during the period that the employer is allowed to carry the employer's own risk.

(m) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administra-
tor unless the person or group has been determined to be qualified to be a third-party administrator by the commission pursuant to rules adopted by the board of managers. Any person or group whose status as a third-party administrator has been revoked, suspended or terminated by the commission shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the commission.

(n) All regulatory, oversight, and document gathering authority provided to the commission under section nine, article two, chapter twenty-three shall transfer to the insurance commissioner and the industrial council upon termination of the commission.

ARTICLE 2A. SUBROGATION.

§23-2A-1. Subrogation; limitations; effective date.

(a) Where a compensable injury or death is caused, in whole or in part, by the act or omission of a third party, the injured worker or, if he or she is deceased or physically or mentally incompetent, his or her dependents or personal representative are entitled to compensation under the provisions of this chapter and shall not by having received compensation be precluded from making claim against the third party.

(b) Notwithstanding the provisions of subsection (a) of this section, if an injured worker, his or her dependents or his or her personal representative makes a claim against the third party and recovers any sum for the claim, the commission or a self-insured employer shall be allowed statutory subrogation with regard to medical benefits paid as of the date of the recovery. The commission or self-insured employer shall permit the deduction from the amount received reasonable attorney’s fees and reasonable costs. It is the duty of the injured worker, his or her dependents, his or her personal representative, or his or her
attorney to notify the commission and the employer when the
claim is filed against the third party.

(c) In the event that an injured worker, his or her depend-
ents or personal representative makes a claim against a third
party, there shall be, and there is hereby created, a statutory
subrogation lien upon the moneys received which shall exist in
favor of the commission or self-insured employer. Any injured
worker, his or her dependents or personal representative who
receives moneys in settlement in any manner of a claim against
a third party remains subject to the subrogation lien until
payment in full of the amount permitted to be subrogated under
subsection (b) of this section is paid.

(d) Effective the first day of January, two thousand six, the
commission, any successor to the commission, any other private
carrier and any self-insured employer shall be allowed statutory
subrogation with regard to all medical and indemnity benefits
actually paid as of the date of the recovery. The commission,
successor to the commission, any other private carrier and the
self-insured employer shall permit the deduction from the
amount received a reasonable attorney's fees and costs and may
negotiate the amount to accept as subrogation. It is the duty of
the injured worker, his or her dependents, his or her personal
representative or his or her attorney to give reasonable notice to
the commission, successor to the commission, any other private
carrier, or the self-insured employer after a claim is filed
against the third party and prior to the disbursement of any third
party recovery. The statutory subrogation described in this
section does not apply to uninsured and underinsured motorist
coverage or any other insurance coverage purchased by the
injured worker or on behalf of the injured worker. If the injured
worker obtains a recovery from a third party and the injured
worker, personal representative or the injured worker's attorney
fails to protect the statutory right of subrogation created herein,
the injured worker, personal representative and the injured
52 worker’s attorney shall lose the right to retain attorney fees and
costs out of the subrogation amount. In addition, such failure
54 creates a cause of action for the private carrier or self-insured
employer against the injured worker, personal representative
and the injured worker’s attorney for the amount of the full
subrogation amount and the reasonable fees and costs associ-
ated with any such cause of action. The right of subrogation
59 granted by the provisions of this subsection shall not attach to
any claim arising from a right of action which arose or accrued,
in whole or in part, prior to the effective date of the amendment
and reenactment of this section during the year two thousand
five.

64 (e) The right of subrogation granted the commission in
subsections (a) through (c), inclusive, of this section shall be
exercised by the insurance commissioner and his or her
designated administrator of the old fund, as set forth in article
two-c of this chapter, for any claim arising from a right of
action which arose or accrued, in whole or in part, prior to the
effective date of the amendment and reenactment of this section
during the year two thousand five. The insurance commissioner
and his or her designated administrator shall be paid a recovery
fee of ten percent of the actual amount recovered through
subrogation with the remainder to be deposited into the old
fund.

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.
§23-2C-3. Creation of employer mutual as successor organization of the West
Virginia workers’ compensation commission.
§23-2C-4. Governance and organization.
§23-2C-5. Creation of the industrial council; duties.
§23-2C-6. Creation of new fund, old fund, mutualization transition fund, uninsured
employer fund, self-insured employer guaranty risk pool, self-insured
employer security risk pool, private carrier guaranty fund, and
assigned risk fund.
§23-2C-8. West Virginia uninsured employers' fund.
§23-2C-10. West Virginia adverse risk assignment.
§23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.
§23-2C-12. Certain personnel provisions governing employees laid-off by the mutual during its initial year of operation.
§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.
§23-2C-14. Certain benefits provided to commission employees.
§23-2C-17. Administration of a competitive system.
§23-2C-18. Ratemaking; insurance commissioner.
§23-2C-19. Special provisions as to private carrier premium collection.
§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.
§23-2C-23. Transfer of assets and contracts.

§23-2C-1. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the state-run monopolistic workers' compensation system;

3 (2) Similar short-term and long-term crises have been ongoing during the past two decades;

4 (3) During the current crisis, employers in West Virginia find it increasingly difficult to afford the rates charged by the workers' compensation commission for workers' compensation coverage and that paying said rates adversely impacts employers' ability to compete in a global economic environment;

5 (4) The cost of obtaining workers' compensation coverage from the state system may result in many employers leaving the state;
(5) Employers' access to competitive workers' compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to provide an enduring solution to this recurring workers' compensation crisis;

(7) An employers' mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

(8) There is a substantial public interest in creating a method to provide a stable workers' compensation insurance market in this state;

(9) The state-run workers' compensation program is a substantial actual and potential liability to the state;

(10) There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers' compensation coverage for employers in this state;

(11) A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

(12) Because the public will greatly benefit from the formation of an employers' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity's initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of an employers' mutual insurance company that will provide:
(1) A means for employers to obtain workers' compensation insurance that is reasonably available and affordable; and

(2) Compensation to employees of mutual policyholders who suffer workplace injuries as defined in chapter twenty-three of this code.


(a) "Executive director" means the executive director of the West Virginia workers' compensation commission as provided in section one-b, article one, chapter twenty-three of this code.

(b) "Commission" means the West Virginia workers' compensation commission as provided by section one, article one, chapter twenty-three of this code.

(c) "Insurance commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of this code.

(d) "Company" or "successor to the commission" means the employers' mutual insurance company created pursuant to the terms of this article.

(e) "Policy default" shall mean a policyholder that has failed to comply with the terms of its workers' compensation insurance policy and is consequently without workers' compensation insurance coverage.

(f) "Industrial insurance" means insurance which provides all compensation and benefits required by chapter twenty-three of this code.

(g) "Insurer" includes:

(1) A self-insured employer; and
(2) A private carrier.

(h) "Industrial council" means the advisory group established in section five of this article.

(i) "Mutualization transition fund" shall be a fund over which the state treasurer is custodian. Moneys transferred or otherwise payable to the mutualization transition fund shall be deposited in the state treasury to the credit of the mutualization transition fund. Disbursements shall be made from the mutualization transition fund upon requisitions signed by the executive director, and, upon termination of the commission, the insurance commissioner, and shall be reasonably related to the legal, operational, consultative and human resource related expenses associated with the establishment of the company and the transferring of personnel from the commission to the company.

(j) "New fund" shall mean a fund owned and operated by the commission and, upon termination of the commission, the successor organization of the West Virginia workers' compensation commission and shall consist of those funds transferred to it from the workers' compensation fund and any other applicable funds. New fund shall include all moneys due and payable to the workers' compensation fund for the quarters ending the thirtieth day of September, two thousand five and the thirty-first day of December, two thousand five, which have not been collected by the workers' compensation fund as of the thirty-first day of December, two thousand five.

(k) "New fund liabilities" shall mean all claims payment obligations (indemnity and medical expenses) for all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or after the first day of July, two thousand five: Provided, That new fund liabilities shall begin with claims payments becoming due and owing on said claims on or after the first day of January, two thousand six.
(I) "Old fund" shall mean a fund held by the state treasurer's office consisting of those funds transferred to it from the workers' compensation fund or other sources and those funds due and owing the workers' compensation fund as of the thirtieth day of June, two thousand five that are thereafter collected. The old fund and assets therein shall remain property of the state and shall not novate or otherwise transfer to the company.

(m) "Old fund liabilities" mean all claims payment obligations (indemnity and medical expenses), related liabilities and appropriate administrative expenses necessary for the administration of all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or before the thirtieth day of June, two thousand five: Provided, That old fund liabilities shall include all claims payments for any claim, regardless of date of injury or last exposure, through the thirty-first day of December, two thousand five: Provided, however, That old fund liabilities shall include all claims with dates of injuries or last exposure prior to the first day of July, two thousand four for bankrupt self-insured employers that had defaulted on their claims obligations which have been recognized by the commission in its actuarially determined liability number as of the thirtieth day of June, two thousand five.

(n) "Private carrier" means any insurer or the legal representative of an insurer authorized by the insurance commissioner to provide workers' compensation insurance pursuant to this chapter and which maintains an office in the state. The term does not include a self-insured employer or private employers but shall include any successor to the commission.

(o) "Uninsured employer fund" means a fund held by the state treasurer's office consisting of those funds transferred to it from the workers' compensation fund and any other source. Disbursements from the uninsured employer fund shall be upon
requisitions signed by the insurance commissioner and the
administrator of the fund, and as otherwise set forth in an
exempt legislative rule promulgated by the workers’ compensa-
tion board of managers.

(p) "Self-insured employer guaranty risk pool" shall be a
fund held by the state treasurer’s office consisting of those
funds transferred to it from the guaranty pool created pursuant
to 85 CSR §19 (2004) and any future funds collected through
continued administration of that exempt legislative rule as
administered by the insurance commissioner. Disbursements
shall be made from the self-insured employer guaranty risk pool
upon requisitions signed by the insurance commissioner and
the administrator of the fund. The obligations of the fund shall
be as provided in 85 CSR §19 (2004). The company shall
administer the self-insured employer guaranty risk pool for a
term and administrative fee as provided in the administration of
the old fund.

(q) "Self-insured employer security risk pool" shall be a
fund held by the state’s treasurer consisting of those funds paid
into it through the insurance commissioner’s administration of
85 CSR §19 (2004). Disbursement from said fund shall be
made from the self-insured employer security risk pool upon
requisitions signed by the insurance commissioner and the
administrator of the fund. The obligations of the fund shall be
as provided in 85 CSR §19: Provided, That said liabilities shall
be limited to those self-insured employers who default on their
claims obligations after the termination of the commission. The
company shall administer the self-insured employer security
risk pool for a term and administrative fee as provided in the
administration of the old fund.

(r) "Private carrier guaranty fund" shall be a fund held by
the state treasurer’s office consisting of funds deposited
pursuant to this article. Disbursements shall be made from the
private carrier guaranty fund upon requisitions signed by the insurance commissioner and the administrator of the fund. The obligations of the fund shall be as provided in this article. The company shall administer the private carrier guaranty fund for a term and administrative fee as provided in the administration of the old fund.

(s) "Assigned risk fund" shall be a fund held by the state treasurer's office consisting of funds deposited pursuant to this article. Disbursements shall be made from the assigned risk fund upon requisitions signed by the insurance commissioner. The obligations of the fund shall be as provided in this article.

(t) "Comprehensive financial plan" shall mean the plan compiled by the director for acceptance by the insurance commissioner identifying and forecasting cash flows, funding sources, debt terms and structures, and scheduled amortization and permanent resolution of all old fund liabilities. The comprehensive financial plan shall provide for the retirement of the revenue bonds authorized by article two-d, chapter twenty-three of this code and all realized and potential claims against the old fund shall be fully reserved. The comprehensive financial plan may include any other information the insurance commissioner may require as a basis for managing the post-transition fiscal soundness of the old fund.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia workers' compensation commission.

(a) On or before the first day of June, two thousand five, the executive director may take such actions as are necessary to establish an employers' mutual insurance company as a domestic, private, nonstock, corporation to:

1. Insure employers against liability for injuries and occupational diseases for which their employees may be
entitled to receive compensation pursuant to chapter twenty-three of this code and federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, et seq.;

(2) Provide employer's liability insurance incidental to and provided in connection with the insurance specified in paragraph (1), including coal-workers pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

(3) Transact such other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(4) The company shall not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the insurance commissioner and apply for a license with the insurance commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the insurance commissioner shall act on the documents within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature hereby authorizes the insurance commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three of chapter thirty-three. The
company shall furnish the insurance commissioner with all information and cooperate in all respects necessary for the insurance commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three. The insurance commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until such time as the commissioner in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall be subject to comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subsection (4) of this section, the insurance commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three as the insurance commissioner determines is necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless said deadline is extended by the insurance commissioner.

(c) For the duration of its existence, the company is not and shall not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, shall be the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not and shall not be considered part of the general revenue fund of the state. The
debts, claims, obligations and liabilities of the company are not and shall not be considered a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; the provisions of article six-a of said chapter; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon said termination, private carriers, including the company, shall not be subject to payment of premium taxes, surcharges and credits contained in article three of chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market shall be subject to the following:

(1) Each fiscal year, the insurance commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policy holders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the insurance commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policy holder's premium payment and deductible payments as a surcharge and remitted to the insurance commissioner. Said surcharge shall be remitted within ten (10) days of receipt of premium payments, whenever said payments are made by its insureds;

(2) Each fiscal year, the insurance commissioner shall calculate a percentage surcharge to be remitted on a monthly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in
the state into the portion of the insurance commissioner’s budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer’s monthly payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The workers’ compensation board of managers may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the insurance commissioner with all required information and cooperate in all respects necessary for the insurance commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three. The surcharge shall be calculated so as to only defray the costs associated with the administration of chapter twenty-three of this code and the funds raised shall not be used for any other purpose.

Upon termination of the commission, the company and all other private carriers shall collect a premiums surcharge from their policy holders equal to ten percent, or such higher or lower rate as annually determined, by the first day of May of each year, by the insurance commissioner to produce forty-five million dollars annually, of each policy holder’s periodic premium amount for workers’ compensation insurance. Additionally, by the first day of May each year, the self-insured employer community shall be assessed a cumulative total of nine million dollars. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the workers’ compensation board of managers. The amount collected shall be remitted to the insurance commissioner for deposit in the workers’ compensation debt reduction fund created in section five, article two-d of this chapter.

The new premiums surcharge imposed by subdivision (2), subsection (f) of this section shall sunset and not be collectible with respect to workers’ compensation insurance.
 premiums paid when the policy is renewed on or after the first
day of the month following the month in which the Governor
certifies to the Legislature that the revenue bonds issued
pursuant to article two-d, chapter twenty-three of this code have
been retired and that the unfunded liability of the old fund has
been paid or has been provided for in its entirety, whichever
occurs last.

§23-2C-4. Governance and organization.

(a) (1) The commission shall implement the initial forma-
tion and organization of the company as provided by this
article.

(2) From the inception of the company, until the first day of
January, two thousand six, the company shall be governed by
a provisional board of directors consisting of the three-persons
on the executive committee of the workers' compensation board
of managers and four members of the Legislature. Two
members of the West Virginia Senate and two members of the
West Virginia House of Delegates shall serve as advisory
nonvoting members of the board. The Governor shall appoint
the legislative members to the board. No more than three of the
legislative members shall be of the same political party. The
provisional board shall have the authority to function as
necessary to establish the company and cause it to become
operational, including the right to contract on behalf of the
company. Each voting board member shall receive compensa-
tion of not more than three hundred fifty dollars per day and
actual and necessary expenses for each day during which he or
she is required to and does attend a meeting of the board.

(3) The provisional board shall develop procedures for the
nomination of the board of directors that will succeed the
provisional board on the first day of January, two thousand six,
and for the conduct of the election, to be held no later than the
first day of November, two thousand five, and shall give notice of the election to the current subscribers to the workers' compensation fund. These procedures shall be exempt from the provisions of article three, chapter twenty-nine-a of this code.

(4) Except as limited by this section and applicable insurance rules and statutes, the company may: (1) On its own; (2) through the formation or acquisition of subsidiaries; or (3) through a joint enterprise, offer:

(A) Workers' compensation insurance in a state other than West Virginia to the extent it also provides workers' compensation or occupational disease insurance coverage to the employer pursuant to chapter twenty-three of this code;

(B) Other workers' compensation products and services and related products and services in West Virginia or other states; and

(C) Other property and casualty insurance in West Virginia and other states.

(b) Effective the first day of January, two thousand six, the company shall be governed by a board of directors consisting of seven directors, as follows:

(1) Three owners or officers of an entity that has purchased or will immediately upon termination of the commission purchase and maintain an active workers' compensation insurance policy from the company. At least one shall be a certified public accountant with financial management or pension or insurance audit expertise and at least one shall be an attorney with financial management experience.

(2) Two directors who have substantial experience as an officer or employee of a company in the insurance industry, one of whom is from a company with less than fifty employees;
(3) One director with general knowledge and experience in business management who is an officer and employee of the company and is responsible for the daily management of the company; and

(4) The chief executive officer of the company.

(c) The directors and officers of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial board of directors selected shall serve for the following terms: (1) Two for four-year terms; (2) two for three-year terms; (3) two for two-year terms; and (4) one for a one-year term. Thereafter, the directors shall serve staggered terms of four years. No director chosen may serve more than two consecutive terms, except for the chief executive officer of the company. Furthermore, owners, directors, or employees of employers otherwise licensed to write workers' compensation insurance in this state or licensed or otherwise authorized to act as a third-party administrator shall not be eligible to be nominated, appointed, elected or serve on the company’s board of directors.

(d) The executive director shall prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one and thirty-three of this code.

§23-2C-5. Creation of the industrial council; duties.

(a) There is hereby created within the office of the insurance commissioner an industrial council.

(b) On or before the first day of July, two thousand five, the governor with the advice and consent of the Senate, shall appoint five voting members to the industrial council who meet the requirements and qualifications prescribed in this subsection. Two members of the West Virginia Senate and two
members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party. The insurance commissioner shall serve as an advisory nonvoting member of the board.

(1) (A) Five members shall be appointed by the governor with the advice and consent of the Senate for terms that begin upon appointment after the effective date of this legislation and expire as follows:

(i) One member shall be appointed for a term ending the thirtieth day of June, two thousand seven;

(ii) Two members shall be appointed for a term ending the thirtieth day of June, two thousand eight; and

(iii) Two members shall be appointed for a term ending the thirtieth day of June, two thousand nine.

(B) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the council may be removed from office by the governor except for official misconduct, incompetency, neglect of duty or gross immorality.

(C) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(2) Each of the appointed voting members of the council shall be appointed based upon his or her demonstrated knowl-
edge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

(A) Each shall hold a baccalaureate degree from an accredited college or university: Provided, That no more than one of the appointed voting members may serve without a baccalaureate degree from an accredited college or university if the member has a minimum of fifteen years' experience in his or her field of expertise as required in this subdivision;

(B) Each shall have a minimum of ten years' experience in his or her field of expertise. The governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise in insurance claims management; expertise in insurance underwriting; expertise in the financial management of pensions or insurance plans; expertise as a trustee of pension or trust funds of more than two hundred beneficiaries or three hundred million dollars; expertise in workers' compensation management; expertise in loss prevention and rehabilitation; expertise in occupational medicine demonstrated by licensure as a medical doctor in West Virginia and experience, board certification or university affiliation; or expertise in similar areas of endeavor;

(C) At least one shall be a certified public accountant with financial management or pension or insurance audit expertise; at least one shall be an attorney with financial management experience; one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance or economics; and one shall represent organized labor.

(D) The council shall appoint one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The council
shall hold meetings at the request of the chairperson or at the request of at least three of the members of the council, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Three members of the council constitute a quorum for the conduct of the business of the council. No vacancy in the membership of the council shall impair the right of a quorum to exercise all the rights and perform all the duties of the council. No action shall be taken by the council except upon the affirmative vote of three members of the council.

(3) (A) Each voting appointed member of the council shall receive compensation of not more than three hundred fifty dollars per day for each day during which he or she is required to and does attend a meeting of the board.

(B) Each voting appointed member of the council is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(C) Each member of the council shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

(c) The industrial council shall:

(1) In consultation with the insurance commissioner, establish operating guidelines and policies designed to ensure the effective administration of the workers' compensation insurance market in West Virginia.

(2) Review and approve, reject or modify rules that are proposed by the insurance commissioner for operation and
regulation of the workers' compensation insurance market before the rules are filed with the secretary of state. The rules adopted by the industrial council are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The industrial council shall follow the remaining provisions of said chapter for giving notice to the public of its actions and for holding hearings and receiving public comments on the rules.

(3) In accordance with the laws and rules of West Virginia, establish and monitor performance standards and measurements to ensure the timeliness and accuracy of activities performed under chapter twenty-three of this code and applicable rules.

(4) Submit for approval by the Legislature, as an isolated and clearly discernable component of the insurance commissioner's budget, a budget for the sufficient administrative resources and funding requirements necessary for their duties under this article.

(5) Perform all record and information gathering functions necessary to carry out its duties under this code.

(6) Every two years, conduct an overview of the safety initiatives currently being utilized or which could be utilized in the workers' compensation insurance market and report said finding to the joint committee on government and finance. Each private carrier and self-insured employer shall cooperate with the council in the performance of its duties to evaluate insurer services provided to employers in controlling losses and providing information on the prevention of industrial accidents or occupational diseases. Each employer, private carrier and self-insured employer shall provide to the council, upon request, any information, statistics or data in its records requested by the council in the performance of these duties.
(7) Perform all other duties as specifically provided in this chapter for the industrial council and those duties incidental thereto.

(8) Establish a method of indexing claims of injured workers that will make information concerning the injured workers of one insurer available to other insurers.

(A) Every insurer shall provide information, as required by the industrial council, for establishing and maintaining the claims index.

(B) If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he or she must obtain the written consent of the employee or the insurance commissioner or his or her designee. The use of the information contained in the files is limited to the administration of the claim.


(a) Effective upon the date upon which this enactment is made effective by the Legislature, there is hereby created in the state treasury a “workers’ compensation old fund”, “workers’ compensation new fund”, “mutualization transition fund”, “workers’ compensation uninsured employers’ fund”, “self-insured employer guaranty risk pool”, “self-insured employer security risk pool”, “private carrier guaranty fund” and an “assigned risk fund”. The executive director of the workers’ compensation commission shall have full authority to administer the old fund, the new fund, the mutualization transition fund, the uninsured employers’ fund, the self-insured employer
guaranty risk pool, the self-insured employer security risk pool
and the private carrier guaranty fund until termination of the
commission. As soon as practicable upon the establishment of
the mutualization transition fund, the executive director shall
cause thirty-five million dollars to be transferred from the
workers’ compensation fund into the mutualization transition
fund. All unencumbered funds remaining in the mutualization
transition fund as of termination of the commission shall be
transferred into the private carrier guaranty fund or, if the
proclamation set forth in this article has not been issued, back
to the workers’ compensation fund. Expenditures from the
funds established by this section shall be upon appropriation of
the Legislature except that during the fiscal year ending the
thirtieth day of June, two thousand five, expenditures from the
mutualization transition fund up to amounts expended for the
purposes of this article are authorized rather than pursuant to an
appropriation by the Legislature.

(b) If the proclamation set forth in this article is issued, then
upon termination of the commission, the funds contained in the
workers’ compensation fund shall be disbursed as follows: (1)
A minimum of three hundred million dollars into the workers’
compensation old fund, the exact amount of which shall be set
forth in the governor’s proclamation provided in this article; (2)
five million dollars into the uninsured employers’ fund; and (3)
the remainder into the new fund. Additionally, the funds
contained in the guaranty pool provided in 85 CSR §19 (2004)
shall be transferred into the self-insured employer guaranty risk
pool created in this article.


(a) The state treasurer shall be the custodian of the workers’
compensation old fund, workers’ compensation uninsured
employers’ fund, the self-insured employer guaranty risk pool,
the self-insured employer security risk pool, the private carrier
guaranty fund and the assigned risk pool and moneys payable
to each of these funds shall be deposited in the state treasury to
the credit of the funds. Each fund shall be a separate and
distinct fund upon the books and records of the auditor and
treasurer. Disbursements from these funds shall be made upon
requisitions signed by the executive director and, effective upon
termination of the commission, the administrator of the funds
and the insurance commissioner. The workers’ compensation
old fund, the workers’ compensation uninsured employer fund,
the self-insured employer guaranty risk pool, self-insured
employer security risk pool, the private carrier guaranty fund
and the assigned risk fund are participant plans as defined in
section two, article six, chapter twelve of this code and are
subject to the provisions of section nine-a of said article. The
funds may be invested by the investment management board in
accordance with said article.

(b) If the governor issues the proclamation set forth in this
article, then, effective upon termination of the commission, all
remaining assets and funds contained in the workers’ compen-
sation fund which are payable to the new fund shall be so
disbursed and paid to the company by communication of the
executive director to the state treasurer or other appropriate
state official prior to the termination of the commission.

§23-2C-8. West Virginia uninsured employers’ fund.

(a) The West Virginia uninsured employers’ fund shall be
governed by the following:

(1) All money and securities in the fund must be held by the
state treasurer as custodian thereof to be used solely as provided
in this article.

(2) The state treasurer may disburse money from the fund
only upon written requisition of the insurance commissioner
and administrator of the fund.
(3) The insurance commissioner shall assess each private carrier and all self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policy holders in the form of a policy surcharge. To establish the amount of the assessment, the insurance commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall allocate a portion of that amount to be payable by private carriers, a portion to be payable by self-insured employers, and a portion to be paid by any other appropriate group. After allocating the amounts payable, the insurance commissioner shall apply an assessment rate to the:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(B) Self-insured employers that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other categories of payees that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The workers' compensation board of managers may adopt rules for the establishment and administration of the assessment methodologies, rates, payments and any penalties that the workers' compensation board of managers determines are necessary to carry out the provisions of this section.

(b) Payments from the fund shall be governed by the following:
(1) Except as otherwise provided in this subsection, an injured worker of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the uninsured employers’ fund if:

(A) He or she meets all jurisdictional and entitlement provisions of this chapter;

(B) He or she files a claim with the insurance commissioner; and

(C) He or she makes an irrevocable assignment to the insurance commissioner a right to be subrogated to the rights of the injured employee.

(2) If the insurance commissioner receives a claim, it shall immediately notify the employer of the claim. For the purposes of this section, the employer has the burden of proving that it provided mandatory workers’ compensation insurance coverage for the employee or that it was not required to maintain workers’ compensation insurance for the employee. If the employer meets this burden, benefits shall not be paid from the fund.

(3) Any employer who has failed to provide mandatory coverage required by the provisions of chapter twenty-three of this code is liable for all payments made on its behalf, including any benefits, administrative costs and attorney’s fees paid from the fund or incurred by the insurance commissioner.

(4) The insurance commissioner:

(A) May recover from the employer the payments made by it, any accrued interest and attorney fees and costs by bringing a civil action in a court of competent jurisdiction.
(B) May enter into a contract with any person, including the administrator of the uninsured employers' fund, to assist in the collection of any liability of an uninsured employer.

(C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

(5) The insurance commissioner shall:

(A) Determine whether the employer was insured within five days after receiving notice of the claim from the employee.

(B) Assign the claim to the administrator of the fund for administration and, if appropriate, payment of compensation.

(6) Upon determining whether the claim is accepted or denied, the fund administrator shall notify the injured employee and the named employer of its determination.

(7) Any party aggrieved by a determination made by the insurance commissioner or the fund administrator regarding the claims decisions made pursuant to this section may appeal that determination by filing a protest with the office of judges as set forth in article five of this chapter.

(8) An uninsured employer is liable for the interest on any amount paid on his or her claims from the fund. The interest must be calculated at a rate set in accordance with the provisions of section thirteen, article two of this chapter, compounded monthly, from the date the claim is paid from the account until payment is received by the insurance commissioner or fund administrator from the employer.

(9) Attorney's fees recoverable by the insurance commissioner or administrator pursuant to this section must be paid at the usual and customary rate for that attorney.
(10) In addition to any other liabilities provided in this section, the insurance commissioner or the fund administrator may impose an administrative fine of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by this chapter. All fines and other moneys collected pursuant to this section shall be deposited into the uninsured employer fund.

(c) The company shall be the administrator of the uninsured employers' fund from the fund's inception and thereafter for seven years and shall be charged with all authority and responsibilities incidental to the administration of the fund which are necessary to accomplish the express provisions and the intent of this chapter. The company shall be paid a monthly administrative fee of five percent of claims paid each month for the administration of the fund through the thirty-first day of December, two thousand ten, and four percent of claims paid each month for the administration of the fund thereafter through the thirty-first day of December, two thousand twelve. The company's administrative duties shall include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the state treasurer's office or other applicable state agency and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of the fund after this seven year period shall be subject to the procedures set forth in article three, chapter five-a of this code.

(d) Employees of self-insured employers who are injured while employed by a self-insured employer are ineligible for benefits from the West Virginia uninsured employer fund.


(a) The private carrier guaranty fund established in article two-c of this chapter shall provide benefits to those employees
whose employers’ private carrier is found to be insolvent by a
court of competent jurisdiction in the insurer’s state of domicile
or has otherwise defaulted on its payment obligations and is
subject to an administrative action by the insurance commis-
sioner.

(b) The private carrier guaranty fund shall be funded
through assessments on each private carrier of workers’
compensation insurance. All assessments shall be deposited in
the private carrier guaranty fund established in this article. The
assessment may be collected by each carrier from its policy
holders in the form of a policy surcharge. To establish the
amount of the assessment, the insurance commissioner shall
determine the amount of money necessary to pay outstanding
obligations of the defaulting private carrier and to maintain an
appropriate balance in the fund for each fiscal year. The
insurance commissioner shall apply an assessment rate to the
private carriers that reflects the relative hazard of the employ-
ments covered by the private carriers, results in an equitable
distribution of costs among the private carriers and is based
upon expected annual premiums to be received.

(c) A defaulting private carrier shall not be permitted to
write any workers’ compensation insurance in this state until it
has reimbursed the private carrier guaranty fund for any
payments made for the private carrier’s unpaid obligations.

(d) Private carriers providing workers’ compensation
insurance shall not be subject to article twenty-six, chapter
thirty-three of this code for any premiums received for coverage
provided under this chapter.

(e) The insurance commissioner may promulgate rules to
implement the provisions of this section.

§23-2C-10. West Virginia adverse risk assignment.
(a) To qualify for adverse risk assignment, an employer must have been categorically declined coverage by at least two insurers that are not affiliated with each other. The employer shall have the burden of establishing that at least two insurers are unwilling to provide coverage at any premium level that is reasonably related to the risk presented by the employer.

(b) To qualify for adverse risk assignment, the employer shall make an application to the insurance commissioner and shall submit the evidence described in subsection (a) of this section.

(c) Upon receipt of the adverse risk assignment application, the insurance commissioner shall determine whether subsection (a) of this section has been satisfied. If so, the insurance commissioner shall, through the assigned risk fund, provide coverage to the applicant at a premium level to be determined by the insurance commissioner, which premiums shall be consistent with generally accepted accounting principles, actuarially sound, and consistent with classification and rate-making methodologies found in the insurance industry. All rates, surcharges or assessments and assignment of adverse risk employers shall be fair and equitable and financially sound in accordance with generally accepted accounting principles.

(d) The coverage provided by this section shall be pursuant to a pooling arrangement managed by the insurance commissioner. The insurance commissioner may contract with any third party, including any private carrier, to administer this pooling arrangement. Costs necessary to operate this pooling arrangement shall be funded by premiums paid by covered employers, surcharges, if any, to covered employers and assessments to private carriers providing workers' compensation insurance in this state.

(e) The workers' compensation board of managers shall promulgate a rule for the establishment of the pooling mecha-
nism and administration thereof; assessment of private carriers; and rating structure with differing rate tiers for insureds.

(f) As often as necessary, the insurance commissioner may assess all private carriers providing workers' compensation insurance in this state such funds as are necessary to cover any deficiencies in the pooling arrangement. The assessments shall result in an equitable distribution of costs among private carriers based upon premiums received by the private carriers. Assessments made upon private carriers pursuant to this section may be collected by each carrier from its policy holders in the form of a surcharge.

§23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.

(a) If the governor determines that:

(1) The old fund assets are sufficient to satisfy the old fund liabilities or that a revenue source has been secured to satisfy the old fund liabilities as they occur from time to time;

(2) The executive director has established a mutual insurance company pursuant to this code;

(3) The comprehensive financial plan has been accepted by the insurance commissioner; and

(4) The commissioner of insurance has determined that the mutual insurance company established by the executive director qualifies:

(A) For a certificate of authority to transact workers' compensation insurance in this state; and

(B) For the authority to issue nonassessable policies of insurance pursuant to this code, the governor shall issue a
proclamation stating that the events described in subdivisions (1) through (4), inclusive, of this subsection have occurred, along with the exact amount of funds to be transferred from the workers' compensation fund to the old fund. The Governor shall establish the effective date of the termination of the commission in the proclamation.

(b) If the governor issues said proclamation:

The executive director shall cause the transfer to the mutual insurance company established pursuant this code the premiums and other money paid or payable, transferred or transferable from the workers' compensation fund into the new fund, old fund, and any other applicable fund. The investment management board, state treasurer and any other agency or board shall fully cooperate in the transfer of the new fund assets.

(c) Upon the issuance of the proclamation set forth in subsection (a) of this section, all commission employees assigned regulatory duties shall transfer, along with the assets necessary to support the functions being performed, from the commission to the insurance commissioner: Provided, That the executive director shall, in consultation with the insurance commissioner, have sole authority to identify and select the employees that are employed by the commission to be assigned and transferred to the insurance commission. For purposes of this section, regulatory duties shall include, but may not be limited to, self-insurance, rating services, office of judges and board of review.

(d) The division of personnel shall cooperate fully by assisting in all personnel activities necessary to expedite all changes for the commission and the insurance commissioner. Due to the emergency currently existing at the commission and the urgent need to develop fast, efficient claims processing, management and administration, the insurance commissioner is
hereby granted authority to reorganize internal functions and
operations and to delegate, assign, transfer, combine, establish,
eliminate and consolidate responsibilities and duties to and
among the positions transferred under the authority of this
subsection. These actions shall not be subject to the grievance
process. The provisions of this subsection are not effective
after the thirty-first day of December, two thousand six.

§23-2C-12. Certain personnel provisions governing employees
laid-off by the mutual during its initial year of operation.

(a) If a mutual insurance company is established pursuant
to this article, a person who:

(1) Is employed on the first day of January, two thousand
five, by the commission;

(2) Was employed by the commission upon its termination;
and

(3) Is laid off by the company on or before the thirtieth day
of June, two thousand eight, is entitled to be placed on an
appropriate reemployment list maintained by the department of
personnel and to be allowed a preference on that list. The
department of personnel shall maintain such an employee on
the reemployment list indefinitely, or until the employee has
declined three offers of employment at a pay grade substantially
similar to that of his or her position upon termination of the
commission, or until he or she is reemployed by the executive
branch of state government, whichever occurs earlier.

(b) The executive director may select former bureau of
employment program employees who are, upon the termination
of the commission, employees of the office of information
services and communication and who enter into an employment
contract with the company before the first day of December,
two thousand five, to become employees of the company and said employees shall be afforded the benefits of this section.

§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.

If a domestic mutual insurance company is established pursuant to this article, the chief executive officer of the company shall enter into an agreement with the department of personnel for the provision of services and training to an employee of the company who is laid off during the first year of the company’s operation and requires additional training to obtain other gainful employment. The department of personnel shall administer the program. The fees required for those services and training shall be in an amount established by the department of personnel, must not exceed two million dollars, in the aggregate, and shall be paid out of the mutualization transition fund. The executive director may select former bureau of employment program employees who are, upon the termination of the commission, employees of the office of information services and communication and who enter into an employment contract with the company before the first day of December, two thousand five, to become employees of the company and said employees shall be afforded the benefits of this section.

§23-2C-14. Certain benefits provided to commission employees.

(a) If a domestic mutual insurance company is created pursuant to this article and becomes operational as a private carrier, then the company shall pay the full actuarial cost to purchase years of credit for not more than five years of service under the state’s public employee retirement system to those individuals who retire upon termination of the commission or who become employed by the company upon termination of the commission. The amount purchased per employee shall be
calculated by allowing six months of credit to be purchased for each year of service with the commission or its predecessors, including the bureau of employment programs, and shall be paid out of the mutualization transition fund. If upon said purchase, an employee does not vest in the public employee retirement plan, the employee can receive his or her contribution from the retirement plan and an amount equal to the employer’s contribution to be payable out of the mutualization transition fund.

(b) The public employees’ retirement system shall take such action as is necessary to carry out the provisions of subsection (a).

(c) All employees employed by the commission on the thirty-first day of December, two thousand four, who are employed by the company immediately upon termination of the commission shall have the following options related to their accrued sick leave: Freeze said accrued sick leave at the balance that existed as of thirty-first day of December, two thousand four and use said sick leave at the time of retirement to purchase insurance through the public employee insurance agency. Any related charges shall be paid from the old fund; have their accrued sick leave irrevocably surrendered in exchange for one hour of pay for each hour of accrued sick leave surrendered to be payable from the mutualization transition fund.

(d) The executive director may select former bureau of employment program employees who are, upon the termination of the commission, employees of the office of information services and communication and who enter into an employment contract with the company before the first day of December, two thousand five, to become employees of the company and said employees shall be afforded the benefits of this section.

(a) Effective upon termination of the commission, all subscriber policies with the commission shall novate to the company and all employers otherwise shall purchase workers’ compensation insurance from the company, unless permitted to self-insure their obligations. The company shall assume responsibility for all new fund obligations of the subscriber policies which novate to the company or which are issued thereafter. Each subscriber whose policy novates to the company shall also have its advanced deposit credited to its account with the company. Employers purchasing workers’ compensation insurance from the company shall have the right to designate a representative or agent to act on its behalf in any and all matters relevant to coverage and claims as administered by the company.

(b) Effective the first day of July, two thousand eight, an employer may elect to: (1) Continue to purchase workers’ compensation insurance from the company; (2) purchase workers’ compensation insurance from another private carrier licensed and otherwise authorized to transact workers’ compensation insurance in this state; or (3) self-insure its obligations if it satisfies all requirements of this code to so self-insure and is permitted to do so: Provided, That all state and local governmental bodies, including, but not limited to, all counties and municipalities and their subdivisions and including all boards, colleges, universities and schools, shall continue to purchase workers’ compensation insurance from the company through the thirtieth day of June, two thousand twelve. The company and other private carriers shall be permitted to sell workers’ compensation insurance through licensed agents in the state. To the extent that a private carrier markets workers’ compensation insurance through a licensed agent, it shall be subject to all applicable provisions of chapter thirty-three of the code. All employers’ must immediately notify the insurance commissioner of its private carrier and any change thereto.
(c) An employer may elect to change its private insurer carrier on or after the first day of July, two thousand eight, if the employer has:

1. Given at least thirty days’ notice to the insurance commissioner of the change of insurer; and
2. Furnished evidence satisfactory to the insurance commissioner that the payment of compensation has otherwise been secured.

(d) Each private carrier and employer shall notify the insurance commissioner if an employer has changed his or her insurer or has allowed his or her insurance to lapse within twenty-four hours or by the end of the next working day, whichever is later, after the insurer has notice of the change or lapse. Every employer shall post a notice upon its premises in a conspicuous place identifying its industrial insurer. The notice must include the insurer’s name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this state. The employer shall at all times maintain the notice provided for the information of his or her employees. Release of employer policy information and status by the industrial council and the insurance commissioner shall be governed by section four, article one, chapter twenty-three of this code. The insurance commissioner shall collect and maintain information related to officers, directors and ten percent or more owners of each carrier’s policy holders. The private carrier shall provide said information to the insurance commissioner.

(e) Any rule promulgated by the workers’ compensation board of managers empowering agencies of this state to revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employer whose account is in default with the commission shall be fully enforceable by the insurance
commissioner against the employer in policy default with a private carrier.

(f) Effective the first day of July, two thousand eight, the company may decline to offer coverage to any applicant. Effective the first day of July, two thousand eight, the company and private carriers may cancel a policy or decline to renew a policy upon the issuance of sixty days written advance notice to the policyholder: Provided, That cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder is effective after fifteen days advance written notice of cancellation to the policyholder.


(a) Notwithstanding any provision of this code to the contrary, the company shall be the administrator of the workers’ compensation old fund from inception of the company and thereafter for seven years and shall be charged with all authority and responsibilities incidental to the administration of the old fund which are necessary to accomplish the express provisions and the intent of this chapter. The company shall be paid a monthly administrative fee of five percent of claims paid each month for the administration of the old fund through the thirty-first day of December, two thousand ten, and four percent of claims paid each month for the administration of the old fund thereafter through the thirty-first day of December, two thousand twelve. The company’s administrative duties shall include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the state treasurer’s office or other applicable state agency, and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of the old fund after this seven-year period shall be subject to the procedures set forth in article three, chapter five-a of this code.
(b) The insurance commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the old fund, including the collection of moneys due the old fund and enforcement of repayment agreements entered into for the collection of moneys due on or before the thirtieth day of June, two thousand five, in any administrative proceeding and in any state or federal court.

(c) The insurance commissioner shall review claims determined to be payable from the old fund and may contest the determination pursuant to the provisions of article five of this chapter.

(d) The insurance commissioner may conduct or cause to be conducted an annual audit to be performed on the old fund.

§23-2C-17. Administration of a competitive system.

(a) Every policy of insurance issued by a private carrier:

(1) Shall be in writing;

(2) Shall contain the insuring agreements and exclusions; and

(3) If it contains a provision inconsistent with this chapter, it shall be deemed to be reformed to conform with this chapter.

(b) The workers' compensation board of managers shall promulgate a rule which prescribes the requirements of a basic policy to be used by private carriers.

(c) A private carrier may enter into a contract to have his or her plan of insurance administered by a third-party administrator, including the company. A private carrier shall not enter into a contract with any person for the administration of any part of the plan of insurance unless that person maintains an office in this state and has registered with the insurance
commissioner of this state in accordance with article forty-six, chapter thirty-three of the code.

(d) A self-insured employer or a private carrier may:

(1) Enter into a contract or contracts with one or more organizations for managed care to provide comprehensive medical and health care services to employees for injuries and diseases that are compensable pursuant to chapter twenty-three of this code. The managed care plan must be approved pursuant to the provisions of section three, article four of this chapter.

(2) Require employees to obtain medical and health care services for their industrial injuries from those organizations and persons with whom the self-insured employer, or private carrier has contracted or as the self-insured employer or private carrier otherwise prescribes.

(3) Except for emergency care, require employees to obtain the approval of the self-insured employer or private carrier before obtaining medical and health care services for their industrial injuries from a provider of health care who has not been previously approved by the self-insured employer or private carrier.

(e) A private carrier or self-insured employer may inquire about and request medical records of an injured employee that concern a preexisting medical condition that is reasonably related to the industrial injury of that injured employee.

(f) An injured employee must sign all medical releases necessary for the insurer of his or her employer to obtain information and records about a preexisting medical condition that is reasonably related to the industrial injury of the employee and that will assist the insurer to determine the nature and amount of workers’ compensation to which the employee is entitled.
§23-2C-18. Ratemaking; insurance commissioner.

(a) For the fiscal year beginning the first day of July, two thousand six, the company shall charge the actuarially determined base rates for the fiscal year. The base rates shall be calculated by the company and submitted for approval by the insurance commissioner.

(b) For the fiscal year beginning the first day of July, two thousand seven, the company shall charge the actuarially determined base rates for said fiscal year. The base rates shall be calculated by the company and submitted for approval by the insurance commissioner.

(c) Effective for the fiscal year beginning the first day of July, two thousand eight, all private carriers' rates shall be governed by the following:

(1) For the period beginning on first day of July, two thousand eight, and ending on the thirtieth day of June, two thousand nine, no more than five percent variance from the base rates established by the insurance commissioner.

(2) For the period beginning on the first day of July, two thousand nine, and ending on the thirtieth day of June, two thousand ten, no more than ten percent variance from the base rates established by the insurance commissioner.

(d) For the period beginning on the first day of July, two thousand six through the thirtieth day of June, two thousand ten, the company and, when applicable, a private carrier, may continue to calculate experience modification factors and other related rating modification methodologies to adequately insure individual employer risks.

(e) The variances provided in this section are only applicable to base rates and shall be exclusive of experience modifica-
tion and other related adjustments, including surcharges
imposed by this chapter.

(f) For the period beginning the first day of July, two
thousand ten, and thereafter, the insurance commissioner shall
set base rates for approved classifications and thereafter in
accordance with rules established in accordance with subsection
nine of this section. Said rates shall be released to the public at
least ninety days prior to the first day of July each year. Within
thirty days from this release date, private carriers shall submit
to the insurance commissioner their proposed rates, which may
be higher than the base rates established by the insurance
commissioner. The insurance commissioner retains authority
to disapprove rates in effect if it is determined that the rates are
not in compliance with the following:

(1) Rates must not be excessive, inadequate or unfairly
discriminatory, nor may an insurer charge any rate which if
continued will have or tend to have the effect of destroying
competition or creating a monopoly.

(2) The insurance commissioner may disapprove rates if
there is not a reasonable degree of price competition at the
consumer level with respect to the class of business to which
they apply. In determining whether a reasonable degree of
price competition exists, the insurance commissioner shall
consider all relevant tests, including:

(A) The number of insurers actively engaged in the class of
business and their shares of the market;

(B) The existence of differentials in rates in that class of
business;

(C) Whether long-run profitability for private carriers
generally of the class of business is unreasonably high in
relation to its risk;
(D) Consumers' knowledge in regard to the market in question; and

(E) Whether price competition is a result of the market or is artificial. If competition does not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to the risk of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(3) Rates are inadequate if they are clearly insufficient, together with the income from investments attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(4) One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with similar exposure to loss but different expense factors, or similar expense factors but different exposure to loss, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

(g) The rate-making provisions and premium provisions contained in article two of this chapter shall not be applicable to the company or other private carriers. The workers' compensation board of managers, in consultation with the insurance commissioner, shall issue an exempt legislative rule to govern ratemaking and premium collection by the company and other private carriers.

§23-2C-19. Special provisions as to private carrier premium collection.
(a) Each employer who is required to purchase and maintain workers' compensation insurance or who elects to purchase workers' compensation insurance shall pay a premium to a private carrier. Each carrier shall notify its policy holders of the mandated premium payment methodology and under what circumstances a policy holder will be found to be in policy default.

(b) An employer who is required to purchase and maintain workers' compensation insurance but fails to do so or otherwise enters policy default shall be deprived of the benefits and protection afforded by this chapter, including section six, article two of this chapter, and the employer is liable as provided in section eight of said article. The policy defaulted employer's liability under these sections is retroactive to day the policy default occurs. The private carrier shall notify the policy defaulted employer of the method by which the employer may be reinstated with the private carrier.

(c) A private carrier is authorized to commence a civil action against an employer who, after due notice, defaults on any payment. If judgment is against the employer, the employer shall pay the costs of the action. Upon prevailing in a civil action, the private carrier is entitled to recover its attorneys' fees and costs of action from the employer.

(d) In addition to the provisions of subsection (a) of this section, any payment, interest and penalty due and unpaid under this chapter is a personal obligation of the employer, its officers and its directors, immediately due and owing to the private carrier and shall, in addition, be a lien enforceable against all the property of the employer: Provided, That the lien shall not be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section one, article ten-c, chapter thirty-eight of this code: Provided,
however, That the lien may be enforced as other judgment liens are enforced through the provisions of said chapter and the same is considered deemed by the circuit court to be a judgment lien for this purpose.

(e) The secretary of state of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of any other state and admitted to do business in this state, until notified by its private carrier that all payments, interest and penalties thereon against the corporation which is an employer under this chapter have been paid or that provision satisfactory to the private carrier has been made for payment.

(f) In addition to any other liabilities provided in this section, the insurance commissioner may impose an administrative fine of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by the this chapter. Further, prior to providing an applicant employer with coverage mandated in this chapter, all private carriers shall exercise reasonable due diligence to ensure that an employer applicant has not been in policy default with another carrier or in default with the commission. If it is discovered that the employer applicant remains in policy default with another carrier or the commission, the company or new carrier shall not provide the coverage mandated by this chapter until such time as the preexisting policy default is cured. Any provider violating this provision may be fined not more than ten thousand dollars by the insurance commissioner.

(g) The company and the insurance commissioner shall be provided extraordinary powers to collect any premium amounts payable to the workers’ compensation fund or the new fund and due from first day of July, two thousand five, through the thirtieth day of June, two thousand eight. Those powers shall
include: (1) Withholding of coverage effective the first day of January, two thousand six. Employers without coverage shall immediately be deprived of the benefits and protection afforded by this chapter, including section six, article two of this chapter and the employer is liable as provided in section eight of said article; (2) the right to maintain a civil action against all officers and directors of the employer individually for collection of the premium owed; and (3) the right to immediately report the employers' to the state tax department and other state agencies to secure suspension of any and all licenses, certificates, permits, registrations and other similar approval documents necessary for the employer to conduct business in this state.


(a) A self-insured employer shall continue to comply with rules promulgated by the board of managers governing the self-administration of its claims and the successor to the commission shall also comply with the rules promulgated by the board of managers governing the self-administration of claims.

(b) The successor to the commission, any other private carrier and any employer that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. The successor to the commission, private carriers and self-insured employers shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the successor to the commission, private carriers, and the self-insured employer in their administration of claims presented by employees of the self-insured employer.
21 (c) Upon termination of the commission, the occupational pneumoconiosis board shall be transferred to the insurance commissioner and shall be administered by the insurance commissioner. The company and other private carriers shall have all authority and responsibility granted to the self-insured employers in the administration and processing of occupational pneumoconiosis claims.

28 (d) Upon termination of the commission, all claims allocation responsibilities shall transfer from the commission to the insurance commissioner.

31 (e) Upon termination of the commission, the administrator of the old fund shall have all administrative and adjudicatory authority vested in the commission in administering old law liabilities and otherwise processing and deciding old law claims.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

1 (a) No cause of action may be brought or maintained by an employee against a private carrier or a third-party administrator, or any employee or agent of a private carrier or third-party administrator, who violates any provision of this chapter or chapter thirty-three of this code.

6 (b) Any administrative fines or remedies provided in this chapter or rules promulgated by the workers’ compensation commission or the insurance commissioner are the exclusive civil remedies for any violation of this chapter committed by a private carrier or a third-party administrator or any agent or employee of a private carrier or a third-party administrator.

12 (c) Upon a determination by the Office of Judges’ that a denial of compensability, a denial of an initial award of
temporary total disability or a denial of an authorization for 
medical benefits was unreasonable, reasonable attorney's fees 
and the costs actually incurred in the process of obtaining a 
reversal of the denial shall be awarded to the claimant and paid 
by the company, private carrier or self-insured employer which 
issued the unreasonable denial. A denial is unreasonable if, 
after submission by or on behalf of the claimant, of evidence of 
the compensability of the claim, the entitlement to initial 
temporary total disability benefits or medical benefits, the 
company, private carrier or self-insured employer is unable to 
demonstrate that it had evidence or a legal basis supported by 
legal authority at the time of the denial which is relevant and 
probative and supports the denial of the award or authorization. 
Payment of attorney's fees and costs awarded under this 
subsection will be made to the claimant at the conclusion of 
litigation, including all appeals, of the claimant's protest of the 
denial.


Except as otherwise provided in this chapter, all rules 
applicable to the former workers' compensation commission 
are hereby adopted and made effective as to the operation of the 
workers' compensation insurance market to the extent that they 
are not in conflict with the current law. Authority to enforce 
the existing rules and the regulatory functions of the commis-
sion as set forth in chapter twenty-three of the code shall 
transfer from the commission to the insurance commissioner 
effective upon termination of the commission.

§23-2C-23. Transfer of assets and contracts.

With the establishment of the company, all commission 
assets, excluding those necessary to perform the regulatory 
function of the insurance commissioner under this chapter are 
hereby transferred and assigned to the company.
ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.


§23-2D-2. Legislative findings; legislative intent.


§23-2D-4. Workers’ compensation debt reduction revenue bonds; amount; when may issue.

§23-2D-5. Special account created; use of moneys in the fund.


§23-2D-6. Creation of debt service fund; disbursements to pay debt service on workers’ compensation debt reduction revenue bonds.


§23-2D-10. Approval and payment of all necessary expenses.


1 This article shall be known and may be cited as the "Workers’ Compensation Debt Reduction Bond Act".

§23-2D-2. Legislative findings; legislative intent.

1 The Legislature finds and declares that:

2 (a) The supreme court of appeals has ruled that article X, section four of the constitution does not preclude issuance of revenue bonds which are to be redeemed from a special fund.

5 (b) The supreme court of appeals has also ruled that the Legislature may not designate funds that will be used to liquidate a bond issue out of a current tax source that flows into the general revenue fund.

9 (c) This act imposes several new taxes and provides for those taxes to be deposited in the workers’ compensation debt reduction fund created in section five of this article, which is a special account in the treasury and is not part of the state general revenue fund.
(d) This act also provides for certain special revenue dollars that are not part of the state general revenue fund to also be deposited in the workers' compensation debt reduction fund.

(e) This article provides for the reduction of the old fund liability of the workers' compensation commission through the issuance of revenue bonds for the purpose of:

(1) Providing for the safety and soundness of the workers' compensation system; and

(2) Redeeming the unfunded liability of the workers' compensation fund in order to realize savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities.

(f) The general credit of the state will not be pledged for repayment of bonds issued under this article and repayment will come from moneys that are not part of the state's general revenue fund.


For purposes of this article:

(a) “Old fund” means the fund created in sections two and six, article two-c of this chapter;

(b) “Workers' compensation commission” or “commission” means the West Virginia workers' compensation commission established under article one, chapter twenty-three of this code, or any successor to all or any substantial part of its powers and duties; and

(c) “Workers' compensation debt reduction revenue bond” means any bond or bonds issued by the economic development authority pursuant to this article.
§23-2D-4. Workers' compensation debt reduction revenue bonds; amount; when may issue.

(a) Revenue bonds of the state of West Virginia are hereby authorized to be issued and sold by the West Virginia economic development authority created and provided in article fifteen, chapter thirty-one of this code, solely for the paying down and elimination of the current unfunded liability of the workers' compensation fund, as provided by the constitution and the provisions of this article. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in section six of this article for repayment.

(b) The bonds shall bear such date or dates and mature at such time or times, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time or times, not exceeding thirty years from their respective dates, and place and in such amounts, and subject to such terms of redemption as the resolution may provide: Provided, That in no event may the amount of bonds issued pursuant to this article exceed one billion five hundred million dollars.

(c) Revenue bonds issued under this article shall state on their face that the bonds do not constitute a debt of the state of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the state of West Virginia; and that the bondholders' remedies are limited in all respects to the "special revenue fund" established in this article for the liquidation of the bonds.

(d) Net proceeds from sale of these bonds shall be deposited in the old fund.

§23-2D-5. Special account created; use of moneys in the fund.
(a) There is hereby created in the state treasury a special interest bearing account known as the "workers' compensation debt reduction fund." Funds in this account may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with interest income a proper credit to this fund.

(b) Moneys to be deposited in this account include:

(1) The amounts provided in section two, article eleven-a, chapter four of this code;

(2) The net amount of all moneys received by the tax commissioner from collection of the new taxes imposed by section four, article thirteen-v, chapter eleven of this code, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code;

(3) The net amount of moneys received by the insurance commissioner from collection of the new premiums tax imposed by section three, article two-c of this chapter; and

(4) Moneys from racetrack video lottery net terminal income, as provided in section ten and ten-b, article twenty-two-a, chapter twenty-nine of this code.

(c) Moneys in this account are to be used and expended to reduce the workers' compensation debt or to pay debt service on bonds sold pursuant to this article for the purpose of reducing or paying the workers' compensation debt, or for any combination of both of these purposes.

(d) From the moneys deposited in this fund, there shall first be transferred each month to the debt service fund created in section six of this article sufficient amounts to provide for the timely payment of the principal, interest and redemption
premium, if any, on any revenue bonds or refunding bonds issued pursuant to this article, as determined in the trust agreement or agreements. Remaining moneys shall be transferred monthly to the old fund.


When in any fiscal year ending after the thirtieth day of June, two thousand six, the state collects net severance tax on the privilege of severing, extracting, reducing to possession or producing coal for sale profit or commercial use imposed by section three, article thirteen-a, chapter eleven of the code, that is in excess of the net amount of the tax collected in fiscal year two thousand six, fifty percent of the difference shall be deposited in the old fund created in article two-c of this chapter. For purposes of this section, the amount of the additional severance tax on coal imposed pursuant to section six, article thirteen-a, chapter eleven of the code, collected each fiscal year for the benefit of counties and municipalities as provided in said section six, shall be excluded when determining the amount of the tax imposed by section three, article thirteen-a, chapter eleven of the code, that is collected each fiscal year from the privilege of severing, extracting, reducing to possession or producing coal for sale, profit or commercial use. The provisions of this section shall not be effective after the thirtieth day of June, two thousand nine.

§23-2D-6. Creation of debt service fund; disbursements to pay debt service on workers’ compensation debt reduction revenue bonds.

(a) There is hereby created a special account in the state treasury, which shall be designated and known as the “West Virginia Workers’ Compensation Debt Reduction Revenue Bond Debt Service Fund”, into which shall monthly be deposited amounts from the workers’ compensation debt reduction
fund necessary to pay debt service on the bonds and to provide
for any coverage requirements.

(b) All amounts deposited in the fund shall be pledged to
the repayment of the principal, interest and redemption pre-
mium, if any, on any revenue bonds or refunding revenue bonds
authorized by this article, including any and all commercially
customary and reasonable costs and expenses which may be
incurred in connection with the issuance, refunding, redemption
or defeasance thereof.

(c) The treasurer shall transfer monies in this fund as set
forth in the trust agreement for the bonds issued under this
article.

(d) A lien on the proceeds of the West Virginia workers'
compensation debt reduction revenue bond debt service fund up
to a maximum amount equal to the projected annual principal,
interest and coverage ratio requirements may be granted by the
economic development authority in favor of the bonds it issues
secured by this fund.


The state of West Virginia covenants and agrees with the
holders of the bonds issued pursuant hereto as follows: (1) That
such bonds shall never constitute a direct and general obligation
of the state of West Virginia; (2) that the full faith and credit of
the state is not hereby pledged to secure the payment of the
principal and interest of such bonds; (3) that new annual state
taxes that are not and never were part of the state general
revenue fund shall be collected in an amount sufficient to pay
as it may accrue the interest on such bonds and the principal
thereof; and (4) that the moneys transferred to the workers’
compensation debt reduction revenue bond debt service fund as
provided in this article are irrevocably set aside and dedicated

All workers’ compensation debt reduction revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.


Any workers’ compensation debt reduction revenue bonds which are outstanding may at any time be refunded by the issuance of refunding bonds in an amount deemed necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish the purpose of this article; and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the workers’ compensation debt reduction revenue bonds to be refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant to this article shall be payable from the workers’ compensation debt reduction revenue bond debt service fund shall be secured in accordance with the provisions of this article.

§23-2D-10. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any revenue bonds pursuant to this article shall be paid out of bond proceeds.
§23-3-1. Compensation fund; catastrophe and catastrophe payment defined; compensation by employers.

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

§23-3-1. Compensation fund; catastrophe and catastrophe payment defined; compensation by employers.

(a) The commission shall establish a workers' compensation fund from the premiums and other funds paid thereto by employers, as provided in this section, for the benefit of employees of employers who have paid the premiums applicable to the employers and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit, to the extent elsewhere in this chapter set out, of employees of employers who have elected, under section nine, article two of this chapter, to make payments into the workers' compensation fund as provided for in this section, and for the benefit of the dependents of all the employees, and for the payment of the administration expenses of this chapter. The workers' compensation fund created pursuant to this article shall terminate upon termination of the commission and its proceeds shall be distributed as set forth in article two-c of this chapter.

(b) A portion of all premiums that are paid into the workers' compensation fund by subscribers not electing to carry their own risk under section nine, article two of this chapter that is set aside to create and maintain a reserve of the fund to cover the catastrophe hazard and all losses not otherwise specifically provided for in this chapter. The percentage to be set aside is determined pursuant to the rules adopted to implement section four, article two of this chapter and shall be in an amount sufficient to maintain a solvent fund. All interest earned on investments by the workers' compensation fund, which is attributable to the reserve, shall be credited to the fund. Effective upon termination of the commission, all funds in the
catastrophe fund shall be transferred into the old fund, all
claims payable as a consequence of a catastrophe hazard shall
be payable from the old fund and any premiums due under this
article shall be payable to the old fund. Employers shall
purchase catastrophe insurance from the company or another
private carrier and shall also reinsure their catastrophic risk.

(c) A catastrophe is hereby defined as an accident in which
three or more employees are killed or receive injuries which, in
the case of each individual, consist of: Loss of both eyes or the
sight thereof; loss of both hands or the use thereof; loss of both
feet or the use thereof; or loss of one hand and one foot or the
use thereof. The aggregate of all medical and hospital bills and
other costs and all benefits payable on account of a catastrophe
is defined as "catastrophe payment". In case of a catastrophe
to the employees of an employer who is an ordinary premium-
paying subscriber to the fund, or to the employees of an
employer who, having elected to carry the employer's own risk
under section nine, article two of this chapter, has previously
elected, or may later elect, to pay into the catastrophe reserve of
the fund under the provisions of said section, the catastrophe
payment arising from the catastrophe shall not be charged
against, or paid by, the employer but shall be paid from the
catastrophe reserve of the fund.

(d) For all awards made on or after the effective date of the
amendments to this section enacted during the year two
thousand three, the following provisions relating to second
injury are not applicable. For awards made before the date
specified in this subsection, if an employee who has a definitely
ascertainable physical impairment, caused by a previous
occupational injury, occupational pneumoconiosis or occupa-
tional disease, irrespective of its compensability, becomes
permanently and totally disabled through the combined effect
of the previous injury and a second injury received in the course
of and as a result of his or her employment, the employer shall
be chargeable only for the compensation payable for the second
injury: Provided, That in addition to the compensation, and
after the completion of the payments therefor, the employee
shall be paid the remainder of the compensation that would be
due for permanent total disability out of the workers' compen-
sation fund. The procedure by which the claimant's request for
a permanent total disability award under this section is ruled
upon shall require that the issue of the claimant's degree of
permanent disability first be determined. Thereafter, by means
of a separate order, a decision shall be made as to whether the
award is a second injury award under this subsection or a
permanent total disability award to be charged to the em-
ployer's account or to be paid directly by the employer if the
employer has elected to be self-insured employer under the
provisions of section nine, article two of this chapter.

(e) Employers electing, as provided in this chapter, to
compensate individually and directly their injured employees
and their fatally injured employees' dependents shall do so in
the manner prescribed by the commission and shall make all
reports and execute all blanks, forms and papers as directed by
the commission, and as provided in this chapter.

§23-3-4. Deposits and disbursements considered abandoned
property; disposition of property.

(a) All disbursements from the workers' compensation fund
and the other funds created pursuant to this chapter including
the advance deposits by employers where there has been no
activity for a period of five years, are presumed abandoned and
subject to the custody of the state as unclaimed property under
the provisions of article eight, chapter thirty-six of this code.
The funds shall be kept in a separate account by the state
treasurer, apart from other unclaimed property funds. Ninety
days after the state treasurer has advertised the accounts and
paid any claims, he or she shall remit the balance of those funds
held in the account to the credit of the workers' compensation
fund or to other affected funds. Such property shall become the
property of, and owned exclusively by, the workers’ compensa-
tion fund. Effective upon termination of the commission, said
funds otherwise meeting the requirements of this section shall
be deposited into the old fund as set forth in article two-c of this
chapter.

(b) Notwithstanding any provision of law to the contrary,
all interest and other earnings accruing to the investments and
deposits of the workers’ compensation fund and of the other
funds created pursuant to this chapter are credited only to the
account of the workers’ compensation fund or to such other
affected fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1b. Report of injuries by employers.
§23-4-1c. Payment of temporary total disability benefits directly to claimant;
payment of medical benefits; payments of benefits during protest;
right of commission, successor to the commission, other private
carriers and self-insured employers to collect payments improperly
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§23-4-1d. Method and time of payments for permanent disability.
§23-4-1e. Temporary total disability benefits not to be paid for periods of correc-
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§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and
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required disclosure of financial interest in sale or rental of medically
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employer with hospital, physician, etc., prohibited; criminal penalties
for violation; payments to certain providers prohibited; medical cost
and care program; payments; interlocutory orders.
§23-4-3b. Creation of health care advisory panel.
§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.
§23-4-6. Classification of and criteria for disability benefits.
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pneumoconiosis.
§23-4-6b. Occupational hearing loss claims.
§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.

§23-4-7b. Trial return to work.

§23-4-8. Physical examination of claimant.

§23-4-8a. Occupational pneumoconiosis board; composition; term of office; duties; quorum; remuneration.

§23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.

§23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

§23-4-9. Physical and vocational rehabilitation.

§23-4-10. Classification of death benefits; “dependent” defined.

§23-4-11. To whom death benefits paid.


§23-4-15a. Nonresident alien beneficiaries.

§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

§23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

§23-4-16a. Interest on benefits.

§23-4-17. Commutation of periodical benefits.

§23-4-20. Postmortem examinations.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

§23-4-1b. Report of injuries by employers.

It is the duty of every employer to report to the commission, the successor to the commission or another private carrier, whichever is applicable, every injury sustained by any person in his or her employ. The report shall be on forms prescribed
by the commission or the insurance commissioner, whichever
is applicable, and shall be made within five days of the em-
ployer's receipt of the employee's notice of injury, required by
section one-a of this article, or within five days after the
employer has been notified by the commission or the insurance
commissioner, whichever is applicable, that a claim for benefits
has been filed on account of such injury, whichever is sooner,
and, notwithstanding any other provision of this chapter to the
contrary, the five-day period may not be extended by the
commission the successor to the commission, or another private
carrier, whichever is applicable, but the employer has the right
to file a supplemental report at a later date. The employer's
report of injury shall include a statement as to whether or not,
on the basis of the information available, the employer disputes
the compensability of the injury or objects to the payment of
temporary total disability benefits in connection with the injury.
The statements by the employer shall not prejudice the em-
ployer's right thereafter to contest the compensability of the
injury, or to object to any subsequent finding or award, in
accordance with article five of this chapter; but an employer's
failure to make timely report of an injury as required in this
section, or statements in the report to the effect that the em-
ployer does not dispute the compensability of the injury or
object to the payment of temporary total disability benefits for
the injury, shall be considered to be a waiver of the employer's
right to object to any interim payment of temporary total
disability benefits paid by the commission, the successor to the
commission, or another private carrier with respect to any
period from the date of injury to the date of receipt of any
objection made to the interim payments by the employer.

§23-4-1c. Payment of temporary total disability benefits directly
to claimant; payment of medical benefits; payments
of benefits during protest; right of commission,
successor to the commission, other private carriers
and self-insured employers to collect payments
improperly made.
(a) In any claim for benefits under this chapter, the workers' compensation commission, the successor to the commission, other private carriers or self-insured employer, whichever is applicable, shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and enter an order giving all parties immediate notice of the decision.

(1) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may enter an order conditionally approving the claimant's application if it finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the commission in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be considered an overpayment. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may only recover the amount of the overpayment as provided for in subsection (h) of this section.

(2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of section sixteen of this article based upon an allegation of recurrence, reinjury, aggravation or progression of the previous compensable injury or in the case of a filing of a request for any other benefits under the provisions of this chapter, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall consider the date of the filing of the claim for benefits for a determination of the following:

(A) Whether the claimant had a scheduled shutdown beginning within one week of the date of the filing;
(B) Whether the claimant received notice within sixty days of the filing that his or her employment position was to be eliminated, including, but not limited to, the claimant's worksite, a layoff or the elimination of the claimant's employment position;

(C) Whether the claimant is receiving unemployment compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment compensation benefits within sixty days of the filing. In the event of an affirmative finding upon any of these four factors, the finding shall be given probative weight in the overall determination of the compensability of the claim or of the merits of the reopening request.

(3) Any party may object to the order of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in section one, article five of this chapter: Provided, That if the successor to the commissioner, other private carrier or self-insured, whichever is applicable, fails to timely issue a ruling upon any application or motion as provided by law, or if the claimant files a timely protest to the ruling of a self-insured employer, private carrier, or other issuing entity, denying the compensability of the claim, denying initial temporary total disability benefits or denying medical authorization, the office of judges shall provide a hearing on the protest on an expedited basis as determined by rule of the office of judges.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may immediately enter an order commencing the payment of temporary total disability benefits
to the claimant in the amounts provided for in sections six and fourteen of this article, and the payment of the expenses provided for in subsection (a), section three of this article, relating to the injury, without waiting for the expiration of the thirty-day period during which objections may be filed to the findings as provided in section one, article five of this chapter. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen working days of receipt of either the employee’s or employer’s report of injury, whichever is received sooner, and also upon receipt of either a proper physician’s report or any other information necessary for a determination. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall give to the parties immediate notice of any order granting temporary total disability or medical benefits. When an order granting temporary total disability benefits is made, the claimant’s return-to-work potential shall be assessed. The commission may schedule medical and vocational evaluation of the claimant and assign appropriate personnel to expedite the claimant’s return to work as soon as reasonably possible.

(c) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of the benefits. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may not enter an order granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the
commission shall enter an order continuing the payment of
temporary total disability benefits for an additional period not
to exceed ninety days and shall give immediate notice to all
parties of the decision.

(d) Upon receipt of the first report of injury in claim, the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable, shall request
from the employer or employers any wage information neces-
sary for determining the rate of benefits to which the employee
is entitled. If an employer does not furnish this information
within fifteen days from the date the commission, successor to
the commission, other private carrier or self-insured employer,
whichever is applicable, received the first report of injury in the
case, the employee shall be paid temporary total disability
benefits for lost time at the rate the commission obtains from
reports made pursuant to subsection (b), section two, article two
of this chapter. If no wages have been reported, the commis-
ion, successor to the commission, other private carrier or self-
insured employer, whichever is applicable, shall make the
payments at the rate the commission, successor to the commis-
ion, other private carrier or self-insured employer, whichever
is applicable, finds would be justified by the usual rate of pay
for the occupation of the injured employee. The rate of benefits
shall be adjusted both retroactively and prospectively upon
receipt of proper wage information. The commission shall have
access to all wage information in the possession of any state
agency.

(e) Subject to the limitations set forth in section sixteen of
this article, upon a finding of the commission, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, that a claimant who has sustained a
previous compensable injury which has been closed by order,
or by the claimant’s return to work, suffers further temporary
total disability or requires further medical or hospital treatment
resulting from the compensable injury, payment of temporary
total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article shall immediately commence, and the expenses provided for in subsection (a), section three of this article, relating to the disability, without waiting for the expiration of the thirty-day period during which objections may be filed. Immediate notice to the parties of the decision shall be given.

(f) Where the employer is a subscriber to the workers’ compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commission shall mail all workers’ compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

(g) Where the employer has elected to carry its own risk under section nine, article two of this chapter, and upon the findings aforesaid, the self-insured employer shall immediately pay the amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent to the claimant.

(h) In the event that an employer files a timely objection to any order of the division with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in subsection (a), section three of this article, the division shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the division that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the division shall, when the employer is a subscriber to the fund, credit said employer’s account with the amount of the overpayment. When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in that case determines that the claimant was not entitled to the benefits or expenses, the
amount of benefits or expenses is considered overpaid. For all
awards made or nonawarded partial benefits paid the commis-
sion, the successor to the commission, other private carriers, or
self-insured employer may recover the amount of overpaid
benefits or expenses by withholding, in whole or in part, future
disability benefits payable to the individual in the same or other
claims and credit the amount against the overpayment until it is
repaid in full.

(i) In the event that the commission, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, finds that, based upon the employer’s
report of injury, the claim is not compensable, the commission,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, shall provide a copy
of the employer’s report to the claimant in addition to the order
deny the claim.

(j) If a claimant is receiving benefits paid through a wage
replacement plan, salary continuation plan or other benefit plan
provided by the employer to which the employee has not
contributed, and that plan does not provide an offset for
temporary total disability benefits to which the claimant is also
entitled under this chapter as a result of the same injury or
disease, the employer shall notify the commission of the
duplication of the benefits paid to the claimant. Upon receipt
of the notice, the commission, successor to the commission,
other private carrier or self-insured employer, whichever is
applicable, shall reduce the temporary total disability benefits
provided under this chapter by an amount sufficient to ensure
that the claimant does not receive monthly benefits in excess of
the amount provided by the employer’s plan or the temporary
total disability benefit, whichever is greater: Provided, That this
subsection does not apply to benefits being paid under the terms
and conditions of a collective bargaining agreement.

§23-4-1d. Method and time of payments for permanent disability.
(a) If the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, makes an award for permanent partial or permanent total disability, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen working days from the date of the award: Provided, That the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may withhold payment of the portion of the award that is the subject of subsection (b) of this section until seventy-seven days have expired without an objection being filed.

(b) When the commission, successor to the commission, other private carrier, self-insured employer, the office of judges or the workers' compensation board of review, whichever is applicable, enters an order or provides notice granting the claimant a permanent total disability award and an objection or petition for appeal is filed by the employer, the commission, the successor to the commission or other private carrier, payment of monthly permanent total disability benefits shall begin. However, any payment for a back period of benefits from the onset date of total permanent disability to the date of the award shall be limited to a period of twelve months of benefits. If, after all litigation is completed and the time for the filing of any further objections or appeals to the award has expired and the award of permanent total disability benefits is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall not only pay the claimant the sum owed but shall also add thereto interest at the simple
rate of six percent per annum from the date of the initial award
granting the total permanent disability to the date of the final
order upholding the award. In the event that an intermediate
order directed an earlier onset date of permanent total disability
than was found in the initial award, the interest-earning period
for that additional period shall begin upon the date of the
intermediate award. Any interest payable shall be charged to
the account of the employer or shall be paid by the employer if
it has elected to carry its own risk.

(d) If a timely protest to the award is filed, as provided in
section one or nine, article five of this chapter, benefits shall
continue to be paid to the claimant benefits during the period of
the disability unless it is subsequently found that the claimant
was not entitled to receive the benefits, or any part thereof, in
which event the commission shall, where the employer is a
subscriber to the fund, credit the employer’s account with the
amount of the overpayment. If the final decision in any case
determines that a claimant was not lawfully entitled to benefits
paid to him or her pursuant to a prior decision, the amount of
benefit paid shall be considered overpaid. For all awards made
or nonawarded partial benefits paid the commission, successor
to the commission, other private carrier or self-insured em-
ployer, whichever is applicable, may only recover that amount
by withholding, in whole or in part, as determined by the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable, future
disability benefits payable to the individual in the same or other
claims and credit the amount against the overpayment until it is
repaid in full.

(e) An award for permanent partial disability shall be made
as expeditiously as possible and in accordance with the time
frame requirements promulgated by the board of managers.

(f) If a claimant is receiving benefits paid through a
retirement plan, wage replacement plan, salary continuation
plan or other benefit plan provided by the employer to which
the employee has not contributed, and that plan does not
provide an offset for permanent total disability benefits to
which the claimant is also entitled under this chapter as a result
of the same injury or disease, the employer shall notify the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable, of the
duplication of the benefits paid to the claimant. Upon receipt
of the notice, the commission, successor to the commission,
other private carrier or self-insured employer, whichever is
applicable, shall reduce the permanent total disability benefits
provided under this chapter by an amount sufficient to ensure
that the claimant does not receive monthly benefits in excess of
the amount provided by the employer’s plan or the permanent
total disability benefit, whichever is greater: Provided, That this
subsection does not apply to benefits being paid under the terms
and conditions of a collective bargaining agreement.

§23-4-le. Temporary total disability benefits not to be paid for
periods of correctional center or jail confinement;
denial of workers’ compensation benefits for injur-
ries or disease incurred while confined.

(a) Notwithstanding any provision of this code to the
contrary, no person shall be jurisdictionally entitled to tempo-
rary total disability benefits for that period of time in excess of
three days during which that person is confined in a state
correctional facility or jail: Provided, That confinement shall
not affect the claimant’s eligibility for payment of expenses:
Provided, however, That this subsection is applicable only to
injuries and diseases incurred prior to any period of confine-
ment. Upon release from confinement, the payment of benefits
for the remaining period of temporary total disability shall be
made if justified by the evidence and authorized by order of the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable.
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14  (b) Notwithstanding any provision of this code to the contrary, no person confined in a state correctional facility or jail who suffers injury or a disease in the course of and resulting from his or her work during the period of confinement which work is imposed by the administration of the state correctional facility or jail and is not suffered during the person’s usual employment with his or her usual employer when not confined shall receive benefits under the provisions of this chapter for the injury or disease.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care program; payments; interlocutory orders.

1  (a) The workers’ compensation commission, and effective upon termination of the commission, the insurance commissioner, shall establish and alter from time to time, as it determines appropriate, a schedule of the maximum reasonable amounts to be paid to health care providers, providers of rehabilitation services, providers of durable medical and other goods and providers of other supplies and medically related items or other persons, firms or corporations for the rendering of treatment or services to injured employees under this chapter. The commission and effective upon termination of the commission, the insurance commissioner, also, on the first day of each regular session and also from time to time, as it may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature.
The commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, shall disburse and pay for personal injuries to the employees who are entitled to the benefits under this chapter as follows:

(1) Sums for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items as may be reasonably required. The commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three-b of this article: Provided, That nothing in this section shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: Provided, however, That any guidelines for utilization review which are developed in addition to the guidelines provided for in section three-b of this article may be used by the commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, until superseded by guidelines developed by the health care advisory panel pursuant to said section. Each health care provider who seeks to provide services or treatment which are not within any guideline shall submit to the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, specific justification for the need for the additional services in the particular case and the commission shall have the justification reviewed by a health care professional before authorizing the additional services. The commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, may enter into preferred provider and managed care agreements which
provides for fees and other payments which deviate from the schedule set forth in this subsection.

(2) Payment for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items authorized under this subsection may be made to the injured employee or to the person, firm or corporation who or which has rendered the treatment or furnished health care services, rehabilitation services, durable medical or other goods or other supplies and items, or who has advanced payment for them, as the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, considers proper, but no payments or disbursements shall be made or awarded by the commission unless duly verified statements on forms prescribed by the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, have been filed within six months after the rendering of the treatment or the delivery of such goods, supplies or items or within ninety days of a subsequent compensability ruling if a claim is initially rejected: Provided, That no payment under this section shall be made unless a verified statement shows no charge for or with respect to the treatment or for or with respect to any of the items specified in this subdivision has been or will be made against the injured employee or any other person, firm or corporation. When an employee covered under the provisions of this chapter is injured, in the course of and as a result of his or her employment and is accepted for health care services, rehabilitation services, or the provision of durable medical or other goods or other supplies or medically related items, the person, firm or corporation rendering the treatment may not make any charge or charges for the treatment or with respect to the treatment against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commission schedule set forth in this subsection.
(3) Any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If a generic brand does not exist, the pharmacist may dispense the name brand. In the event that a claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant may receive the name brand medication but, in that event, the claimant is personally liable for the difference in costs between the generic brand medication and the brand name medication.

(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the workers' compensation commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, pursuant to the schedule of maximum reasonable amounts of fees authorized by this subsection, with the exceptions noted below, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider.

(A) In the event of an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant, if the claimant receives the emergency care from an out-of-state health care provider who refuses to accept as full payment the scheduled amount, the claimant is not personally liable for the difference between the amount scheduled and the amount demanded by the health care provider. Upon the claimant's attaining a stable medical condition and being able to be transferred to either a West Virginia health care provider or an out-of-state health care provider who has agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek the specified alternative
health care providers, he or she is personally liable for the
difference in costs between the scheduled amount and the
amount demanded by the health care provider for services
provided after attaining stability and being able to be trans-
ferred.

(B) In the event that there is no health care provider
reasonably near to the claimant's home who is qualified to
provide the claimant's needed medical services who is either
located in the state of West Virginia or who has agreed to
accept as payment in full the scheduled amounts of fees, the
commission, upon application by the claimant, may authorize
the claimant to receive medical services from another health
care provider. The claimant is not personally liable for the
difference in costs between the scheduled amount and the
amount demanded by the health care provider.

(b) (1) No employer shall enter into any contracts with any
hospital, its physicians, officers, agents or employees to render
medical, dental or hospital service or to give medical or surgical
attention to any employee for injury compensable within the
purview of this chapter and no employer shall permit or require
any employee to contribute, directly or indirectly, to any fund
for the payment of such medical, surgical, dental or hospital
service within such hospital for the compensable injury. Any
employer violating this subsection is liable in damages to the
employer's employees as provided in section eight, article two
of this chapter, and any employer or hospital or agent or
employee thereof violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine not less than one hundred dollars nor more
than one thousand dollars or by imprisonment not exceeding
one year, or both.

(2) The provisions of this subsection shall not prohibit an
employer, the successor to the commission, other private carrier
or self-insured employer from participating in a managed health
care plan, including, but not limited to, a preferred provider organization or program or a health maintenance organization or managed care organization or other medical cost containment relationship with the providers of medical, hospital or other health care. An employer, successor to the commission, other private carrier or self-insured employer that provides a managed health care plan approved by the commission or, upon termination of the commission, the insurance commissioner, for its employees or the employees of its insured may require an injured employee to use health care providers authorized by the managed health care plan for care and treatment of his or her compensable injuries. If the employer does not provide a managed health care plan or program, the claimant may select his or her initial health care provider for treatment of a compensable injury or disease, except as provided under subdivision (3) of this subsection. If a claimant wishes to change his or her health care provider and if his or her employer has established and maintains a managed health care plan, the claimant shall select a new health care provider through the managed health care plan. A claimant who has used the providers under the employer’s managed health care plan may select a health care provider outside the employer’s plan for treatment of the compensable injury or disease if the employee receives written approval from the commission to do so and the approval is given pursuant to criteria established by rule of the commission.

(3) If the commission enters into an agreement which has been approved by the board of managers with a managed health care plan, including, but not limited to, a preferred provider organization or program, a health maintenance organization or managed care organization or other health care delivery organization or organizations or other medical cost containment relationship with the providers of medical, hospital or other health care, then:

(A) If an injured employee’s employer does not provide a managed health care plan approved by the commission for its
employees as described in subdivision (2) of this subsection, the
commission may require the employee to use health care
providers authorized by the commission's managed health care
plan for care and treatment of his or her compensable injuries;
and

(B) If a claimant seeks to change his or her initial choice of
health care provider where neither the employer nor the
commission had an approved health care management plan at
the time the initial choice was made, and if the claimant's
employer does not provide access to such a plan as part of the
employer's general health insurance benefit, then the claimant
shall be provided with a new health care provider from the
commission's managed health care plan available to him or her.

(c) When an injury has been reported to the commission by
the employer without protest, the commission or self-insured
employer may pay, within the maximum amount provided by
schedule established under this section, bills for health care
services without requiring the injured employee to file an
application for benefits.

(d) The commission, successor to the commission, other
private carrier or self-insured employer, whichever is applica-
ble, shall provide for the replacement of artificial limbs,
crutches, hearing aids, eyeglasses and all other mechanical
appliances provided in accordance with this section which later
wear out, or which later need to be refitted because of the
progression of the injury which caused the devices to be
originally furnished, or which are broken in the course of and
as a result of the employee's employment. The commission,
successor to the commission, other private carrier or self-
insured employer shall pay for these devices, when needed,
notwithstanding any time limits provided by law.

(e) No payment shall be made to a health care provider who
is suspended or terminated under the terms of section three-c of
this article except as provided in subsection (c) of said section.
(f) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may engage in and contract for medical cost containment programs, pharmacy benefits management programs, medical case management programs and utilization review programs. Payments for these programs shall be made from the workers’ compensation fund or the funds of the successor to the commission, other private carrier, or self-insured employer. Any order issued pursuant to the program shall be interlocutory in nature until an objecting party has exhausted all review processes provided for by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable.

(g) Notwithstanding the provisions of this section, the commission, successor to the commission, other private carrier or self-insured employer may establish fee schedules, make payments and take other actions required or allowed pursuant to article twenty-nine-d, chapter sixteen of this code.

§23-4-3b. Creation of health care advisory panel.

(a) The commission shall establish a health care advisory panel consisting of representatives of the various branches and specialties among health care providers in this state which shall be in existence until termination of the commission. There shall be a minimum of five members of the health care advisory panel who shall receive reasonable compensation for their services and reimbursement for reasonable actual expenses. Each member of this panel shall be provided appropriate professional or other liability insurance, without additional premium, by the state board of risk and insurance management created pursuant to article twelve, chapter twenty-nine of this code. The panel shall:

(1) Establish guidelines for the health care which is reasonably required for the treatment of the various types of
(2) Establish protocols and procedures for the performance of examinations or evaluations performed by physicians or medical examiners pursuant to sections seven-a and eight of this article;

(3) Assist the commission in establishing guidelines for the evaluation of the care provided by health care providers to injured employees for purposes of section three-c of this article;

(4) Assist the commission in establishing guidelines regarding the anticipated period of disability for the various types of injuries pursuant to subsection (b), section seven-a of this article; and

(5) Assist the commission in establishing appropriate professional review of requests by health care providers to exceed the guidelines for treatment of injuries and occupational diseases established pursuant to subdivision (1) of this section.

(b) In addition to the requirements of subsection (a) of this section, on or before the thirty-first day of December, two thousand three, the board of managers shall promulgate a rule establishing the process for the medical management of claims and awards of disability which includes, but is not limited to, reasonable and standardized guidelines and parameters for appropriate treatment, expected period of time to reach maximum medical improvement and range of permanent partial disability awards for common injuries and diseases or, in the alternative, which incorporates by reference the medical and disability management guidelines, plan or program being utilized by the commission for the medical and disability management of claims, with the requirements, standards, parameters and limitations of such guidelines, plan or program having the same force and effect as the rule promulgated in compliance herewith.
§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

(a) In case the personal injury causes death, reasonable funeral or cemetery expense, in an amount to be fixed, from time to time, by the commission, and upon its termination, the insurance commissioner, shall be paid from the fund, or the private carrier, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for the services and supplies, as the commission may determine proper, in addition to any award made to the employee's dependents.

(b) A funeral director or cemeterian, or any person who furnished the services and supplies associated with the funeral or cemetery expenses, or a person who has advanced payment for the services and supplies, is prohibited from making any charge or charges against the employee's dependents for funeral expenses which would result in a total charge for funeral expenses in excess of the amount fixed by the commission, and upon its termination, the insurance commissioner, unless:

1. The person seeking funeral expenses notifies, in writing and prior to the rendering of any service, the employee's dependent as to the exact cost of the service and the exact amount the employee's dependent would be responsible for paying in excess of the amount fixed by the commission or insurance commissioner; and

2. The person seeking funeral expenses secures, in writing and prior to the rendering of any service, consent from the employee's dependent that he or she will be responsible to make payment for the amount in excess of the amount fixed by the commission or the insurance commissioner.

(c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the commission or the insurance commissioner
without satisfying both of the requirements of subsection (b) of
this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined three thousand dollars or confined in jail
for a definite term of confinement of twelve months, or both.

§23-4-6. Classification of and criteria for disability benefits.

Where compensation is due an employee under the provi-
sions of this chapter for personal injury, the compensation shall
be as provided in the following schedule:

(a) The terms “average weekly wage earnings, wherever
earned, of the injured employee, at the date of injury” and
“average weekly wage in West Virginia”, as used in this
chapter, have the meaning and shall be computed as set forth in
section fourteen of this article except for the purpose of
computing temporary total disability benefits for part-time
employees pursuant to the provisions of section six-d of this
article.

(b) For all awards made on and after the effective date of
the amendment and reenactment of this section during the year
two thousand three, if the injury causes temporary total disabil-
ity, the employee shall receive during the continuance of the
disability a maximum weekly benefit to be computed on the
basis of sixty-six and two-thirds percent of the average weekly
wage earnings, wherever earned, of the injured employee, at the
date of injury, not to exceed one hundred percent of the average
weekly wage in West Virginia: Provided, That in no event shall
an award for temporary total disability be subject to annual
adjustments resulting from changes in the average weekly wage
in West Virginia: Provided, however, in the case of a claimant
whose award was granted prior to the effective date of the
amendment and reenactment of this section during the year two
thousand three, the maximum benefit rate shall be the rate
applied under the prior enactment of this subsection which was
in effect at the time the injury occurred. The minimum weekly
benefits paid under this subdivision shall not be less than thirty-
three and one-third percent of the average weekly wage in West Virginia, except as provided in sections six-d and nine of this article. In no event, however, shall the minimum weekly benefits exceed the level of benefits determined by use of the applicable federal minimum hourly wage: Provided further, That any claimant receiving permanent total disability benefits, permanent partial disability benefits or dependents' benefits prior to the first day of July, one thousand nine hundred ninety-four, shall not have his or her benefits reduced based upon the requirement in this subdivision that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

(c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks; aggregate award for a single injury for which an award of temporary total disability benefits is made on or after the effective date of the amendment and reenactment of this section in the year two thousand three shall be for a period not exceeding one hundred four weeks. Notwithstanding any other provision of this subdivision to the contrary, no person may receive temporary total disability benefits under an award for a single injury for a period exceeding one hundred four weeks from the effective date of the amendment and reenactment of this section in the year two thousand three.

(d) For all awards of permanent total disability benefits that are made on or after the second day of February, one thousand nine hundred ninety-five, including those claims in which a request for an award was pending before the division or which were in litigation but not yet submitted for a decision, then benefits shall be payable until the claimant attains the age necessary to receive federal old age retirement benefits under the provisions of the Social Security Act, 42 U.S.C. §§401 and 402, in effect on the effective date of this section. The claimant shall be paid benefits so as not to exceed a maximum benefit of
sixty-six and two-thirds percent of the claimant's average weekly wage earnings, wherever earned, at the time of the date of injury not to exceed one hundred percent of the average weekly wage in West Virginia. The minimum weekly benefits paid under this section shall be as is provided for in subdivision (b) of this section. In all claims in which an award for permanent total disability benefits was made prior to the second day of February, one thousand nine hundred ninety-five, the awards shall continue to be paid at the rate in effect prior to the effective date of the amendment and reenactment of this section in the year two thousand three: Provided, That the provisions of sections one through eight, inclusive, article four-a of this chapter shall be applied thereafter to all prior awards that were previously subject to its provisions. A single or aggregate permanent disability of eighty-five percent or more entitles the employee to a rebuttable presumption of a permanent total disability for the purpose of paragraph (2), subdivision (n) of this section: Provided, however, That the claimant must also be at least fifty percent medically impaired upon a whole body basis or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (t) of this section. The presumption may be rebutted if the evidence establishes that the claimant is not permanently and totally disabled pursuant to subdivision (n) of this section. Under no circumstances may the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, grant an additional permanent disability award to a claimant receiving a permanent total disability award: Provided further, That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting from the injury, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

(e) (1) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, if the injury causes permanent disability
less than permanent total disability, the percentage of disability
to total disability shall be determined and the award computed
on the basis of four weeks' compensation for each percent of
disability determined at the maximum or minimum benefit rates
as follows: Sixty-six and two-thirds percent of the average
weekly wage earnings, wherever earned, of the injured em-
ployee at the date of injury, not to exceed seventy percent of the
average weekly wage in West Virginia: Provided, That in no
event shall an award for permanent partial disability be subject
to annual adjustments resulting from changes in the average
weekly wage in West Virginia: Provided, however, That in the
case of a claimant whose award was granted prior to the
effective date of the amendment and reenactment of this section
during the year two thousand three, the maximum benefit rate
shall be the rate applied under the prior enactment of this
section which was in effect at the time the injury occurred.

(2) If a claimant is released by his or her treating physician
to return to work at the job he or she held before the occupa-
tional injury occurred and if the claimant's preinjury employer
does not offer the preinjury job or a comparable job to the
employee when a position is available to be offered, the award
for the percentage of partial disability shall be computed on the
basis of six weeks of compensation for each percent of disabil-
ity.

(3) The minimum weekly benefit under this subdivision
shall be as provided in subdivision (b) of this section for
temporary total disability.

(f) If the injury results in the total loss by severance of any
of the members named in this subdivision, the percentage of
disability shall be determined by the percentage of disability,
specified in the following table:

The loss of a great toe shall be considered a ten percent
disability.
The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of a foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.
The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index fingers shall be considered a thirty-two percent disability.

The loss of index and middle fingers shall be considered a twenty percent disability.

The loss of middle and ring fingers shall be considered a fifteen percent disability.

The loss of ring and little fingers shall be considered a ten percent disability.

The loss of thumb, index and middle fingers shall be considered a forty percent disability.

The loss of index, middle and ring fingers shall be considered a thirty percent disability.

The loss of middle, ring and little fingers shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one or both eyes, the percentages of disability shall be determined by the commission, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-two and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a fifty-five percent disability.

For the partial loss of hearing in one or both ears, the percentage of disability shall be determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, using as a basis the total loss of hearing in both ears.

If a claimant sustains a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision or dies from sickness or noncompensable injury before the commission makes the proper award for the injury, the commission shall make the award to the claimant's dependents as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage and that this liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges against, the estate.

(g) If a claimant to whom has been made a permanent partial award dies from sickness or noncompensable injury, the
unpaid balance of the award shall be paid to claimant’s depend-
ents as defined in this chapter, if any; the payment to be made
in the same installments that would have been paid to claimant
if living: Provided, That no payment shall be made to any
surviving spouse of the claimant after his or her remarriage, and
that this liability shall not accrue to the estate of the claimant
and is not subject to any debts of, or charges against, such
estate.

(h) For the purposes of this chapter, a finding of the
occupational pneumoconiosis board has the force and effect of
an award.

(i) For the purposes of this chapter, with the exception of
those injuries provided for in subdivision (f) of this section and
in section six-b of this article, the degree of permanent disabil-
ity other than permanent total disability shall be determined
exclusively by the degree of whole body medical impairment
that a claimant has suffered. For those injuries provided for in
subdivision (f) of this section and section six-b of this article,
the degree of disability shall be determined exclusively by the
provisions of said subdivision and said section. The occupa-
tional pneumoconiosis board created pursuant to section eight-a
of this article shall premise its decisions on the degree of
pulmonary function impairment that claimants suffer solely
upon whole body medical impairment. The workers’ compen-
sation commission shall adopt standards for the evaluation of
claimants and the determination of a claimant’s degree of whole
body medical impairment. Once the degree of medical impair-
ment has been determined, that degree of impairment shall be
the degree of permanent partial disability that shall be awarded
to the claimant. This subdivision is applicable to all injuries
incurred and diseases with a date of last exposure on or after the
second day of February, one thousand nine hundred ninety-five,
to all applications for an award of permanent partial disability
made on and after that date and to all applications for an award
of permanent partial disability that were pending before the
commission or pending in litigation but not yet submitted for
decision on and after that date. The prior provisions of this
subdivision remain in effect for all other claims.

(j) From a list of names of seven persons submitted to the
executive director by the health care advisory panel, the
executive director shall appoint an interdisciplinary examining
board consisting of five members to evaluate claimants,
including by examination if the board elects. The interdisci-
plinary examining board shall terminate upon termination of the
commission and all administrative and adjudicatory functions
performed by the interdisciplinary examining board shall be
performed by the following reviewing bodies for those claims
over which they have administrative jurisdiction: (1) The
insurance commissioner or his or her designated administrator
of each of the funds set forth in this chapter; (2) private carriers;
or (3) self-insured employers. The reviewing bodies shall
employ or otherwise engage adequate resources, including
medical professionals, to perform the functions of the interdis-
ciplinary examining board. The board shall be composed of
three qualified physicians with specialties and expertise
qualifying them to evaluate medical impairment and two
vocational rehabilitation specialists who are qualified to
evaluate the ability of a claimant to perform gainful employ-
ment with or without retraining. One member of the board shall
be designated annually as chairperson by the executive director.
The term of office of each member of the board shall be six
years and until his or her successor has been appointed and has
qualified. Any member of the board may be appointed to any
number of terms. Any two physician members and one
vocational rehabilitation specialist member shall constitute a
quorum for the transaction of business. The executive director,
from time to time, shall fix the compensation to be paid to each
member of the board, and the members are also entitled to
reasonable and necessary traveling and other expenses incurred
while actually engaged in the performance of their duties. The
board shall perform the duties and responsibilities assigned by
the provisions of this chapter, consistent with the administrative policies developed by the executive director with the approval of the board of managers.

(1) The executive director shall establish requirements for the proper completion and support for an application for permanent total disability benefits within an existing or a new rule no later than the first day of January, two thousand four. Upon adoption of the rule by the board of managers, no issue of permanent total disability may be referred to the interdisciplinary examining board, or, any other reviewing body, unless a properly completed and supported application for permanent total disability benefits has been first filed Prior to the referral of any issue to the interdisciplinary examining board, or, upon its termination, prior to a reviewing body’s adjudication of a permanent total disability application, the commission, or reviewing body shall conduct examinations of the claimant that it finds necessary and obtain all pertinent records concerning the claimant’s medical history and reports of examinations and forward them to the board at the time of the referral. The commission or reviewing body shall provide adequate notice to the employer of the filing of the request for a permanent total disability award and the employer shall be granted an appropriate period in which to respond to the request. The claimant and the employer may furnish all pertinent information to the board or other reviewing body and shall furnish to the board or other reviewing body any information requested. The claimant and the employer may each submit no more than one report and opinion regarding each issue present in a given claim. The employer may have the claimant examined by medical specialists and vocational rehabilitation specialists: Provided, That the employer is entitled to only one examination on each issue present in a given claim. Any additional examinations must be approved by the commission or other reviewing body and shall be granted only upon a showing of good cause. The reports from all employer-conducted examinations must be filed with the board or other reviewing body and served upon the claim-
The board or other reviewing body may request that those persons who have furnished reports and opinions regarding a claimant provide it with additional information considered necessary. Both the claimant and the employer, as well as the commission, or other reviewing body may submit or obtain reports from experts challenging or supporting the other reports in the record regardless of whether or not the expert examined the claimant or relied solely upon the evidence of record.

(2) If the board or a quorum of the board elects to examine a claimant, the individual members shall conduct any examinations that are pertinent to each of their specialties. If a claim presents an issue beyond the expertise of the board, the board may obtain advice or evaluations by other specialists. In addition, if the board of managers determines that the number of applications pending before the interdisciplinary examining board has exceeded the level at which the board can review and make recommendations within a reasonable time, the board of managers may authorize the executive director to appoint any additional members to the board that are necessary to reduce the backlog of applications. The additional members shall be recommended by the health care advisory panel. The executive director may make any appointments he or she chooses from the recommendations. The additional board members shall not serve a set term but shall serve until the board of managers determines that the number of pending applications has been reduced to an acceptable level.

(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, utilization review decisions and managed care decisions arising under section three of this article.

(4) In the event the board members or other reviewing body elects to examine a claimant, the board or other reviewing body
shall prepare a report stating the tests, examinations, procedures and other observations that were made, the manner in which each was conducted and the results of each. The report shall state the findings made by the board or other reviewing body and the reasons for the findings. Copies of the reports of all examinations made by the board or other reviewing body shall be served upon the parties and the commission until its termination. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) The board or other reviewing body shall state its initial recommendations to the commission in writing with an explanation for each recommendation setting forth the reasons for each. The recommendations shall be served upon the parties and the commission and each shall be afforded a thirty-day opportunity to respond in writing to the board or other reviewing body regarding its recommendations. The board or other reviewing body shall review any responses and issue its final recommendations. The final recommendations shall be effectuated by the entry of an appropriate order by the commission, or, upon its termination, the private carrier or self-insured employer. For all awards for permanent total disability where the claim was filed on or after the effective date of the amendment and reenactment of this section in the year two thousand three, the commission or other reviewing body shall establish the date of onset of the claimant’s permanent total disability as the date when a properly completed and supported application for permanent total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding of permanent total disability was filed with the commission or other reviewing body: Provided, That upon notification of the commission or other reviewing body by a claimant or his or her representative that the claimant seeks to be evaluated for permanent total disability, the commission or other reviewing body shall send the claimant or his or her representative the proper application form. The commission or other reviewing body shall set time limits for the return of the application. A properly completed
and supported application returned within the time limits set by
the commission or other reviewing body shall be treated as if
received on the date the commission or other reviewing body
was notified the claimant was seeking evaluation for permanent
total disability: Provided, however, That notwithstanding any
other provision of this section to the contrary, the onset date
may not be sooner than the date upon which the claimant meets
the percentage thresholds of prior permanent partial disability
that are established by subsection (n) of this section as a
prerequisite to the claimant's qualification for consideration for
a permanent total disability award.

(6) Except as noted below, objections pursuant to section
one, article five of this chapter to any order shall be limited in
scope to matters within the record developed before the
workers' compensation commission and the board or other
reviewing body and shall further be limited to the issue of
whether the board or other reviewing body properly applied the
standards for determining medical impairment, if applicable,
and the issue of whether the board's findings are clearly wrong
in view of the reliable, probative and substantial evidence on
the whole record. The preponderance of the evidence set forth
in article one of this chapter shall apply to decisions made by
reviewing bodies other than the commission instead of the
clearly wrong standard. If either party contends that the
claimant's condition has changed significantly since the review
conducted by the board or other reviewing body, the party may
file a motion with the administrative law judge, together with
a report supporting that assertion. Upon the filing of the
motion, the administrative law judge shall cause a copy of the
report to be sent to the examining board or other reviewing
body asking the board to review the report and provide com-
ments if the board chooses within sixty days of the board's
receipt of the report. The board or other reviewing body may
either supply comments or, at the board's or other reviewing
body's discretion, request that the claim be remanded to the
board for further review. If remanded, the claimant is not
required to submit to further examination by the employer's medical specialists or vocational rehabilitation specialists. Following the remand, the board or other reviewing body shall file its recommendations with the administrative law judge for his or her review. If the board or other reviewing body elects to respond with comments, the comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board's or other reviewing body's recommendations or comments, the administrative law judge shall issue a written decision ruling upon the asserted change in the claimant's condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: Provided, That each party and the commission may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either challenging or defending the board's or other reviewing body's findings and conclusions. Thereafter, based upon the evidence of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection. The limitation of the scope of review otherwise provided in this subsection is not applicable upon termination of the commission and any objections shall be subject to article five of this chapter in its entirety.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right to the compensation shall not vest in his or her estate, except that any unpaid compensation which would
have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of the injured employee if there are any dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

(n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on and after the effective date of the amendment and reenactment of this section during the year two thousand three, a claimant: (A) Must have been awarded the sum of fifty percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding by the commission that the claimant has suffered a medical impairment of fifty percent; or (C) has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated by the examining board or other reviewing body pursuant to subdivision (i) of this section to determine if the claimant has suffered a whole body medical impairment of fifty percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. A claimant whose prior permanent partial
disability awards total eighty-five percent or more shall also be
examined by the board or other reviewing body and must be
found to have suffered a whole body medical impairment of
fifty percent in order for his or her request to be eligible for
further review. The examining board or other reviewing body
shall review the claim as provided for in subdivision (j) of this
section. If the claimant has not suffered whole body medical
impairment of at least fifty percent or has sustained a thirty-five
percent statutory disability pursuant to the provisions of
subdivision (f) of this section, the request shall be denied.
Upon a finding that the claimant has a fifty percent whole body
medical impairment or has sustained a thirty-five percent
statutory disability pursuant to the provisions of subdivision (f)
of this section, the review of the application continues as
provided for in the following paragraph of this subdivision.
Those claimants whose prior permanent partial disability
awards total eighty-five percent or more and who have been
found to have a whole body medical impairment of at least fifty
percent or have sustained a thirty-five percent statutory disabil-
ity pursuant to the provisions of subdivision (f) of this section
are entitled to the rebuttable presumption created pursuant to
subdivision (d) of this section for the remaining issues in the
request.

(2) For all awards made on or after the effective date of the
amendment and reenactment of this section during the year two
thousand three, disability which renders the injured employee
unable to engage in substantial gainful activity requiring skills
or abilities which can be acquired or which are comparable to
those of any gainful activity in which he or she has previously
engaged with some regularity and over a substantial period of
time shall be considered in determining the issue of total
disability. The comparability of preinjury income to post-
disability income will not be a factor in determining permanent
total disability. Geographic availability of gainful employment
within a driving distance of seventy-five miles from the
residence of the employee or within the distance from the
residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. For any permanent total disability award made after the amendment and reenactment of this section in the year two thousand three, permanent total disability benefits shall cease at age seventy years. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three of this chapter shall be considered once they are effective.

(3) In the event that a claimant, who has been found to have at least a fifty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, is denied an award of permanent total disability benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or she previously held, the claimant is eligible, notwithstanding the provisions of section nine of this article, to receive temporary partial rehabilitation benefits for a period of four years. The benefits shall be paid at the level necessary to ensure the claimant’s receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and sections six-d and fourteen of this article:

(A) Eighty percent for the first year;

(B) Seventy percent for the second year;

(C) Sixty percent for the third year; and

(D) Fifty percent for the fourth year. Provided, That in no event shall the benefits exceed one hundred percent of the average weekly wage in West Virginia. In no event shall the benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b) of this section.

(4) Notwithstanding any provision of this subsection, subsection (d) of this section or any other provision of this code
to the contrary, on any claim filed on or after the effective date of the amendment and reenactment of this section in the year two thousand three:

(A) No percent of whole body medical impairment existing as the result of carpal tunnel syndrome for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this subsection or subsection (d) of this section; and

(B) No percent of whole body medical impairment existing as the result of any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and measurable medical findings, and for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this subsection or subsection (d) of this section.

(o) To confirm the ongoing permanent total disability status of the claimant, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may elect to have any recipient of a permanent total disability award undergo one independent medical examination during each of the first five years that the permanent total disability award is paid and one independent medical examination during each three-year period thereafter until the claimant reaches the age of seventy years: Provided, That the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may elect to have any recipient of a permanent total disability award under the age of fifty years undergo one independent medical examination during each year that the permanent total disability award is paid until the recipient reaches the age of fifty years, and thereafter one independent medical examination during each three-year period thereafter until the claimant reaches the age of seventy years.
§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability is determined by the degree of medical impairment that is found by the occupational pneumoconiosis board. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall enter an order setting forth the findings of the occupational pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is the final decision of the commission for purposes of section one, article five of this chapter. If a decision is objected to, the office of judges shall affirm the decision of the occupational pneumoconiosis board made following hearing unless the decision is clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Compensation is paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section six of this article: Provided, That for any employee who applies for occupational pneumoconiosis benefits whose award was granted on or after the effective date of the amendment and reenactment of this section during the year two thousand three, there shall be no permanent partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis without a specific finding of measurable impairment.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article;
as to the benefits, sections eleven to fourteen, inclusive, of this article apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen of this article and sections two, three, four and five, article five of this chapter providing for the further adjustment of claims are applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

(a) In all claims for occupational hearing loss caused by either a single incident of trauma or by exposure to hazardous noise in the course of and resulting from employment, the degree of permanent partial disability, if any, shall be determined in accordance with the provisions of this section and awards made in accordance with the provisions of section six of this article.

(b) The percent of permanent partial disability for a monaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz shall be determined for the injured ear and the total shall be divided by four to ascertain the average decibel loss;

(2) The percent of monaural hearing impairment for the injured ear shall be calculated by multiplying by one and six-tenths percent the difference by which the aforementioned
average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels; and

(3) The percent of monaural hearing impairment obtained shall be multiplied by twenty-two and one-half to ascertain the degree of permanent partial disability.

(c) The percent of permanent partial disability for a binaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz is determined for each ear and the total for each ear shall be divided by four to ascertain the average decibel loss for each ear;

(2) The percent of hearing impairment for each ear is calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels;

(3) The percent of binaural hearing impairment shall be calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear) and dividing the sum by six; and

(4) The percent of binaural hearing impairment obtained shall be multiplied by fifty-five to ascertain the degree of permanent partial disability.

(d) No permanent partial disability benefits shall be granted for tinnitus, psychogenic hearing loss, recruitment or hearing loss above three thousand hertz.

(e) An additional amount of permanent partial disability shall be granted for impairment of speech discrimination, if
any, to determine the additional amount for binaural impairment, the percentage of speech discrimination in each ear shall be added together and the result divided by two to calculate the average percentage of speech discrimination, and the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination obtained.

To determine the additional amount for monaural impairment, the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination in the injured ear.

**TABLE**

<table>
<thead>
<tr>
<th>% of Speech Discrimination</th>
<th>% of Permanent Partial Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% and up to and including</td>
<td>100% and up to and including 100%</td>
</tr>
<tr>
<td>80% and up to but not including</td>
<td>90% and up to but not including 90%</td>
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<tr>
<td>70% and up to but not including</td>
<td>80% and up to but not including 80%</td>
</tr>
<tr>
<td>60% and up to but not including</td>
<td>70% and up to but not including 70%</td>
</tr>
<tr>
<td>0% and up to but not including</td>
<td>60% and up to but not including 60%</td>
</tr>
</tbody>
</table>

(f) No temporary total disability benefits shall be granted for noise-induced hearing loss.

(g) An application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. The commission shall allocate to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation is based upon the time of exposure with each employer. In determining the allocation, the commission shall consider all the time of employment by each employer during which the claimant was exposed and not just the time within the three-year period under the same allocation as is applied in occupational pneumoconiosis cases.
(h) The commission shall provide, consistent with current practice, for prompt referral the claims for evaluation, for all medical reimbursement and for prompt authorization of hearing enhancement devices.

(i) The provisions of this section and the amendments to section six of this article insofar as applicable to permanent partial disabilities for hearing loss are operative as to any claim filed after thirty days from the effective date of this section.

(j) Effective upon termination of the commission, the administrative duties governing hearing loss claims shall transfer to the insurance commissioner.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers’ compensation system established by this chapter are to provide benefits to an injured claimant promptly and to effectuate his or her return to work at the earliest possible time; that the prompt dissemination of medical information to the commission and employer as to diagnosis, treatment and recovery is essential if these two objectives are to be achieved; that claimants are increasingly burdened with the task of contacting their treating physicians to request the furnishing of detailed medical information to the commission and their employers; that the commission is increasingly burdened with the administrative responsibility of providing copies of medical reports to the employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed narrative reports from the treating physician are often necessary in order for the commission, the claimant’s representatives and
the employer to evaluate a claim and determine whether additional or different treatment is indicated.

(b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her application for benefits that any physician may release to and orally discuss with the claimant's employer, or its representative, or with a representative of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, from time to time, the claimant's medical history and any medical reports pertaining to the occupational injury or disease and to any prior injury or disease of the portion of the claimant's body to which a medical impairment is alleged containing detailed information as to the claimant's condition, treatment, prognosis and anticipated period of disability and dates as to when the claimant will reach or has reached his or her maximum degree of improvement or will be or was released to return to work. For the exclusive purposes of this chapter, the patient-physician privilege of confidentiality is waived with regard to the physician's providing this medical information to the commission, the employer or to the employer's representative. Whenever a copy of any medical report is obtained by the employer or its representative and the physician has not also forwarded a copy of the medical report to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, the employer shall forward a copy of the medical report to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, within ten days from the date the employer received the medical report from the physician.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.
(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives it is essential that the commission establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commission, in consultation with the health care advisory panel, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability established for the injury involved shall be reviewed by the commission. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commission shall mark the claim file accordingly and shall diary the claim file as to the next date for required review which shall not exceed sixty days. If the commission concludes that the claimant might benefit by an independent medical evaluation, the commission shall proceed as specified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes that the claimant has either reached his or her maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, the authorized treating physician may recommend a permanent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of fifteen percent or less, the commission shall enter an award of permanent partial disability benefits based upon the recommendation and all other available
The claimant’s entitlement to temporary total disability benefits ceases upon the entry of the award unless previously terminated under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician recommends a permanent partial disability award in excess of fifteen percent, or recommends a permanent total disability award, the claimant’s entitlement to temporary total disability benefits ceases upon the receipt by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, of the medical report. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of its selection for independent evaluation prior to the entry of a permanent disability award: Provided, That unless the claimant has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in subdivision (e), section six of this article until the entry of a permanent disability award or until the claimant returns to work. The amount of benefits paid prior to the receipt of the independent evaluation report shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted by the permanent partial disability award, the claimant is entitled to no further benefits by the award and the excess paid shall be an overpayment. For all awards made or nonawarded partial benefits paid the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may only recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.
(d) When the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, concludes that an independent medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of its selection for examination and evaluation. If the physician or physicians selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and the claimant’s treating physician and the recommended treatment may be authorized by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable.

(e) Notwithstanding any provision in subsection (c) of this section, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

(1) The physician or physicians selected by the commission conclude that the claimant has reached his or her maximum degree of improvement;

(2) When the authorized treating physician advises the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section;
(3) When other evidence submitted to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, justifies a finding that the claimant has reached his or her maximum degree of improvement; or

(4) When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with his or her compensable workers' compensation injury.

In all cases, a finding by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement terminates the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work. Under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date the claimant is released to return to work or beyond the date he or she actually returns to work.

In the event that the medical or other evidence indicates that claimant has a permanent disability, unless he or she has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in subdivision (e), section six of this article until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, or until the claimant returns to work. The amount of benefits shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, the claimant is entitled to no further benefits by the order.
(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability continues longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commission under other provisions of this chapter), the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of the commission’s selection for examination and evaluation in accordance with the provisions of subsection (d) of this section and the provisions of subsection (e) of this section are fully applicable: Provided, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in no way in derogation of the power and authority vested in the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of the employer’s selection and at the employer’s expense, or vested in the claimant or employer to file a protest, under other provisions of this chapter.

(h) All evaluations and examinations performed by physicians shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary.
(i) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may suspend benefits being paid to a claimant if the claimant refuses, without good cause, to undergo the examinations or needed treatments provided for in this section until the claimant submits to the examination or needed treatments. The executive director shall propose rules for approval by the commission to implement the provisions of this subsection.

§23-4-7b. Trial return to work.

(a) The Legislature hereby finds and declares that it is in the interest of employees, employers and the commission that injured employees be encouraged to return to work as quickly as possible after an injury and that appropriate protections be afforded to injured employees who return to work on a trial basis.

(b) Notwithstanding any other provisions of this chapter to the contrary, the injured employee shall not have his or her eligibility to receive temporary total disability benefits terminated when he or she returns to work on a trial basis as set forth in this section. An employee is eligible to return to work on a trial basis when he or she is released to work on a trial basis by the treating physician.

(c) When an injured employee returns to work on a trial basis, the employer shall provide a trial return-to-work notification to the commission. Upon receipt of the notification, the commission shall note the date of the first day of work pursuant to the trial return and shall continue the claimant's eligibility for temporary total disability benefits, but shall temporarily suspend the payment of temporary total disability benefits during the period actually worked by the injured employee. The claim shall be closed on a temporary total disability basis either when the injured employee or the authorized treating physician notifies the commission, successor to the commission, other private carrier or self-insured employer, whichever
is applicable, that the injured employee is able to perform his or
her job or automatically at the end of a period of three months
from the date of the first day of work unless the employee
notifies the commission, successor to the commission, other
private carrier or self-insured employer, whichever is applica-
table, that he or she is unable to perform the duties of the job,
whichever occurs first. If the injured employee is unable to
continue working due to the compensable injury for a three-
month period, the injured employee shall provide notice and
temporary total disability benefits shall be reinstated immedi-
ately and he or she shall be referred for a rehabilitation evalu-
ation as provided in section nine of this article. No provision of
this section shall be construed to prohibit the commission,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, from referring the
injured employee for any permanent disability evaluation
required or permitted by any other provision of this article.

(d) Nothing in this section shall prevent the employee from
returning to work without a trial return-to-work period.

(e) Nothing in this section shall be construed to require an
injured employee to return to work on a trial basis.

(f) The provisions of this section shall be terminated and be
of no further force and effect on the first day of July, two
thousand seven.

§23-4-8. Physical examination of claimant.

The commission, successor to the commission, other
private carrier or self-insured employer, whichever is applica-
table, may, after due notice to the employer and claimant,
whenever in its opinion it is necessary, order a claimant of
compensation for a personal injury other than occupational
pneumoconiosis to appear for examination before a medical
examiner or examiners selected by the commission, successor
to the commission, other private carrier or self-insured em-
employer, whichever is applicable; and the claimant and employer, respectively, each have the right to select a physician of the claimant's or the employer's own choosing and at the claimant's or the employer's own expense to participate in the examination. All examinations shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable. The respective physicians selected by the claimant and employer have the right to concur in any report made by the medical examiner or examiners selected by the commission, or each may file with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, a separate report, which separate report shall be considered by the commission in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may, after due notice to the employer, and whenever in the commission's opinion it is necessary, order a claimant to appear for examination before the occupational pneumoconiosis board provided for in section eight-a of this article. In any case the claimant is entitled to reimbursement for loss of wages, and to reasonable traveling and other expenses necessarily incurred by him or her in obeying the order.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, as aforesaid or in connection with any claim which is in litigation, the employer shall reimburse the claimant for loss of wages, and reasonable traveling and other expenses in connection with the examination or examinations,
not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable.

§23-4-8a. Occupational pneumoconiosis board; composition; term of office; duties; quorum; remuneration.

The occupational pneumoconiosis board shall consist of five licensed physicians who shall be appointed by the executive director. Effective upon termination of the commission, the physicians shall be appointed by the insurance commissioner: Provided, That those physicians serving as of the termination of the commission shall continue to serve until replaced. No person shall be appointed as a member of the board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the occupational pneumoconiosis board shall be physicians of good professional standing admitted to practice medicine and surgery in this state. Two members shall be roentgenologists. One member of the board shall be designated annually as chairman by the executive director. The term of office of each member of the board shall be six years. The five members of the existing board in office on the effective date of this section shall continue to serve until their terms expire and until their successors have been appointed and have qualified. Any member of the board may be appointed to any number of terms. The function of the board is to determine all medical questions relating to cases of compensation for occupational pneumoconiosis under the direction and supervision of the executive director and, effective upon termination of the commission, the insurance commissioner. Any three members of the board constitute a quorum for the transaction of its business if at least one of the members present is a roentgenologist. The executive director and, effective upon termination of the commission, the insurance commissioner, shall, from time to time, fix the compensation to be paid each
member of the board. Members are also entitled to reasonable
and necessary traveling and other expenses incurred while
actually engaged in the performance of their duties. In fixing
the compensation of board members, the executive director or
the insurance commissioner shall take into consideration the
number of claimants a member of the board actually examines,
the actual time spent by members in discharging their duties
and the recommendation of the board of managers and governor
as to reasonable reimbursement per unit of time expended based
on comparative data for physicians within the state in the same
medical specialties.

§23-4-8b. Occupational pneumoconiosis board; procedure;
autopsy.

The occupational pneumoconiosis board, upon reference to
it by an appropriate party of a case of occupational pneumoico-
niosis, shall notify the employee, or in case he or she is dead,
the claimant, and the employer, successor to the commission,
other private carrier or self-insured employer, whichever is
applicable, to appear before the board at a time and place stated
in the notice. If the employee is living, he or she shall appear
before the board at the time and place specified and submit to
the examination, including clinical and X-ray examinations,
required by the board. If a physician licensed to practice
medicine in the state makes an affidavit that the employee is
physically unable to appear at the time and place designated by
the board, the board shall, on notice to the proper parties,
change the place and time as may reasonably facilitate the
hearing or examination of the employee or may appoint a
qualified specialist in the field of respiratory disease to examine
the claimant on behalf of the board. The employee, or in case
he or she is dead, the claimant, and employer shall also produce
as evidence to the board all reports of medical and X-ray
examinations which may be in their respective possession or
control, showing the past or present condition of the employee.
If the employee is dead, the notice of the board shall further
require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board so directs. When in the opinion of the board an autopsy is considered necessary accurately and scientifically to ascertain and determine the cause of death, the autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist or any other specialists determined necessary by the board, to make the examination and tests to determine the cause of death and certify his or her or their written findings, in triplicate, to the board. The findings shall be public records. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made, all rights for compensation are forfeited.

The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board and to be represented by attorneys and physicians.

§23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, of its findings and conclusions on every medical question in controversy and the commission shall send one copy of the report to the employee or claimant and one copy to the employer. The board shall also return to and file with the commission all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.
(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of ten years during the fifteen years immediately preceding the date of his or her last exposure to such hazard and that the claimant or deceased employee has sustained a chronic respiratory disability, it shall be presumed that the claimant is suffering or the deceased employee was suffering at the time of his or her death from occupational pneumoconiosis which arose out of and in the course of his or her employment. This presumption is not conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

1. Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis and, if so, the percentage of permanent disability resulting therefrom;

2. Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis or other occupational disease; and

3. What, if any, physician appeared before the board on behalf of the claimant or employer and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

(d) If either party objects to the whole or any part of the findings and conclusions of the board, the party shall file with the commission or, on or after the first day of July, one thousand nine hundred ninety-one, with the office of judges, within thirty days from receipt of the copy to that party, unless for good cause shown the commission or chief administrative law judge extends the time, the party's objections to the findings and conclusions of the board in writing, specifying the particu-
lar statements of the board's findings and conclusions to which such party objects. The filing of an objection within the time specified is a condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commission or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the board, notice of the objection shall be given to the board, and the members of the board joining in the findings and conclusions shall appear at the time fixed by the commission or office of judges for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the occupational pneumoconiosis board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of ninety days.
Any previously filed, but unruled upon, claim shall be consolidated with the claim in which the board’s decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant’s claim to be forever barred by the provisions of section fifteen of this article.

(f) Effective upon termination of the commission, the insurance commissioner shall assume all administrative powers and responsibilities necessary to administer sections eight-a, eight-b and eight-c of this article.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers’ compensation program to assist employees to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it is a priority of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It is the goal of rehabilitation to return injured employees to employment which is comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation is to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician and the commission to cooperate in the development of a rehabilitation process designed to promote reemployment for the injured employee.
(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability as determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall at the earliest possible time determine whether the employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if it is determined that the employee can be physically and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties or work hours modification, by the provision of crutches, artificial limbs or other approved mechanical appliances, or medicines, medical, surgical, dental or hospital treatment or other services which the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, in its sole discretion determines will directly assist the employee’s return to employment, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall immediately develop a rehabilitation plan for the employee and, after due notice to the employer, expend an amount necessary for that purpose: Provided, That the expenditure for vocational rehabilitation shall not exceed twenty thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, prior to the rendering of the physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury
and the attending physician or physicians have requested
authorization prior to the rendering of the treatment: Provided
further, That payment for physical rehabilitation, including the
purchase of prosthetic devices and other equipment and training
in use of the devices and equipment, are considered expenses
within the meaning of section three of this article and are
subject to the provisions of sections three, three-b and three-c
of this article. The provision of any rehabilitation services may
be pursuant to a rehabilitation plan to be developed and
monitored by a rehabilitation professional for each injured
employee or by such other provider as determined by the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable. Notwith-
standing any other provision of this section to the contrary, the
commission may determine under rules promulgated by the
board of managers that a rehabilitation plan or any component
thereof is not appropriate for an injured employee.

(c) In every case in which the commission, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, orders physical or vocational rehabili-
tation of a claimant as provided in this section, the claimant
shall, during the time he or she is receiving any vocational
rehabilitation or rehabilitative treatment that renders him or her
totally disabled during the period of rehabilitation, be compen-
sated on a temporary total disability basis for that period.

(d) In every case in which the claimant returns to gainful
employment as part of a rehabilitation plan, and the employee’s
average weekly wage earnings are less than the average weekly
wage earnings earned by the injured employee at the time of the
injury, he or she shall receive temporary partial rehabilitation
benefits calculated as follows: The temporary partial rehabilita-
tion benefit shall be seventy percent of the difference between
the average weekly wage earnings earned at the time of the
injury and the average weekly wage earnings earned at the new
employment, both to be calculated as provided in sections six,
six-d and fourteen of this article as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: Provided, however, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year two thousand three shall be for a period not exceeding fifty-two weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of one hundred four weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee's average weekly wage in the new employment has changed and, if the change has occurred, the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.
(e) The executive director, in consultation with the board of
managers, shall propose for promulgation rules for the purpose
of developing a comprehensive rehabilitation program which
will assist injured workers to return to suitable gainful employ-
ment after an injury in a manner consistent with the provisions
and findings of this section. The rules shall provide definitions
for rehabilitation facilities and rehabilitation services pursuant
to this section. Notwithstanding any other provision of this
chapter to the contrary, and in addition to the provisions of
section three of this article authorizing employers to participate
in a managed health care plan, including a managed health care
plan that provides physical and vocational rehabilitation
services, an employer may contract directly with one or more
providers of vocational rehabilitation services to be the em-
ployer’s preferred provider of vocational rehabilitation services
for its employees who receive injuries compensable under the
provisions of this chapter and the rules promulgated under this
section may require those employees to use the preferred
providers.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury, other than occupational pneumo-
coniosis or other occupational disease, suffered by an employee
in the course of and resulting from his or her employment,
causes death, and disability is continuous from the date of the
injury until the date of death, or if death results from occupa-
tional pneumoconiosis or from any other occupational disease,
the benefits shall be in the amounts and to the persons as
follows:

(a) If there are no dependents, the disbursements shall be
limited to the expense provided for in sections three and four of
this article;

(b) If there are dependents as defined in subdivision (d) of
this section, the dependents shall be paid for as long as their
dependency continues in the same amount that was paid or
would have been paid the deceased employee for total disability
had he or she lived. The order of preference of payment and
length of dependence shall be as follows:

(1) A dependent widow or widower until death or remar-
riage of the widow or widower, and any child or children
dependent upon the decedent until each child reaches eighteen
years of age or where the child after reaching eighteen years of
age continues as a full-time student in an accredited high
school, college, university, business or trade school, until the
child reaches the age of twenty-five years, or if an invalid child,
to continue as long as the child remains an invalid. All persons
are jointly entitled to the amount of benefits payable as a result
of employee’s death;

(2) A wholly dependent father or mother until death; and

(3) Any other wholly dependent person for a period of six
years after the death of the deceased employee;

(c) If the deceased employee leaves no wholly dependent
person, but there are partially dependent persons at the time of
death, the payment shall be fifty dollars a month to continue for
the portion of the period of six years after the death, determined
by the commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable, but no
partially dependent person shall receive compensation pay-
ments as a result of the death of more than one employee.

Compensation under this subdivision and subdivision (b) of
this section shall, except as may be specifically provided to the
contrary in those subdivisions, cease upon the death of the
dependent, and the right to the compensation shall not vest in
his or her estate.

(d) “Dependent”, as used in this chapter, means a widow,
widower, child under eighteen years of age, or under twenty-
five years of age when a full-time student as provided in this section, invalid child or posthumous child, who, at the time of the injury causing death, is dependent, in whole or in part, for his or her support upon the earnings of the employee, stepchild under eighteen years of age, or under twenty-five years of age when a full-time student as provided in this section, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-five years of age when a full-time student as provided in this section, father, mother, grandfather or grandmother, who, at the time of the injury causing death, is dependent, in whole or in part, for his or her support upon the earnings of the employee; and invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death; and

(e) If a person receiving permanent total disability benefits dies from a cause other than a disabling injury leaving any dependents as defined in subdivision (d) of this section, an award shall be made to the dependents in an amount equal to one hundred four times the weekly benefit the worker was receiving at the time of his or her death and be paid either as a lump sum or in periodic payments, at the option of the dependent or dependents.

§23-4-11. To whom death benefits paid.

The benefits, in case of death, shall be paid to one or more dependents of the decedent, or to any other persons, for the benefit of all of the dependents, as may be determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, who may apportion the benefits among the dependents in the manner as they consider just and equitable. Payment to a dependent subsequent in right may be made if the commission considers proper and it operates to discharge all other claims for the benefits.

The dependent or person to whom benefits are paid shall apply the benefits to the use of the several beneficiaries of the benefits according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable.


(a) The average weekly wage earnings, wherever earned, of the injured person at the date of injury and the average weekly wage in West Virginia as determined by the commission, and, effective the first day of January, two thousand six, the insurance commissioner, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

(1) In cases involving occupational pneumoconiosis or other occupational diseases, the "date of injury" is the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

(2) In computing benefits payable on account of occupational pneumoconiosis, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b)(1) Until the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for
the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(2) On and after the first day of July, one thousand nine hundred ninety-four, the expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the commission pursuant to subsection (b), section two, article two of this chapter, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(c) The expression “average weekly wage in West Virginia”, within the meaning of this chapter, is the average weekly wage in West Virginia as determined by the commissioner of the bureau of employment programs in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code and other applicable provisions of said chapter.

(d) In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after the first day of July, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant in effect on the date of the injury. In no event shall an award for permanent total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia.

(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the commission and, effective upon termination of the commission, the insurance commissioner, and filed with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, within six months from and after the injury or death, as the case may be, and unless filed within the six months period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must also be filed with the commis- sion within six months from and after the death. In case the employee is mentally or physically incapable of filing the application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions of this subsection, the application for compensation shall be made on the form or forms prescribed by the commission and effective upon termination of the commission, the insurance commissioner, and filed with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, within three years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician and unless filed within the three-year period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, or, in the case of death, the application shall be filed by the dependent of the employee within one year from and after the
employee’s death, and such time limitation is a condition of the right and hence jurisdictional.

(c) To entitle any employee to compensation for occupational disease other than occupational pneumoconiosis under the provisions of this section, the application for compensation shall be made on the form or forms prescribed by the commission and, effective upon termination of the commission, the insurance commissioner, and filed with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, within three years from and after the day on which the employee was last exposed to the particular occupational hazard involved or within three years from and after the employee’s occupational disease was made known to him or her by a physician or which he or she should reasonably have known, whichever last occurs, and unless filed within the three-year period, the right to compensation under this chapter shall be forever barred, such time limitation being hereby declared to be a condition of the right and therefore jurisdictional, or, in case of death, the application shall be filed as aforesaid by the dependent of the employee within one year from and after the employee’s death, and such time limitation is a condition of the right and hence jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.

Notwithstanding any other provisions of this chapter, nonresident alien beneficiaries are entitled to the same benefits as citizens of the United States: Provided, That the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, in its discretion may make, and the beneficiary shall accept, commutation of the benefits into a lump sum settlement and payment. Nonresident alien beneficiaries within the meaning of this section means persons not citizens of the United States residing outside of the territorial limits of the United States at the time of the injury with respect to which benefits are awarded.
§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

(a) If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of sixty days' exposure to the hazards of occupational pneumoconiosis, the commission shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the commission shall determine whether the claimant filed his or her application within that period and whether in the state of West Virginia the claimant was exposed to the hazard over a continuous period of not less than two years during the ten years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the commission shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to the hazard over...
a continuous period of not less than two years during the ten
years immediately preceding the date of his or her last exposure
to the hazard and whether the claimant was exposed to the
hazard over a period of not less than ten years during the fifteen
years immediately preceding the date of his or her last exposure
to the hazard. The commission shall also determine other
nonmedical facts that, in the commission’s opinion, are
pertinent to a decision on the validity of the claim.

The commission shall enter an order with respect to
nonmedical findings within ninety days following receipt by the
commission of both the claimant’s application for occupational
pneumoconiosis benefits and the physician’s report filed in
connection with the claimant’s application and shall give each
interested party notice in writing of these findings with respect
to all the nonmedical facts. The findings and actions of the
commission are final unless the employer, employee, claimant
or dependent, within thirty days after receipt of the notice,
objects to the findings, and unless an objection is filed within
the thirty-day period, the findings are forever final, the time
limitation is a condition of the right to litigate the findings and
therefor jurisdictional. Upon receipt of an objection, the chief
administrative law judge shall set a hearing as provided in
section nine, article five of this chapter. In the event of an
objection to the findings by the employer, the claim shall,
notwithstanding the fact that one or more hearings may be held
with respect to the objection, mature for reference to the
occupational pneumoconiosis board with like effect as if the
objection had not been filed. If the administrative law judge
concludes after the protest hearings that the claim should be
dismissed, a final order of dismissal shall be entered. The final
order is subject to appeal in accordance with the provisions of
sections ten and twelve, article five of this chapter. If the
administrative law judge concludes after the protest hearings
that the claim should be referred to the occupational pneumocon-
iosis board for its review, the order entered shall be interlocu-
tory only and may be appealed only in conjunction with an
appeal from a final order with respect to the findings of the
occupational pneumoconiosis board.

(b) The administrative duties required to be performed by
the commission pursuant to section fifteen-b of this article, and
all applicable exempt legislative rules shall transfer from the
commission to the insurance commissioner effective upon
termination of the commission.

§23-4-16. Jurisdiction over case continuous; modification of
finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening
cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, over each case is continuing and the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. Upon and after the second day of February, one thousand nine hundred ninety-five, the period in which a claimant may request a modification, change or reopening of a prior award that was entered either prior to or after that date shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in section twenty-two of this article, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.
(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time period, only two requests may be filed. With regard to those occupational diseases, including occupational pneumoconiosis, which are medically recognized as progressive in nature, if any such request is granted by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, a new five-year period begins upon the date of the subsequent award. With the advice of the health care advisory panel, the executive director and the board of managers shall by rule designate those progressive diseases which are customarily the subject of claims.

(3) No further award may be made in fatal cases except within two years after the death of the employee.

(4) With the exception of the items set forth in subsection (d), section three of this article, in any claim in which medical or any type of rehabilitation service has not been rendered or durable medical goods or other supplies have not been received for a period of five years, no request for additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or any type of rehabilitation benefits or any type of goods or supplies be paid for by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.

(b) In any claim in which an injured employee makes application for a further period of temporary total disability, if the application is in writing and filed within the applicable time limit stated above, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall pass upon the request within thirty days of
If the decision is to grant the request, the order shall provide for the receipt of temporary total disability benefits. In any case in which an injured employee makes application for a further award of permanent partial disability benefits or for an award of permanent total disability benefits, if the application is in writing and filed within the applicable time limit as stated above, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall pass upon the request within thirty days of its receipt and, if the commission determines that the claimant may be entitled to an award, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall refer the claimant for further examinations that are necessary.

(c) If the application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, in support of his or her application and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement shall be made by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished by the claimant, but shall in no case exceed the sum fixed pursuant to the applicable schedule of maximum reasonable fees.

(d) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, has continuing power and jurisdiction over claims in which permanent total disability awards have been made after the eighth day of April, one thousand nine hundred ninety-three.
The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall continuously monitor permanent total disability awards and may, from time to time, after due notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award. At such times as the commission may determine, the commission may require the claimant to provide documents and other information to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, including, but not limited to, tax returns, financial records and affidavits demonstrating level of income, recreational activities, work activities, medications used and physicians or other medical or rehabilitation providers treating or prescribing medication or other services for the claimant; require the claimant to appear under oath before the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, or its duly authorized representative and answer questions; and suspend or terminate any benefits of a claimant who willfully fails to provide the information or appear as required: Provided, That the commission shall develop, implement and complete a program as soon as reasonably possible that requires each person receiving permanent total disability benefits on the effective date of the amendment and reenactment of this section in the year two thousand three, and each person who is awarded those benefits thereafter, to submit the tax returns and the affidavit described herein at least once: Provided, however, That this requirement does not restrict the commission's authority to require the information that may be required herein at such other times as the commission may determine. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may reopen a claim for reevaluation when, in its sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under subdivision (n), section six of this article. The eligibility requirements,
including any vocational standards, shall be applied as those
requirements are stated at the time of a claim’s reopening.

(2) Upon reopening a claim under this subsection, the
commission, successor to the commission, other private carrier
or self-insured employer, whichever is applicable, may take
evidence, have the claimant evaluated, make findings of fact
and conclusions of law and shall vacate, modify or affirm the
original permanent total disability award as the record requires.
The claimant’s former employer shall not be a party to the
reevaluation, but shall be notified of the reevaluation and may
submit any information as the employer may elect. In the event
the claimant retains his or her award following the reevaluation,
the claimant’s reasonable attorneys’ fees incurred in defending
the award shall be paid by the workers’ compensation commis-
sion, successor to the commission, other private carrier or self-
insured employer, whichever is applicable. In addition, the
workers’ compensation commission, successor to the commis-
sion, other private carrier or self-insured employer, whichever
is applicable, shall reimburse a prevailing claimant for his or
her costs in obtaining one evaluation on each issue during the
course of the reevaluation with the reimbursement being made
from the fund. The board of managers shall adopt criteria for
the determination of reasonable attorneys’ fees.

(3) This subsection shall not be applied to awards made
under the provisions of subdivision (m), section six of this
article. The claimant may seek review of the final order as
otherwise provided in article five of this chapter for review of
orders granting or denying permanent disability awards.

(4) The commission shall establish by rule criteria for
review, reopening and reevaluating a claim under this subsec-
tion. The commission shall at least quarterly provide a report
of the exercise of its authority to continuously monitor perma-
nent total disability awards under this section to the joint
committee on government and finance and the joint commission
on economic development.
(e) A claimant may have only one active request for a permanent disability award pending in a claim at any one time. Any new request that is made while another is pending shall be consolidated into the former request.

§23-4-16a. Interest on benefits.

Whenever any award of temporary total, permanent partial or permanent total disability benefits or dependent benefits is made on or after the first day of July, one thousand nine hundred seventy-one, and a protest is filed to the award or an appeal is taken from the award by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following the protest or appeal, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall add interest to the award at the simple rate of six percent per annum from the date the award would have been payable had the protest or appeal not been filed or taken, exclusive of any period for which a continuance was granted upon motion of any party other than the protesting or appealing employer. Any interest payable shall be charged to the account of the protesting or appealing employer to the extent that the benefits upon which such interest is computed are charged to the account of the employer.

§23-4-17. Commutation of periodical benefits.

The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, under special circumstances and when it is considered advisable, may commute periodical benefits to one or more lump-sum payments. Upon the application of any claimant who has received an award of partial or total disability, who is not a citizen of the United States and desires to reside permanently beyond the territorial limits of the United States, or upon the application of an alien dependent of a deceased employee with respect of whose death award of compensation has been made,
the dependent residing in the territorial limits of the United States at the time of the decedent’s death, and desiring to reside permanently beyond the territorial limits of the United States, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may commute into one lump-sum payment the periodical payments to which the claimant or dependent would be entitled, but at the rate of one-half the amount that would be payable to a citizen of the United States under like circumstances. The lump-sum payment at the rate specified in this section discharges all liability with respect to the award, but in no event shall the award be paid until the claimant or dependent has actually arrived and domiciled himself or herself outside the territorial limits of the United States, except a sufficient portion of the award to pay transportation and other necessary expenses.

§23-4-20. Postmortem examinations.

The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may, after due notice to the employer and claimant, whenever it considers it necessary, order an autopsy and may designate a duly licensed physician to make the postmortem examination or examinations that are necessary to determine the cause of the deceased employee’s death. The physician shall file with the commission a written report of his or her findings. The claimant and the employer, respectively, have the right to select a physician of his, her or its own choosing and, at his or her or its own expense, to participate in the postmortem examination. The respective physicians selected by the claimant and the employer have the right to concur in any report made by the physician selected by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, or each may file with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, a separate report. In any case, including silicosis cases, in
which either the employer or a claimant requests that an autopsy be performed, the autopsy shall be directed as provided in this section. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made all rights to compensation shall be forfeited.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under subdivision (d) or (n), section six of this article or section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. §401 and 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be remanded for the production of the evidence.

(b) The workers' compensation commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, has the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in whole or in part, to subdivision (d) or (n), section six of this article. Any claim or request for permanent total disability
benefits arising under said subdivisions shall first be presented to the commission as part of the initial claim filing or by way of an application for modification or adjustment pursuant to section sixteen of this article. The office of judges may consider a claim only after the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, has entered an appropriate order.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

(a) After the eighth day of April, one thousand nine hundred ninety-three, a reduction in the amount of benefits as specified in subsection (b) of this section shall be made whenever benefits are being paid for a permanent total disability award regardless of when the benefits were awarded. This section is not applicable to the receipt of medical benefits or the payment for medical benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. Prior to the application of this section to any claimant, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall give the claimant notice of the effect of this section upon a claimant’s award if and when the claimant later earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time period in which the claimant has earned wages as a result of his or her employment, the following reduction in applicable benefits shall be made. The claimant’s applicable monthly benefits and monthly net wages received from the current employment shall be added together. If the total exceeds by more than one hundred twenty percent of the amount of the claimant’s monthly net wages earned during his or her last employment prior to the award of permanent total disability benefits, the excess shall be reduced by one dollar for
each two dollars that the claimant's monthly benefits and monthly net wages exceed the one hundred twenty percent level: Provided, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided in subdivisions (b) and (d), section six of this article.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers’ relief fund created.
§23-4A-9. Transfer of authority to the insurance commissioner.

§23-4A-1. Disabled workers’ relief fund created.

(a) For the relief of persons who are receiving benefits pursuant to a permanent total disability award in amounts less than thirty-three and one-third percent of the average weekly wage for the state of West Virginia per month, and for the relief of widows who are receiving benefits on account of the death of an employee in amounts less than thirty-three and one-third percent of the average weekly wage in the state of West Virginia per month, and for the relief of children of employees deceased before one thousand nine hundred sixty-seven, who are under the age of twenty-three and who are full-time students, and for the relief of other persons who are receiving dependents’ benefits on account of the death of an employee in amounts less than the specific monetary amounts set forth in section ten, article four of this chapter and in effect as of the first day of July, one thousand nine hundred seventy-three, there is continued a separate fund, heretofore known as the “Disabled Workmen’s Relief Fund”, and which shall hereafter be known as the “Disabled Workers’ Relief Fund”, which shall consist of any sums that are, from time to time, made available to carry out the objects and purposes of this article. The fund shall be in the custody of the state treasurer and disbursements from the fund shall be made upon requisition signed by the executive director to those persons entitled to participate in the fund and in such amounts to each participant that are provided in section three of this article.
(b) Effective upon termination of the commission, the "Disabled Workers' Relief Fund" shall be administered by the successor to the commission and the administrative duties assigned to the executive director shall be transferred to the chief executive officer of the successor to the commission.


Payments to an individual entitled to participate in the disabled workers' relief fund may be made from said fund by separate check or may be made from said fund and from the workers' compensation fund and, effective upon termination of the commission, the old fund, by one check, but each such check drawn on the two funds shall be so written as to show plainly the payments made from each fund. No disbursements shall be made from the workers' compensation fund or the old fund on account of any provisions of this article.

§23-4A-9. Transfer of authority to the insurance commissioner.

Effective upon termination of the commission, the authority to make the annual transfer as required in section eight of this article shall transfer to the insurance commissioner.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.


Upon the termination of the commission, all assets, obligations and liabilities resulting from this article are transferred to the successor of the commission. The state treasurer and all other departments, agencies and boards shall cooperate to ensure this novation occurs in an expedient and orderly fashion. Thereafter, the company shall offer insurance to provide for the benefits required by this article until at least the thirtieth day of June, two thousand eight.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.
§23-4C-5. Administration.

1 Until the termination of the commission, the employers’ excess liability fund shall be administered by the executive director, who shall employ any employees that are necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the employers’ excess liability fund upon requisitions signed by the executive director.

§23-4C-6. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets, obligations and liabilities resulting from this article are transferred to the successor of the commission. Thereafter, the company shall offer insurance to provide for the benefits required by this article until at least the thirtieth day of June, two thousand eight. The state treasurer and all other departments, agencies and boards shall cooperate to ensure this novation occurs in an expedient and orderly fashion.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

§23-5-3. Refusal to reopen claim; notice; objection.

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

§23-5-5. Refusal of modification; notice; objection.


§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.

§23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.

§23-5-10. Appeal from administrative law judge decision to appeal board.
§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

(a) The workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers may hear and determine all questions within their jurisdiction. In matters arising under articles three and four of this chapter, the commission, the successor to the commission, other private insurance carriers and self-insured employers shall promptly review and investigate all claims. The parties to a claim shall file the information in support of their respective positions as they consider proper. In addition, the commission, the successor to the commission, other private insurance carriers and self-insured employers may develop additional information that it considers to be necessary in the interests of fairness to the parties and in keeping with their fiduciary obligations. With regard to any issue which is ready for a decision, the commission, the successor to the commission, other private insurance carriers and self-insured employers shall explain the basis of its decisions.

(b) Except with regard to interlocutory matters and those matters set forth in subsection (d) of this section, upon making any decision, upon making or refusing to make any award or upon making any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the commission, the successor to the commission, other private insurance carriers and self-insured employers shall give notice, in writing, to the employer, employee, claimant or dependant as the case may be, of its action. The notice shall state the time allowed for filing an objection to the finding. The action of the commission, the successor to the commission, other private insurance carriers and self-insured
employers is final unless the employer, employee, claimant or
dependant shall, within thirty days after the receipt of the
notice, object in writing, to the finding. Unless an objection is
filed within the thirty-day period, the finding or action is final.
This time limitation is a condition of the right to litigate the
finding or action and hence jurisdictional. Any objection shall
be filed with the office of judges with a copy served upon the
commission, the successor to the commission, other private
insurance carriers and self-insured employers, whichever is
applicable, and other parties in accordance with the procedures
set forth in sections eight and nine of this article. In all
instances where a private carrier, self-insured employer or a
third-party administrator has made claims decisions as autho-
rized in this chapter, they shall provide claimants notice of all
claims decisions as provided by rules for self-administration
promulgated by the board of managers and shall be bound by
each requirement imposed upon the commission by this article.

(c) Where a finding or determination of the commission,
the successor to the commission, other private insurance
carriers and self-insured employers, whichever is applicable, is
protested only by the employer, and the employer does not
prevail in its protest, and in the event the claimant is required
to attend a hearing by subpoena or agreement of counsel or at
the express direction of the commission or office of judges,
then the claimant in addition to reasonable traveling and other
expenses shall be reimbursed for loss of wages incurred by the
claimant in attending the hearing.

(d) The commission, the successor to the commission, other
private insurance carriers and self-insured employers, which-
ever is applicable may amend, correct or set aside any order or
decision on any issue entered by it which, at the time of
issuance or any time thereafter, is discovered to be defective or
clearly erroneous or the result of mistake, clerical error or
fraud, or otherwise not supported by the evidence. Jurisdiction
to take this action continues until the expiration of two years
from the date of entry of an order unless the order is sooner
affected by appellate action: Provided, That corrective actions
in the case of fraud may be taken at any time.

(e) All objections to orders of the commission, the succes-
sor to the commission, other private insurance carriers and self-
insured employers, whichever is applicable shall be styled in
the name of the issuing entity. All appeals prosecuted from the
office of judges shall be in the name of the issuing party. In all
actions under this article, the workers’ compensation commis-
sion shall be the party in interest unless the parties to the appeal
are limited to a claimant and a self-insured employer.

§23-5-2. Application by employee for further adjustment of
claim; objection to modification; hearing.

In any case where an injured employee makes application
in writing for a further adjustment of his or her claim under the
provisions of section sixteen, article four of this chapter and the
application discloses cause for a further adjustment, the
commission shall, after due notice to the employer, make the
modifications, or changes with respect to former findings or
orders in the claim that are justified. Any party dissatisfied
with any modification or change made by the commission, the
successor to the commission, other private insurance carriers
and self-insured employers, whichever is applicable, is, upon
proper and timely objection, entitled to a hearing, as provided
in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

If it appears to the commission, the successor to the
commission, other private insurance carriers and self-insured
employers, whichever is applicable, that an application filed
under section two of this article fails to disclose a progression
or aggravation in the claimant’s condition, or some other fact or
facts which were not previously considered in its former
findings and which would entitle the claimant to greater
§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in section nine of this article.

§23-5-5. Refusal of modification; notice; objection.
If in any case it appears to the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, that the application filed pursuant to section four of this article fails to disclose some fact or facts which were not previously considered by the commission in its former findings, and which would entitle the employer to any modification of the previous award, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall, within sixty days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. The employer may, within thirty days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the thirty-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the office of judges shall afford the employer an evidentiary hearing as provided in section nine of this article.


With the exception of medical benefits for nonorthopedic occupational disease claims, the claimant, the employer and the workers’ compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim except for medical
benefits for nonorthopedic occupational disease claims with the claimant and said settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insurer employer and its sureties or guarantors or both as provided in section five and five-a, article two of this chapter.

Each settlement agreement shall provide the toll free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The insurance commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

The amendments to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-nine shall apply to all settlement agreements executed after the effective date.

§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.

(a) The workers’ compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers’ compensation system of this state. The office of judges shall be under the supervision of a chief
administrative law judge who shall be appointed by the governor with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge’s salary shall be set by the workers’ compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two-thirds of the members of the workers’ compensation board of managers. Upon transfer of the office of judges to the insurance commissioner, the chief administrative law judge shall continue to serve as chief administrative law judge until the thirty-first day of December, two thousand seven. Thereafter, appointments of the chief administrative law judge shall be for terms of four years beginning the first day of January, two thousand eight, and the chief administrative law judge may be removed only for cause by the vote of four members of the Industrial Council. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee is applicable to the chief administrative law judge.

(c) The chief administrative law judge shall employ administrative law judges and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the workers’ compensation commission which orders have been objected to by a party. The employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of this code and rules of the classified service pursuant to article six, chapter twenty-
nine of this code. All additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation commission and, upon termination of the commission, the insurance commissioner.

(e) The office of judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the workers' compensation commission. The office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in article three, chapter twenty-nine-a of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The office of judges shall follow the remaining provisions of said chapter for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(f) The chief administrative law judge has the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records and make reports that are necessary for disputed claims and exercise any additional powers, including the delegation of powers to administrative law judges or hearing examiners that are necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law
§23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.

(a) Objections to a decision of the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, made pursuant to the provisions of section one of this article shall be filed with the office of judges. Upon receipt of an objection, the office of judges shall notify the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, and all other parties of the filing of the objection. The office of judges shall establish by rule promulgated in accordance with the provisions of subsection (e), section eight of this article an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant and the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall be notified of any hearing at least ten days in advance. The office of judges shall review and amend, or modify, as necessary its procedural rules by the first day of July, two thousand seven.

(b) The office of judges shall establish a program for mediation to be conducted in accordance with the requirements of rule twenty-five of the West Virginia trial court rules. The parties may agree that the result of the mediation is binding. A
case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the office of judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia state bar.

(c) The office of judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to section eight of this article, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges, evidence taken at hearings conducted by the office of judges and any documents in the claim files which relate to the subject matter of the objection. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The office of judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to section eight of this article. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the office of judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The rule authorized by subsection (a) of this section shall be promulgated on or before the first day of October, two thousand three. Until the rule is promulgated, any rules previously promulgated shall remain in full force and effect.

(f) The office of judges may remand a claim to the commission, the successor to the commission, other private insurance
carriers and self-insured employers, whichever is applicable, for
further development of the facts or administrative matters as, in
the opinion of the administrative law judge, may be necessary
for a full and complete disposition of the case. The administra-
tive law judge shall establish a time within which the commis-
sion, the successor to the commission, other private insurance
carriers and self-insured employers, whichever is applicable,
must report back to the administrative law judge.

(g) The decision of the workers' compensation office of
judges regarding any objections to a decision of the workers’
compensation commission, the successor to the commission,
other private insurance carriers and self-insured employers,
whichever is applicable, is final and benefits shall be paid or
denied in accordance with the decision unless the decision is
subsequently appealed and reversed in accordance with the
procedures set forth in this article.

§23-5-10. Appeal from administrative law judge decision to
appeal board.

The employer, claimant, workers' compensation commiss-
ion, the successor to the commission, other private insurance
carriers and self-insured employers, whichever is applicable,
may appeal to the appeal board created in section eleven of this
article for a review of a decision by an administrative law
judge. No appeal or review shall lie unless application therefor
be made within thirty days of receipt of notice of the adminis-
trative law judge's final action or in any event within sixty days
of the date of such final action, regardless of notice and, unless
the application for appeal or review is filed within the time
specified, no such appeal or review shall be allowed, such time
limitation being hereby declared to be a condition of the right
of such appeal or review and hence jurisdictional.

(a) On the thirty-first day of January, two thousand four, the
workers' compensation appeal board heretofore established in
this section is hereby abolished.

(b) There is hereby created the "workers' compensation
board of review", which may also be referred to as "the board
of review" or "the board". Effective the first day of February,
two thousand four, the board of review shall exercise exclusive
jurisdiction over all appeals from the workers' compensation
office judges including any and all appeals pending with the
board of appeals on the thirty-first day of January, two thousand
four.

(c) The board shall consist of three members.

(d) The governor shall appoint, from names submitted by
the "workers' compensation board of review nominating
committee", with the advice and consent of the Senate, three
qualified attorneys to serve as members of the board of review.
If the governor does not select a nominee for any vacant
position from the names provided by the nominating commit-
tee, he shall notify the nominating committee of that circum-
stance and the committee shall provide additional names for
consideration by the governor. A member of the board of
review may be removed by the governor for official miscon-
duct, incompetence, neglect of duty, gross immorality or
malfeasance and then only after notice and opportunity to
respond and present evidence. No more than two of the
members of the board may be of the same political party. The
members of the board of review shall be paid an annual salary
of eighty-five thousand dollars. Members are entitled to be
reimbursed for actual and necessary travel expenses incurred in
the discharge of official duties in a manner consistent with the
guidelines of the travel management office of the department of
administration.

(e) The nominating committee shall consist of the following
members: (1) The president of the West Virginia state bar who
will serve as the chairperson of the committee; (2) an active
member of the West Virginia state bar workers' compensation
committee selected by the major trade association representing
employers in this state; (3) an active member of the West
Virginia state bar workers' compensation committee selected
by the highest ranking officer of the major employee organiza-
tion representing workers in this state; (4) the dean of the West
Virginia university school of law; and (5) the chairman of the
judicial investigation committee.

(f) The nominating committee is responsible for reviewing
and evaluating candidates for possible appointment to the board
of review by the governor. In reviewing candidates, the
nominating committee may accept comments from and request
information from any person or source.

(g) Each member of the nominating committee may submit
up to three names of qualified candidates for each position on
the board of review: Provided, That the member of the nomi-
nating committee selected by the major trade organization
representing employers of this state shall submit at least one
name of a qualified candidate for each position on the board
who either is, or who represents, small business employers of
this state. After careful review of the candidates, the committee
shall select a minimum of one candidate for each position on
the board.

(h) No later than the first day of November, two thousand
three, the nominating committee shall present to the governor
its list of candidates for the initial board of review. The
governor shall appoint the initial board no later than the thirty-
first day of December, two thousand three: Provided, That upon
the thirty-first day of December, two thousand three, the
deadline for filling all positions of the board of review will be
extended, as necessary, if, on or before that date, the governor
has timely requested additional names from the nominating
committee. Thereafter, the nominating committee shall meet at
the request of the governor in order to make timely recommendations to the governor for appointees to the board as the initial and subsequent terms expire or become vacant. The recommendations shall be submitted no later than thirty days prior to the expiration of any term.

(i) Of the initial appointments, one member shall be appointed for a term ending the thirty-first day of December, two thousand six; one member shall be appointed for a term ending the thirty-first day of December, two thousand eight; and one member shall be appointed for a term ending the thirty-first day of December, two thousand ten. Thereafter, the appointments shall be for six-year terms.

(j) A member of the board of review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia state bar, have a minimum of ten years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level.

(k) No member of the board of review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the board of review may engage in the practice of law during his or her term of office.

(l) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.
(m) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(n) The board of review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(o) The board of review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice and procedure to be used by the board.

(p) The board of review may hire a clerk and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the board of review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board shall serve at the will and pleasure of the board. The board’s employees are exempt from the salary schedule or pay plan adopted by the division of personnel. All personnel of the board of review shall be under the supervision of the chairman of the board of review.

(q) If deemed necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(r) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the member shall promptly
determine the matter and make an award in accordance with his or her determination.

(s) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(t) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the board of review and the applicable time limitations involved.

(u) The board shall submit a budget to the executive director for inclusion in the budget for the workers' compensation commission sufficient to adequately provide for the administrative and other operating expenses of the board.

(v) The board shall report monthly to the board of managers on the status of all claims on appeal.

(w) Effective upon termination of the commission, the board of review shall be transferred to the insurance commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

(a) Any employer, employee, claimant or dependent, who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of section nine of this article, shall have the right to appeal to the board created in section eleven of this article for a review of such action. The workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final
action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the office of judges directed to the board, within thirty days after receipt of notice of the action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The office of judges shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The office of judges shall forthwith make up a transcript of the proceedings before the office of judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge’s findings are:

(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the administrative law judge; or

(3) Made upon unlawful procedures; or
(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written decision to be filed with the commission and a copy thereof sent by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of the board of review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse or modify the administrative law judge’s decision.

(2) Decisions of the board of review shall be made by a majority vote of the board of review.

(3) A decision of the board of review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the board of review.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case
to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional or further evidence in accordance with any instruction given by the board within thirty days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least ten days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge. The decision shall be appealable to, and proceeded with by the board of review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, following a remand shall be subject to objection to the office of judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

§23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.
(a) Review of any final decision of the board, including any order of remand, may be prosecuted by either party or by the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, to the supreme court of appeals within thirty days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as respondents. Unless the petition for review is filed within the thirty-day period, no appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The clerk of the supreme court of appeals shall notify each of the respondents and the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within ten days after receipt of the notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except
that neither the record nor briefs need be printed. Every review
granted or certified question docketed prior to thirty days before
the beginning of the term, shall be placed upon the docket for
that term. The attorney general shall, without extra compensa-
tion, represent the board in such cases. The court shall deter-
mine the matter brought before it and certify its decision to the
board and to the commission. The cost of the proceedings on
petition, including a reasonable attorney’s fee, not exceeding
thirty dollars to the claimant’s attorney, shall be fixed by the
court and taxed against the employer if the latter is unsuccess-
ful. If the claimant, or the commission (in case the latter is the
applicant for review) is unsuccessful, the costs, not including
attorney’s fees, shall be taxed against the commission, payable
out of the workers’ compensation fund, or shall be taxed against
the claimant, in the discretion of the court. But there shall be
no cost taxed upon a certified question.

(b) In reviewing a decision of the board of review, the
supreme court of appeals shall consider the record provided by
the board and give deference to the board’s findings, reasoning
and conclusions, in accordance with subsections (c) and (d) of
this section.

(c) If the decision of the board represents an affirmation of
a prior ruling by both the commission and the office of judges
that was entered on the same issue in the same claim, the
decision of the board may be reversed or modified by the
supreme court of appeals only if the decision is in clear
violation of constitutional or statutory provision, is clearly the
result of erroneous conclusions of law, or is based upon the
board’s material misstatement or mischaracterization of
particular components of the evidentiary record. The court may
not conduct a de novo re-weighing of the evidentiary record. If
the court reverses or modifies a decision of the board pursuant
to this subsection, it shall state with specificity the basis for the
reversal or modification and the manner in which the decision
of the board clearly violated constitutional or statutory provi-
ions, resulted from erroneous conclusions of law, or was based upon the board’s material misstatement or mischaracterization of particular components of the evidentiary record.

(d) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision.

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 exceeds 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) Until the first day of July, two thousand five, fourteen
percent of net terminal income at a licensed racetrack shall be
deposited in the special fund established by the licensee, and
used for payment of regular purses in addition to other amounts
provided for in article twenty-three, chapter nineteen of this
code, on and after the first day of July, two thousand five, the
rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located
shall receive two percent of the net terminal income: Provided,
That:
(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during the fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during the 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 other county other that 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 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 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 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;

(9) On and after the first day of July, two thousand five, seven percent of net terminal income shall be deposited into the workers' compensation debt reduction fund created in section five, article two-d, chapter twenty-three of this code; and

(10) 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 pertaining 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 twenty-two-a 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
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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) For all years beginning on or after the first day of July, two thousand one, 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) Until the first day of July, two thousand five, 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; on and after the first day of July, two thousand five, the rate shall be four percent of net terminal income;

(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 subdivi-
sion 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
distributed pursuant to the provisions of paragraph (B), subdivi-
son (8), subsection (c), section ten of this article;

(9) On and after the first day of July, two thousand five,
four percent of net terminal income shall be deposited into the
workers’ compensation debt reduction fund created in section
Provided, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of subdivision (9), subsection (c), section ten of this article totals eleven million dollars, all subsequent distributions under this subdivision (9) 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; and

(10) (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 33. INSURANCE.

Article
1. Definitions.
2. Insurance Commissioner.
41. Privileges and Immunity.

ARTICLE 1. DEFINITIONS.

§33-1-2. Insurer.
§33-1-10. Kinds of insurance defined.
§33-1-2. Insurer.

Insurer is every person engaged in the business of making contracts of insurance. Insurer includes private carrier as that term is used in chapter twenty-three of this code.

§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, chooses 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, com-
pressed 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, mainte-
nance 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;
60 (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;

67 (5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;

71 (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

75 (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.

83 (e) Casualty. — Casualty insurance includes:

84 (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 representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental 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.

(14) Workers’ compensation insurance, which is insurance providing all compensation and benefits required by chapter twenty-three of this code.

(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 surety ship: 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, neck-
laces, 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 furnish-
ings, 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 2. INSURANCE COMMISSIONER.

§33-2-10. Rules and regulations.
§33-2-20. Authority of insurance commissioner to regulate workers compensation
industry; authority of insurance commissioner to administer chapter
twenty-three.

§33-2-10. Rules and regulations.

(a) The commissioner is authorized to promulgate and
adopt rules relating to insurance as are necessary to discharge
his or her duties and exercise his or her powers and to effectuate
the provisions of this chapter, protect and safeguard the
interests of policyholders and the public of this state.
(b) The commissioner is authorized to promulgate rules necessary to discharge his or her duties relating to workers' compensation insurance as set forth in chapter twenty-three of this code, which shall be exempt from the provisions of chapter twenty-nine-a, article three of this code, except that these rules shall be filed with the Secretary of State's Office.

(c) Prior to assuming regulatory authority over workers' compensation insurance pursuant to article two-c, chapter twenty-three of this code, the commissioner shall review and revise all applicable rules to reflect the assumption of this new regulatory authority: Provided, That all such revisions shall be exempt from the provisions of chapter twenty-nine-a, article three, except that the amended rules shall be filed with the Secretary of State's Office.

§33-2-20. Authority of insurance commissioner to regulate workers compensation industry; authority of insurance commissioner to administer chapter twenty-three.

(a) Upon the termination of the Workers' Compensation Commission pursuant to chapter twenty-three of this code, the powers and duties heretofore imposed upon the Workers' Compensation Commission as they relate to general administration of the provisions of chapter twenty-three of this code are hereby transferred to and imposed upon the insurance commissioner.

(b) Unless otherwise specified in chapter twenty-three, upon termination of the Workers' Compensation Commission, the duties imposed upon the Workers' Compensation Commission as they relate to the award and payment of disability and death benefits and the review of claims in articles four and five, chapter twenty-three of this code, will be imposed upon the employers mutual insurance company established pursuant to article two-c, chapter twenty-three of this code, a private carrier
offering workers’ compensation insurance in this state and self-
insured employers. Whenever reference is made to the Work-
ers’ Compensation Commissioner in those articles, the duty
prescribed shall apply to the employers mutual insurance
company, a private carrier or self-insured employer, as applica-
ble.

(c) From the effective date of this enactment, the insurance
commissioner shall regulate all insurers licensed to transact
workers’ compensation insurance in this state and all of the
provisions of this chapter shall apply to such insurers, unless
otherwise exempted by statute.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-2. Definitions.
§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.
§33-41-11. Fraudulent claims to insurance companies.

§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,
including the writing of workers’ compensation insurance under
the provisions of chapter twenty-three of this code, self-
insurance by an employer or employer group for workers’
compensation risk including the risk of catastrophic injuries
under the provisions of chapter twenty-three of this code 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
or employees of insurers, or who are other persons authorized
to act on their behalf;
(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;
   (D) Act as surety; or
   (E) Self-insurance for workers' compensation risk including the risk of catastrophic injuries under the provisions of chapter twenty-three of this code.

(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 mainte-
nance organization, captive insurance company, risk retention
group or other insurer, regardless of the type of coverage
written, including the writing of workers' compensation
insurance or self insurance under the provisions of chapter
twenty-three of this code, 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
tywenty-five-a of this chapter;

(9) "Policy" means an individual or group policy, group
certificate, contract or arrangement of insurance or reinsurance,
coverage by a self-insured employer or employer group for its
workers' compensation risk including its risk of catastrophic
injuries 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 treatment, services or expense; and any application, report, actuarial study, rate request or other document submitted or required to be submitted to any authorized agency. A statement also includes any written or oral representation recorded by electronic or other media; and

(12) "Unit" means the insurance fraud unit established pursuant to the provisions of this article acting collectively or by its duly authorized representatives.

§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, the provisions of chapter twenty-three, 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 information 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 representa-
tives, 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 provi-
sions 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.

§33-41-11. 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) In addition to the foregoing provisions, the offenses
enumerated in sections twenty-four-e through twenty-four-h,
inclusive, article three, chapter sixty-one of this code are
applicable to matters concerning workers' compensation
insurance.

(f) 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.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe for workers’ compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

§61-3-24f. Wrongfully seeking workers’ compensation; false testimony or statements; penalties; venue.

§61-3-24g. Workers’ compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

§61-3-24h. Providing false documentation to workers’ compensation, to the insurance commissioner or a private carrier of workers’ compensation insurance; altering documents or certificates from workers’ compensation; penalties; venue.

§61-3-24e. Omission to subscribe for workers’ compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

1 (1) Failure to subscribe:

2 (A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer’s principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers’ compensation insurance shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be
confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars.

(B) Any corporation, association or partnership who, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers’ compensation insurance shall be guilty of a felony and, upon conviction, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars.

(2) Failure to pay:

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to make premium tax payments to the workers’ compensation fund or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the workers’ compensation fund or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the
amount is one thousand dollars or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars. If the amount is less than one thousand dollars, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person, as defined in this section, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer’s assets for the purpose of evading the payment of workers’ compensation premium taxes to the workers’ compensation fund, or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(D) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer’s assets for the purpose of evading the payment of workers’ compensation premium taxes to the workers’ compen-
sation fund, or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is one thousand dollars or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars. If the amount is less than one thousand dollars, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to file a premium tax report with the workers' compensation fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail for a term not to exceed one year and shall be fined not more than two thousand five hundred dollars.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file a premium tax report with the workers' compensation fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars.

(4) Failure to file other reports:
(A) Any person, individually or as owner, partner, president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully fails to file any report, other than a premium tax report, required by such chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any report, other than a premium tax report, with the workers’ compensation fund or insurance commissioner as required by chapter twenty-three of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(5) False testimony or statements:

Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the workers’ com-
(6) Asset forfeiture:

(A) The court, in imposing sentence on a person or entity convicted of an offense under this section, shall order the person or entity to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission, insurance commissioner or private carrier of the offense. Any person or entity convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term “payment of the costs of asset forfeiture” means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention, forfeiture or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to
the discretion of the workers’ compensation fund to determine
the validity of any such lien or mortgage and the amount of
payment to be made, and the employment of attorneys and
other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or
mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on
forfeited real property that accrued between the date of the
violation giving rise to the forfeiture and the date of the
forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall
be either the county in which the defendant’s principal business
operations are located or in Kanawha County where the
workers’ compensation fund is located.

§61-3-24f. Wrongfully seeking workers’ compensation; false
testimony or statements; penalties; venue.

(1) Any person who shall knowingly and with fraudulent
intent secure or attempt to secure compensation from the
workers’ compensation fund, a private carrier or from a self-
insured employer:

(A) That is larger in amount than that to which he or she is
entitled; or

(B) That is longer in term than that to which he or she is
entitled; or

(C) To which he or she is not entitled, shall be guilty of a
larceny and, if the amount is one thousand dollars or more, such
person shall be guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility not less than
one nor more than ten years or, in the discretion of the court, be
confined in a county or regional jail not more than one year and
shall be fined not more than two thousand five hundred dollars.
If the amount is less than one thousand dollars, such person
shall be guilty of a misdemeanor and, upon conviction thereof,
shall be confined in a county or regional jail for a term not to
exceed one year or fined an amount not to exceed two thousand
five hundred dollars, or both, in the discretion of the court.

(2) Any person who shall knowingly and willfully make a
false report or statement under oath, affidavit, certification or
by any other means respecting any information required to be
provided under chapter twenty-three of this code shall be guilty
of a felony and, upon conviction thereof, shall be confined in a
state correctional facility for a definite term of imprisonment
which is not less than one year nor more than three years or
fined not less than one thousand dollars nor more than ten
thousand dollars, or both, in the discretion of the court.

(3) In addition to any other penalty imposed, the court shall
order any person convicted under this section to make full
restitution of all moneys paid by the workers' compensation
fund, private carrier or self-insured employer as the result of a
violation of this section. The restitution ordered shall constitute
a judgment against the defendant and in favor of the state of
West Virginia workers' compensation commission, private
carrier or self-insured employer.

(4) If the person so convicted is receiving compensation
from such fund, private carrier or employer, he or she shall,
from and after such conviction, cease to receive such compen-
sation as a result of any alleged injury or disease.

(5) Venue for prosecution of any violation of this section
shall either be the county in which the claimant resides, the
county in which the claimant is employed or working, or in
Kanawha County where the workers' compensation fund is
located.
§61-3-24g. Workers’ compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

(1) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice:

(A) To defraud the workers’ compensation fund, private carrier or a self-insured employer in connection with the delivery of or payment for workers’ compensation health care benefits, items or services;

(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the workers’ compensation fund, private carrier or a self-insured employer in connection with the delivery of or payment for workers’ compensation health care benefits, items or services; or

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth in the workers’ compensation commission’s schedule of maximum reasonable amounts to be paid for the treatment or services issued pursuant to subsection (a), section three article four, chapter twenty-three of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars.

(2) Any person who, in any matter involving a health care program related to workers’ compensation insurance, knowingly and willfully:
(A) Falsifies, conceals or covers up by any trick, scheme or device a material fact; or

(B) Makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court.

(3) Any person who willfully embezzles, steals or otherwise unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property or other assets of a health care program related to the provision of workers’ compensation insurance, 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 ten years or fined not less than ten thousand dollars, or both, in the discretion of the court.

(4) Any health care provider who fails, in violation of subsection (5) of this section to post a notice, in the form required by the workers’ compensation commission, in the provider’s public waiting area that the provider cannot accept any patient whose treatment or other services or supplies would ordinarily be paid for from the workers’ compensation fund, private carrier or by a self-insured employer unless the patient consents, in writing, prior to the provision of the treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars.
(5) Any person convicted under the provisions of this section shall, after such conviction, be barred from providing future services or supplies to injured employees for the purposes of workers' compensation and shall cease to receive payment for services or supplies. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the workers' compensation fund, private carrier or self-insured employer as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the state of West Virginia workers' compensation commission, insurance commissioner, private carrier or self-insured employer.

(6) (A) The court, in imposing sentence on a person convicted of an offense under this section, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. Any person convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term "payment of the costs of asset forfeiture" means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of the property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of the properties in an effort to maximize the return from the properties; and
(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the workers’ compensation fund to determine the validity of the lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue for prosecution of any violation of this section shall be either the county in which the defendant’s principal business operations are located or in Kanawha County where the workers’ compensation fund is located.

§61-3-24h. Providing false documentation to workers’ compensation, to the insurance commissioner or a private carrier of workers’ compensation insurance; altering documents or certificates from workers’ compensation; penalties; venue.

(1) Any person, firm, partnership, company, corporation association or medical provider who submits false documentation to workers’ compensation, the insurance commissioner or a private carrier of workers’ compensation insurance with the intent to defraud the workers’ compensation commission, the insurance commissioner or a private carrier of workers’ compensation insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not
to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(2) Any person, firm, partnership, company, corporation, association or medical provider who alters, falsifies, defaces, changes or modifies any certificate or other document which would indicate good standing with the workers' compensation commission, insurance commissioner or private carrier concerning workers' compensation insurance coverage or endorsement by workers' compensation for medical services shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the workers' compensation fund is located.
Proposing an amendment to the Constitution of the State of West Virginia authorizing appropriations and the issuance and sale of additional state general obligation bonds in an amount not exceeding five billion five hundred million dollars for the purpose of funding all or a portion of the unfunded actuarial accrued liabilities of the state teachers retirement system, §18-7A-1, et seq., of the Code of West Virginia, the judges’ retirement system, §51-9-1, et seq., of said Code and the public safety death,
disability and retirement system, §15-2-26, *et seq.*, of said Code and paying any costs associated with the issuance of said bonds; requiring the Legislature to direct the investment of the funds from such issuance and sale pursuant to the laws and Constitution of the State of West Virginia; requiring the levy, collection and dedication of an additional tax for the payment of the principal and interest on the bonds in any year the moneys from the general revenue fund of the state irrevocably set aside and appropriated and applied to the payment of the interest on and the principal of the bonds becoming due and payable in the year are insufficient therefor; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand six, or at any special election held prior thereto, which proposed amendment is as follows:

**Pension Bond Amendment**

1. The Legislature may authorize the issuing and selling of state general obligation bonds not exceeding in the aggregate five billion five hundred million dollars, which shall be in addition to all other state bonds heretofore authorized. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature authorizes. The proceeds of the bonds hereby authorized to be issued and sold shall be deposited in the trust funds of the consolidated public retirement board to fund all or a portion of the unfunded actuarial accrued liabilities of the state teachers retirement system, §18-7A-1, *et seq.*, of the Code of West Virginia; the judges' retirement system, §51-9-1, *et seq.*, of said Code; and the
public safety death, disability and retirement system, §15-2-26, et seq., of said Code and used to pay any costs associated with the issuance of the bonds. When a bond issue as aforesaid is authorized, the Legislature shall direct the investment of such proceeds as permitted by the laws and the Constitution of the State of West Virginia.

When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the levy, collection and dedication of an additional state tax, or enhancement to such other tax as the Legislature may determine, in such amount as may be required to pay annually the interest on such bonds and the principal thereof or premium, if any, within and not exceeding thirty years and all such taxes so levied shall be irrevocably dedicated for the payment of the principal of or premium, if any, and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged. Such additional tax shall be levied in any year only to the extent that the moneys from the general revenue fund of the state irrevocably set aside and appropriated and applied to the payment of the interest on and the principal of the bonds becoming due and payable in the year are insufficient therefor. Any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

The Legislature may enact legislation to implement the provisions of this amendment.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Pension Bond Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to permit the
issuance and sale of additional state general obligation bonds not exceeding five billion five hundred million dollars to help provide for the fiscal soundness of the State Teachers Retirement System, the Judges' Retirement System, and the Public Safety Death, Disability and Retirement System. These additional state general obligation bonds will help the State to fund the unfunded actuarial accrued liabilities of these systems.”

Clerks's Note: Pursuant to the provisions of the resolution, a Special Statewide Election was held on June 25, 2005. The voters of the State defeated the proposed bond sale by a vote of 75,065 for the proposal and 87,883 against the proposal.
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 Senate, fund 0165, fiscal year 2005, organization 2100, to the House of Delegates, fund 0170, fiscal year 2005, organization 2200, to the Joint Expenses, fund 0175, fiscal year 2005, organization 2300, to the Department of Administration - Division of Purchasing, fund 0210, fiscal year 2005, organization 0213, to the Department of Administration, Ethics Commission,
fund 0223, fiscal year 2005, organization 0220, to the Educational Broadcasting Authority, fund 0300, fiscal year 2005, organization 0439, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2005, organization 0511, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 0453, fiscal year 2005, organization 0612, to the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2005, organization 0807, and to the Department of Environmental Protection, fund 0273, fiscal year 2005, organization 0313, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand five; 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 five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0165, fiscal year 2005, organization 2100, be supplemented and amended by increasing and adding a new item of appropriation to the total appropriation as follows:

1  TITLE II — APPROPRIATIONS.

2  Section 1. Appropriations from general revenue.

3  LEGISLATIVE
Any unexpended balances remaining in the appropriation for technology improvements - surplus (fund 0165, activity 725) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0170, fiscal year 2005, organization 2200, be supplemented and amended by increasing and adding a new item of appropriation to the total appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**LEGISLATIVE**

2-House of Delegates

Fund 0170 FY 2005 Org 2200
Any unexpended balance remaining in the appropriation for technology improvements - surplus (fund 0170, activity 725) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0175, fiscal year 2005, organization 2300, be supplemented and amended by increasing and adding a new item of appropriation to the total appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

LEGISLATIVE

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2005 Org 2300

General

Activity

Revenue

Fund

12a Technology

12b Improvements - Surplus (R) . . . . 725 $ 240,000

Any unexpended balance remaining in the appropriation for technology improvements - surplus (fund 0175, activity 725) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0210, fiscal
year 2005, organization 0213, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0223, fiscal year 2005, organization 0220, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

26—Ethics Commission

Fund 0223 FY 2005 Org 0220
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0300, fiscal year 2005, organization 0439, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

43-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2005 Org 0439

Any unexpended balance remaining in the appropriation for unclassified-surplus (fund 0300, activity 097) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0403, fiscal
year 2005, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2005 Org 0511

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>35 Indigent Burials - Surplus</td>
<td>$ 500,000</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0453, fiscal year 2005, organization 0612, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

57-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2005 Org 0612
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0582, fiscal year 2005, organization 0807, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

Section 1. Appropriations from general revenue.

**DEPARTMENT OF TRANSPORTATION**

72-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2005 Org 0807

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0273, fiscal year 2005, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

Section 1. Appropriations from general revenue.
DEPARTMENT OF ENVIRONMENTAL PROTECTION

82—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2005 Org 0313

General Activity Fund

10 Unclassified - Surplus ............... 097 $ 3,000,000

The above appropriation to unclassified-surplus (activity 097), three million dollars shall be transferred to fund 3287, org 0312 for the administration of loans by the solid waste management board to solid waste authorities on a revolving basis.

The purpose of this supplemental appropriation bill is to supplement, and increase appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 2

(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]
unappropriated balance in the state excess lottery revenue fund, to the lottery commission - excess lottery revenue fund surplus, fund 7208, fiscal year 2005, organization 0705, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state excess lottery revenue fund, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular and surplus appropriations for the fiscal year two thousand five; and

WHEREAS, The governor, by executive message dated the sixteenth day of April, two thousand five, has increased the state excess lottery revenue fund revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the governor’s statement of the state excess lottery revenue fund and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 7208, fiscal year 2005, organization 0705, be supplemented and increased in the existing line as follows:

1. TITLE II — APPROPRIATIONS.
2. Sec. 5. Appropriations from state excess lottery revenue fund.
3. 245—Lottery Commission—
Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2005 Org 0705

1 Unclassified - Total - Transfer . . . . 402 $139,191,000

The purpose of this supplementary appropriation bill is to increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand five.

CHAPTER 3

(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of one million one hundred thousand dollars from the Industrial Development Loans Fund, fund 3148, fiscal year 2005, organization 0307, in the amount of one hundred four dollars and twenty-four cents from the Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, and in the amount of two hundred thirty-four thousand five hundred three dollars and eighty-six cents from the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Education and the Arts-Division of Culture and History, fund 0293, fiscal year 2005,
organization 0432, to the Department of Education and the Arts-State Board of Rehabilitation-Division of Rehabilitation Services, fund 0310, fiscal year 2005, organization 0932, and to the Department of Commerce-West Virginia Development Office-Division of Tourism, fund 0246, fiscal year 2005, organization 0304.

WHEREAS, The Legislature finds that the account balance in the industrial development loans fund, fund 3148, fiscal year 2005, organization 0307, Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, and the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the industrial development loans fund, fund 3148, fiscal year 2005, organization 0307, be decreased by expiring the amount of one million one hundred thousand dollars, the Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, be decreased by expiring the amount of one hundred four dollars and twenty-four cents, and the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, be decreased by expiring the amount of two hundred thirty-four thousand five hundred three dollars and eighty-six cents, to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0293, fiscal year 2005, organization 0432, be supplemented and amended by increasing existing items of appropriation as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

41—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2005 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services-Surplus ........</td>
<td>243 $ 28,500</td>
</tr>
<tr>
<td>Employees Benefits-Surplus ......</td>
<td>250 22,000</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0310, fiscal year 2005, organization 0932, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

44—State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2005 Org 0932
Any unexpended balance remaining in the appropriation for
Unclassified-Surplus (fund 0310, activity 097) at the close of the
fiscal year 2005 is hereby reappropriated for expenditure during
the fiscal year 2006.

That chapter thirteen, acts of the Legislature, regular
session, two thousand four, known as the budget bill, be
supplemented and amended by adding to Title II, section one
thereof the following:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

72a—West Virginia Development Office

Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2005 Org 0304

Any unexpended balance remaining in the appropriation
for Tourism-Special Projects-Surplus(fund 0246, activity 293)
at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-said account for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 4
(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

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 five, to the higher education policy commission - system - tuition fee capital improvement fund (capital improvement and bond retirement fund) control account, fund 4903, fiscal year 2005, organization 0442, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established that there now remains an unappropriated balance in the higher education policy commission - system - tuition fee capital improvement fund (capital improvement and bond retirement fund) control account, fund 4903, fiscal year 2005, organization 0442, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 4903, fiscal year 2005, organization 0442, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 HIGHER EDUCATION POLICY COMMISSION

4 207—Higher Education Policy Commission—

5 System—

6 Tuition Fee Capital Improvement Fund

7 (Capital Improvement and Bond Retirement Fund)

8 Control Account

9 (WV Code Chapters 18 and 18B)

10 Fund 4903 FY 2005 Org 0442

11 Activity Other Funds

12

13 2 General Capital Expenditures (R) . . 306 $ 7,001,200

14 The purpose of this supplementary appropriation bill is to supplement and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand five.
CHAPTER 5

(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of administration - public defender services, fund 0226, fiscal year 2005, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of administration - public defender services, fund 0226, fiscal year 2005, organization 0221, be amended and reduced in the existing line item as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 27—Public Defender Services

5 (WV Code Chapter 29)

6 Fund 0226 FY 2005 Org 0221
And that the total appropriations from the state fund, general revenue, to the department of administration - public defender services, fund 0226, fiscal year 2005, organization 0221, be amended and increased in the existing line item as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2005 Org 0221

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand five with no new money being appropriated.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the Governor’s Office, fund 0101, fiscal year 2005, organization 0100, to the Governor’s Office - civil contingent fund, fund 0105, fiscal year 2005, organization 0100, to the West Virginia Conservation Agency, fund 0132, fiscal year 2005, organization 1400, to the Secretary of State, fund 0155, fiscal year 2005, organization 1600, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2005, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2005, organization 0205, to the Department of Education - State Department of Education, fund 0313, fiscal year 2005, organization 0402, to the Department of Education – State Department of Education - state aid to schools, fund 0317, fiscal year 2005, organization 0402, to the Department of Military Affairs and Public Safety - Division of Corrections - correctional units, fund 0450, fiscal year 2005, organization 0608, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2005, organization 0613, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2005, organization 0702, to the Bureau of Commerce - West Virginia Development Office - Division of Tourism, fund 0246, fiscal year 2005, organization 0304, to the Bureau of
Commerce - West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, to the Higher Education Policy Commission - Higher Education Policy Commission - administration - control account, fund 0589, fiscal year 2005, organization 0441, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year 2005, less net appropriation balances forwarded and regular appropriations for fiscal year 2005; and

WHEREAS, The Governor, by executive message dated the sixteenth day of April, two thousand five, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the Governor's statement of the state fund - general revenue and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 0101, fiscal year 2005, organization 0100, be supplemented and amended by increasing the total appropriation by adding new items of appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE
4 5—Governor’s Office

(WV Code Chapter 5)

6 Fund 0101 FY 2005 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General</th>
<th>Revenue</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay, Repairs and Equipment (R)</td>
<td>589</td>
<td>$1,000,000</td>
<td></td>
</tr>
<tr>
<td>Pharmaceutical Cost Management Council (R)</td>
<td>796</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>Jobs Fund (R)</td>
<td>665</td>
<td>2,000,000</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0101, activity 589), Pharmaceutical Cost Management Council (fund 0101, activity 796), and Jobs Fund (fund 0101, activity 665) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0105, fiscal year 2005, organization 0100, be supplemented and amended by increasing the total appropriation and adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

8—Governor’s Office—

Civil Contingent Fund
(WV Code Chapter 5)

Fund 0105 FY 2005 Org 0100

3  Civil Contingent Fund - Total (R) . . . . 114  $ 14,500,000
3a Unclassified - Transfer .......... 482  28,307,000

The above appropriation for Unclassified - Transfer (fund 0105, activity 482) shall be transferred to the Tax Reduction and Federal Funding Increased Compliance fund (fund 1732, organization 2300).

And, that the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0132, fiscal year 2005, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

12—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2005 Org 1400

5  Soil Conservation Projects (R) . . . . 120  $ 2,000,000
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0155, fiscal year 2005, organization 1600, be supplemented and amended by increasing the total appropriation by adding a new item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

Section 1. Appropriations from general revenue.

**EXECUTIVE**

*16—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2005 Org 1600

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>Pension Bond Amendment (R) . . . . . 088</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Pension Bond Amendment (fund 0155, activity 088) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0186, fiscal year 2005, organization 0201, be supplemented and amended by increasing the total appropriation by adding new items of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

Section 1. Appropriations from general revenue.
DEPARTMENT OF ADMINISTRATION

18—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2005 Org 0201

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a Program Review (R)</td>
<td>086 $500,000</td>
</tr>
<tr>
<td>4b Financial Advisor (R)</td>
<td>304 $500,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Program Review (fund 0186, activity 086), and Financial Advisor (fund 0186, activity 304) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0195, fiscal year 2005, organization 0205, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2005 Org 0205
### APPROPRIATIONS

| 107 | General |
| 108 | Activity |
| 109 | Revenue |
| 110 | Fund |

| 110 1 | Pension Merger Administration |
| 111 2 | Costs (R) .................. 429 | $2,000,000 |
| 112 3 | Unclassified - Transfer ........ 482 | 225,000,000 |
| 113 4 | Total ........................ | $227,000,000 |

The above appropriation for Unclassified - Transfer (fund 0195, activity 482) shall be transferred to the West Virginia Department of Public Safety Death, Disability and Retirement Fund (Plan A) as certified by the Consolidated Public Retirement Board and approved by the Governor.

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 retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

Any unexpended balance remaining in the appropriation for Pension Merger Administration Costs (fund 0195, activity 429) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0313, fiscal year 2005, organization 0402, be supplemented and amended by increasing the total appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**
DEPARTMENT OF EDUCATION

34—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2005 Org 0402

General Activity Fund

8 Traditional Student Increased
9 Enrollment 5yr-12th grade . . . . . 997 $ 2,491,935
31b Tax Assessment Errors . . . . . . . 353 227,037

And, that the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0317, fiscal year 2005, organization 0402, be supplemented and amended by increasing the total appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

36—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2005 Org 0402

General Activity Fund

14 Teachers’ Retirement System (R) . . 019 $ 7,627,000
Any unexpended balance remaining in the appropriation for Teachers' Retirement System (fund 0317, activity 019) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0450, fiscal year 2005, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

56—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2005 Org 0608

<table>
<thead>
<tr>
<th>General Revenue Activity Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Payments to Federal, County and/or</td>
</tr>
<tr>
<td>12 Regional Jails (R) ............ 555 $ 9,316,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Payments to Federal, County and/or Regional Jails (fund 0450, activity 555) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0456, fiscal
year 2005, organization 0613, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

58—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2005 Org 0613

<table>
<thead>
<tr>
<th>General</th>
<th>Activity</th>
<th>Revenue</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>12a</td>
<td>Veterans Bonus (R)</td>
<td>483</td>
<td>$6,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Veterans’ Bonus (fund 0456, activity 483) at the close of fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0470, fiscal year 2005, organization 0702 be supplemented and amended by increasing the total appropriation by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE
215 65—Tax Division
(WV Code Chapter 11)
217 Fund 0470 FY 2005 Org 0702
218 General
219 Activity
220 Revenue
221 9a Integrated Tax Accounting
222 9b System (R) ................. 292 $ 22,000,000
223 Any unexpended balance remaining in the appropriation for
224 Integrated Tax Accounting System (fund 0470, activity 292) at
225 the close of the fiscal year 2005 is hereby reappropriated for
226 expenditure during the fiscal year 2006.
227 And, that chapter thirteen, Acts of the Legislature, Regular
228 Session, two thousand four, known as the budget bill, be
229 supplemented and amended by adding to Title II, section one
230 thereof the following:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE

72a—West Virginia Development Office

Division of Tourism

(FW Code Chapter 5B)

Fund 0246 FY 2005 Org 0304
Any unexpended balance remaining in the appropriation for Tourism - Special Projects (fund 0246, activity 859) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0256, fiscal year 2005, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE

75—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2005 Org 0307

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0589, fiscal year 2005, organization 0441, be supplemented and amended to read as follows:
### APPROPRIATIONS

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**HIGHER EDUCATION POLICY COMMISSION**

85—Higher Education Policy Commission—

*Administration—*

*Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2005 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified</th>
<th>WVNET</th>
<th>West Virginia Council for Community and Technical Education (R)</th>
<th>Vice Chancellor for Health Sciences - Rural Health Initiative Program And Site Support (R)</th>
<th>PROMISE Scholarship - Transfer</th>
<th>Higher Education - Special Projects (R)</th>
<th>BRIM Premium</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>099</td>
<td>169</td>
<td>392</td>
<td>595</td>
<td>800</td>
<td>488</td>
<td>913</td>
<td>20,540,822</td>
</tr>
</tbody>
</table>

*General Revenue Fund*

|          | $2,000,000   | 1,952,662 | 0 | 0 | 10,921,651 | 5,600,000 | 66,509 | $20,540,822 |

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.

The above appropriation for PROMISE Scholarship Transfer (activity 800) shall be transferred to the PROMISE Scholarship Fund (fund 4296, organization 0441) established by chapter eighteen-c, article seven, section seven.

Any unexpended balances remaining in the appropriation for Higher Education - Special Projects (fund 0589, activity 488) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The purpose of this supplementary appropriation bill is to supplement, amend, add and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.
AN ACT to repeal §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend and reenact §5A-1-2 of said code; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating generally to the elimination of the Employee and Insurance Services Division of the Department of Administration and reassigning certain duties; reinstating the Secretary of the
Department of Administration as a member of the Consolidated Public Retirement Board, the Public Employees Insurance Agency Finance Board and the State Personnel Board; providing that the Governor shall appoint the Director of the Public Employees Insurance Agency; providing that the Division of Personnel is continued within the Department of Administration; clarifying board member compensation and expense reimbursement; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended, be repealed; that §5-10D-1 of said code be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that §5A-1-2 of said code be amended and reenacted; 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.

5A. Department of Administration.

29. Miscellaneous Boards and Officers.

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

Article

10D. Consolidated Public Retirement Board.


ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.
Ch. 1] ADMINISTRATION 2641

(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 Deputy Sheriff Death, Disability and Retirement Fund 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 Secretary of the Department of Administration or his or her designee;

(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 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 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 appoint-
ment for the unexpired term. No more than five appointees
may 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 West Virginia State
Police Retirement System created by article two-a of said
chapter; the Deputy Sheriff Death, Disability and Retirement
Fund 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 appropri-
ate governing boards.

(e) The Consolidated Public Retirement Board may propose
rules for legislative approval, in accordance with article three,
chapter twenty-nine-a of this code, necessary to effectuate its
powers, duties and responsibilities: Provided, That the Board
may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) 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.

(g) 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 is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public Retirement Board is 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.

(h) 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.
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.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of Director of Agency; employees; civil service coverage.

(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 Governor, with the advice and consent of the Senate, and serves at the will and pleasure of the Governor. 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 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 programs provided 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) Except for the Director, his or her personal secretary, the Deputy Director and the Chief Financial Officer, all positions in the Agency shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code.

(c) The Director is responsible for the administration and management of the Public Employees Insurance Agency as
provided 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 negotiations, 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 managing 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 Secretary of the Department of Administration or his or her designee 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 Secretary of the Department of Administration, 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
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 Secretary of the Department of Administration 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 Legisla-
tive 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 autho-
rized 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 effect until amended by rule of the Director promulgated pursuant to this subsection.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

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 is 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 serves at the will and pleasure of the Governor. The annual compensation of the Secretary shall be as 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, Division of Personnel 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. 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.

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.

(a) The Division of Personnel is continued within the Department of Administration.

(b) The Division of Personnel shall perform the following functions:

(1) Applicant services;

(2) Classification and compensation;

(3) Management development and training;

(4) Program evaluation and payroll;

(5) Employee services;

(6) Employee relations; and

(7) Administrative and staff services.

(c) 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. The Director may establish additional
sections necessary to carry out the purposes of this article.

§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 consisting of the Secretary of the Department of Administration or his or her designee who serves as an ex officio nonvoting 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 compensated for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties, as recommended by the Citizens Legislative Compensation Commission as authorized by law, and may be reimbursed actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(d) The Secretary of the Department of Administration or his or her designee serves 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 legislative approval, 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 2

(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect from passage.]
[Approved by the Governor on May 23, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Fund, General Revenue, to the Department of Administration - Office of the Secretary,
fund 0186, fiscal year 2006, organization 0201, and to the Department of Revenue - State Budget Office, fund 0595, fiscal year 2006, organization 0703, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Fund, General Revenue, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2006, organization 0201, be amended to hereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

17—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2006 Org 0201

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14 The appropriation for Lease Rental Payments shall be disbursed as provided by chapter thirty-one, article fifteen, section six-b of the Code of West Virginia.
That the items of the total appropriation from the State Fund, General Revenue, to the Department of Revenue - State Budget Office, fund 0595, fiscal year 2006, organization 0703, be amended to hereafter read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF REVENUE

77—State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2006 Org 0703

1 Unclassified .................. 099 $ 1,052,333
2 Pay Equity Reserve ............ 364 250,000
3 Total .......................... $ 1,302,333

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0595, activity 096) at the close of the fiscal year two thousand five is hereby reappropriated for expenditure during the fiscal year two thousand six.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand six with no new money being appropriated.
CHAPTER 3

(S. B. 3006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect from passage.]
[Approved by the Governor on May 23, 2005.]

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 six, to a new item of appropriation designated to the Department of Environmental Protection - Litter Control Fund, fund 3486, fiscal year 2006, organization 0313, supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Environmental Protection - litter control fund, fund 3486, fiscal year 2006, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF ENVIRONMENTAL PROTECTION

4 151a—Division of Environmental Protection—

5 Litter Control Fund

6 (WV Code Chapter 22)

7 Fund 3486 FY 2006 Org 0313

8 Activity Other Funds

9

10 1 Unclassified - Total ................. 096 $ 40,000

11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for fiscal year ending
13 the thirtieth day of June, two thousand six, by providing for a
14 new item of appropriation to be established therein to appropri-
15 ate funds for the designated spending unit for expenditure
16 during the fiscal year two thousand six.

CHAPTER 4

(S. B. 3004 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect from passage.]
[Approved by the Governor on May 23, 2005.]

AN ACT supplementing and amending items of the existing appro-
priations from the State Fund, General Revenue, to a new item of
appropriation designated to the Governor’s Office, fund 0104,
fiscal year 2006, organization 0100, supplementing and amending chapter sixteen, Acts of the Legislature, for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, section one thereof, the following:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

6a—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2006 Org 0100

Any unexpended balances remaining in the appropriations for Family Resource Networks (fund 0104, activity 274) at the close of the fiscal year two thousand five is hereby reappropriated and redesignated to fund 0403, fiscal year 2006, activity 274, for expenditure during the fiscal year two thousand six.

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 six, by providing a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand six.
AN ACT supplementing, amending, reducing and increasing items of appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 6394, fiscal year 2005, organization 0612, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, to fund 6394, fiscal year 2005, organization 0612, be supplemented and amended to hereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations from State Excess

3 Lottery Revenue Fund.

4 246a—West Virginia State Police

5 (WV Code Chapter 15)

6 Fund 6394 FY 2005 Org 0612
The above appropriation for Transfer to Aviation Division (activity 670) shall be transferred to the Travel Management Office Fund (fund 2300, organization 0215) for expenditure by the Aviation Division.

The purpose of this supplementary appropriation bill is to supplement, amend, decrease and add items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand five with no additional funds being appropriated.

CHAPTER 6

(Com. Sub. for S. B. 3010 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-9-6d, all relating generally to the judicial retirement system; increasing the contribution rate for judges and justices effective the first day of July, two thousand five, consistent with the salary increase granted to judges and justices of courts of record during the two thousand five regular legislative session; providing that judges and justices appointed or
elected for the first time as judge of a court of record after the first day of July, two thousand five, must have served fourteen years as a sitting judge to receive annual retirement benefits; changing the annual benefit calculations and retirement qualifications for all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; changing the annual benefit calculations for the spouses and children of all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; clarifying the ability of judges and justices to use prosecutorial service as qualifying service; providing that retired judges and justices may hold a public office or trust for compensation from the State of West Virginia; and providing that retired judges and justices are ineligible to participate in any other pension plan maintained by the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-9-6d, all to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

§51-9-6. Eligibility for and payment of benefits.

§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.
§51-9-1a. Definitions.

(a) As used in this article, the term "judge", "judge of any court of record" or "judge of any court of record of this state" means, refers to and includes judges of the several circuit courts and Justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to or include family court judges.

(b) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(c) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(d) "Final average salary" means the average of the highest thirty-six consecutive months' compensation received by the member as a judge of any court of record of this state.

(e) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(f) "Member" means a judge participating in this system.

(g) "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.

(h) "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 the member retires or otherwise separates from covered employment.
(i) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges and Justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the State Treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-five, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the judges' retirement fund nine percent of the salary received by that person: Provided further, That consistent with the salary increase granted to judges of courts of record during the two thousand five regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third
extraordinary legislative session of two thousand five, on and
after the first day of July, two thousand five, every person who
is then serving or shall thereafter serve as a judge of any court
of record in this state shall pay into the judges' retirement fund
ten and one-half percent of the salary received by that person.
Any prior occurrence or practice to the contrary, in any way
allowing discontinuance of required employee contributions
prior to actual retirement under this retirement system, is
rejected as erroneous and contrary to legislative intent and as
 violative of required equal treatment and is hereby nullified
and discontinued fully, with the State Auditor to require such
contribution in every instance hereafter, except where no
contributions are required to be made under any of the provi-
sions of this article.

(b) An individual who is a leased employee shall not be
eligible to participate in the system. For purposes of this
system, a "leased employee" means any individual who
performs services as an independent contractor or pursuant to
an agreement with an employee leasing organization or other
similar organization. If a question arises regarding the status
of an individual as a leased employee, the Board has the final
power to decide the question.

(c) In drawing warrants for the salary checks of judges, the
State Auditor shall deduct from the amount of each such salary
check six percent thereof, which amount so deducted shall be
credited by the Consolidated Public Retirement Board to the
trust fund: Provided, That on or after the first day of January,
one thousand nine hundred ninety-five, the amount so deducted
and credited shall be nine percent of each such salary check:
Provided, however, That consistent with the salary increase
granted to judges of courts of record during the two thousand
five regular legislative session and to changes effectuated in
judicial retirement by provisions enacted during the third
extraordinary legislative session of two thousand five, on or
after the first day of July, two thousand five, the amount so
deducted and credited shall be ten and one-half percent of each
such salary check.

(d) Any judge seeking to qualify military service to be
claimed as credited service, in allowable aggregate maximum
amount up to five years, shall be entitled to be awarded the
same without any required payment in respect thereof to the
judges' retirement fund.

(e) Notwithstanding the preceding provisions of this
section, contributions, benefits and service credit with respect
to qualified military service shall be provided in accordance
with Section 414(u) of the Internal Revenue Code. For
purposes of this section, "qualified military service" has the
same meaning as in Section 414(u) of the Internal Revenue
Code. The Retirement Board is authorized to determine all
questions and make all decisions relating to this section and
may promulgate rules relating to contributions, benefits and
service credit pursuant to the authority granted to the Retire-
ment Board in section one, article ten-d, chapter five of this
code to comply with Section 414(u) of the Internal Revenue
Code.

(f) Any judge holding office as such on the effective date
of the amendments to this article adopted by the Legislature at
its regular session in the year one thousand nine hundred
eighty-seven who seeks to qualify service as a prosecuting
attorney as credited service, which service credit must have
been earned prior to the year one thousand nine hundred
eighty-seven, shall be required to pay into the judges' retire-
ment fund nine percent of the annual salary which was actually
received by such person as prosecuting attorney during the
time such prosecutorial service was rendered prior to the year
one thousand nine hundred eighty-seven and for which credited
service is being sought, together with applicable interest. No
§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, six-d, twelve and thirteen of this article, and subject to the provisions of subsection (e) of this section, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual
salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended: Provided, however, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record: Provided further, That every individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record.

(b) Notwithstanding any other provisions of this article with the exception of sections twelve-a and twelve-b, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive at age sixty-five, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement: Provided, That every individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record. The reduced percentage (less than seventy-five percent) actuarially computed,
determined and established at time of retirement in respect of this reduced pension benefit shall also continue and be applicable to any subsequent new annual salary set for the office from which such judge has retired and as such salary may be changed from time to time during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by this section, active full-time duty (including leaves and furloughs) in the armed forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with twelve or more years actual service as a sitting judge of a court of record, such awardable military service to not exceed five years: Provided, That in determining eligibility for the benefits provided by this section for every individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, active full-time duty (including leaves and furloughs) in the armed forces of the United States qualifies as credited service for the purposes of this article for any judge with fourteen or more years actual service as a sitting judge of a court of record of this state, the awardable military service not to exceed five years.

(d) If a judge of a court of record who is presently sitting as such on the effective date of the amendments to this section enacted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven and who has served for a period of not less than twelve full years and has made payments into the judges’ retirement fund as provided in this article for each month during which he or she served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of section four of this article: Provided, That any
term of office as prosecuting attorney, or part thereof, commencing after the thirty-first day of December, one thousand nine hundred eighty-eight, shall not hereafter in any way qualify as eligible years of service under this retirement system. For purposes of this article, eligible service as a "prosecuting attorney" or as a "prosecutor" does not include any service as an assistant prosecuting attorney. The amendment to this subsection during the third extraordinary session in the year two thousand five is not for the purpose of changing existing law but is intended to clarify the intent of the Legislature as to existing law regarding eligibility for benefits for service as a prosecuting attorney since its initial enactment and this clarification shall be applied retrospectively to the effective date of this section and any predecessor acts in which service as a prosecuting attorney was initially determined by statute to qualify as eligible years of service under the retirement system provided by this article.

(e) Any retirement benefit accruing under the provisions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.

(f) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

Any judge of a court of record of this state who shall have served for a period of not less than eight full years after attaining the age of sixty-five years and who shall have made payments into the judges' retirement fund as provided in this article for each month during which he or she served as such judge following the effective date of this section, shall be
subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments. If such judge shall become incapacitated to perform his or her said duties before the expiration of his or her said term and after serving for six years thereof, and upon the acceptance of his or her resignation as in this article provided, he or she shall be paid the annual retirement benefits as herein provided so long as he or she shall live. The provisions of this section shall prevail over any language to the contrary in this article contained, except those provisions of sections twelve-a and twelve-b of this article: Provided, That no individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, is eligible for retirement under this section.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

(a) There shall be paid, from the fund created or continued by section two of this article, or from such funds as may be appropriated by the Legislature for such purpose, an annuity to the surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement benefits provided by any of the provisions of this article, or who has, at death, actually served five years or more as a sitting judge of any court of record of this state, exclusive of any other service
credit to which such judge may otherwise be entitled, and who
10 dies either while in office or after resignation or retirement
11 from office pursuant to the provisions of this article. Said
12 annuity shall amount to forty percent of the annual salary of the
13 office which said judge held at his or her death or from which
14 he or she resigned or retired. In the event said salary is
15 increased or decreased while an annuitant is receiving the
16 benefits hereunder, his or her annuity shall amount to forty
17 percent of the new salary: Provided, That with respect to any
18 individual who is appointed or elected for the first time as
19 judge of a court of record of this state after the first day of July,
20 two thousand five, any annuity to the surviving spouse of the
21 judge shall be an amount equal to forty percent of the judge’s
22 final average salary: Provided, however, That the annuitant is
23 not entitled to an increase in benefits by virtue of any increase
24 in the salaries of the offices of circuit court judge or Justice of
25 the Supreme Court of Appeals. The annuity granted hereunder
26 shall accrue monthly and shall be due and payable in monthly
27 installments on the first business day of the month following
28 the month for which the annuity shall have accrued. Such
29 annuity shall commence on the first day of the month in which
30 said judge dies and shall, subject to the provisions of subsection (b) of this section, terminate upon the death of the annuitant or shall terminate upon the remarriage of the annuitant.

33 (b) If there be no surviving spouse at the time of death of
34 a judge who dies after serving five years or more as a sitting
35 judge of any court of record and such judge leaves surviving
36 him any dependent child or children, such dependent child or
37 children shall receive an amount equal to twenty percent of the
38 annual salary of the office which said judge held at the time of
39 his or her death: Provided, That the total of all such annuities
40 payable to each such child shall not exceed in the aggregate an
41 amount equal to forty percent of such salary. Such annuity
42 shall continue as to each such child until: (i) He or she attains
the age of eighteen years; or (ii) attains the age of twenty-three years so long as such child remains a full-time student. The Auditor shall by legislative rule establish the criteria for determining a person's status as a full-time student within the meaning and intent of this subsection. In the event there are surviving any such judge three or more dependent children, then each such child's annuity shall be proratably reduced in order that the aggregate annuity received by all such dependent children does not exceed forty percent of such salary and the amount to be so received by any such child shall continue throughout the entire period during which each such child is eligible to receive such annuity. The provisions of this subsection shall also apply to those circumstances and situations wherein a surviving spouse of a deceased judge shall die while receiving benefits pursuant to subsection (a) of this section and who shall leave surviving dependent children of such deceased judge who would be entitled to benefits under this subsection as if they had succeeded to such annuity benefits upon the death of such judge in the first instance. In the event the salary of judges is increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the annuities payable shall be likewise increased or decreased proportionately to reflect such change in salary: Provided, however, That with respect to any individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, any annuity to any children of the judge shall be calculated with respect to the judge's final average salary: Provided further, That the child is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals. The annuities granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the same day as surviving spouses' benefits are required to be paid. Such annuities shall commence on the first day of the month in which any such
dependent child becomes eligible for benefits hereunder and shall terminate on the last day of the month during which such eligibility ceases.

§51-9-6d. Adjusted annual retirement benefit calculations.

In calculating the annual retirement benefits under section six of this article for any individual who is appointed or elected for the first time as judge of a court of record of this state after the first day of July, two thousand five, the judge shall receive retirement benefits in an amount equal to seventy-five percent of the individual's final average salary. The individual is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals.

§51-9-7. Ineligibility to receive pay or benefits.

A judge who retires under the provisions of any section of this article and accepts the pay or benefits payable under this article shall, while receiving said pay or benefits, be permitted to hold any public office or trust for which the judge receives compensation from the State of West Virginia. If, after retirement under the provisions of this article, a judge is elected or appointed to any public office or trust for which he or she receives any salary or other compensation from the State of West Virginia, the retired judge is not eligible to participate in any other pension plan maintained by the State of West Virginia, nor accrue additional years of credited service under this system or any other state pension system. A judge who retires because of disability and accepts the pay or benefits payable under this article because of his or her disability shall not, while receiving said pay or benefits because of his or her disability, be permitted to practice law. If, after disability retirement under the provisions of this article and while receiving pay or benefits payable under said article because of
19 his or her disability, he or she shall enter the practice of law, 
20 his or her pay or benefits under this article because of his or her 
21 disability shall be suspended for such time only as he or she 
22 shall be engaged in the practice of law.

CHAPTER 7

(S. B. 3008 — By Senators Tomblin, Mr. President, and Sprouse) 
[By Request of the Executive]

[Passed May 17, 2005; in effect from passage.] 
[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §8-13C-1 and §8-13C-9 of the Code 
of West Virginia, 1931, as amended; and to amend said code by 
adding thereto a new section, designated §8-13C-14, all relating 
to the use of proceeds from a pension relief municipal occupa­
tional tax, a pension relief municipal sales and service tax and a 
pension relief municipal use tax; providing that amendments 
shall not be construed to allow certain taxes; providing circum­
stances under which a municipality loses authority to impose 
certain taxes; authorizing a qualifying municipality, subject to 
meeting certain requirements, to close its existing pension and 
relief fund plan for policemen and firemen to those hired after a 
future date; authorizing a qualifying municipality, subject to 
meeting certain requirements, to establish a defined contribution 
plan for policemen and firemen hired on and after the future date; 
authorizing a qualifying municipality, subject to meeting certain 
requirements, to issue revenue bonds for the purpose of eliminat­
ing the unfunded actuarial accrued liability of the existing 
pension and relief fund plan for policemen and firemen and to 
issue refunding bonds issued to refund, in whole or in part, bonds
issued for that purpose; requiring that certain disability and health benefits be provided; and providing for expiration of authority granted by this enactment.

Be it enacted by the Legislature of West Virginia:

That §8-13C-1 and §8-13C-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 §8-13C-14, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.

§8-13C-1. Findings.

§8-13C-9. Restriction on use of certain revenues.


§8-13C-1. Findings.

1 The Legislature finds that:

2 (a) Imposing additional taxes creates an extra burden on the citizens of the state;

3 (b) Imposing additional taxes can be detrimental to the economy of the state;

4 (c) Imposing additional taxes is only proper under certain circumstances;

5 (d) For many municipalities with severe unfunded liabilities of the police and fire pension funds, all available sources of local revenue have been exhausted. Property taxes are at the maximum allowed by the state Constitution and local business
and occupation taxes and utility taxes are at the maximum rates allowed by state law. Other fees have reached the economic maximum and are causing relocation of business outside the municipal boundaries;

(e) For many municipalities with severe unfunded police and fire pension fund liabilities, revenue from existing sources has become stagnant over the past few years with no expectation of significant future growth;

(f) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds are now close to equaling the city payrolls for police and fire protection and will rise to exceed those payrolls within a ten-year period;

(g) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds now constitute a large percentage of those municipalities' total budget and will rise to an even larger percentage of the available revenues in the next ten years. Payment and benefit levels are dictated to the municipalities by state law;

(h) As the required pension payments rise, many of the municipalities with severe unfunded police and fire pension fund liabilities will find it impossible to maintain at minimum levels necessary and proper city services including, but not limited to, police and fire protection, street maintenance and repair and sanitary services;

(i) For some of the municipalities with severe unfunded liabilities of the police and fire pension funds, the combination of the steeply rising pension obligations and the stagnant revenue sources raise the real possibility of municipal bankruptcy in the near and predictable future. If this happens,
pensioners would either not receive the full benefits which they
have been promised or pressure would be placed on the state to
fund these programs;

(j) For a municipality that has the most severe unfunded
liability in its pension funds, paying off the unfunded liability
in a timely manner would cause tremendous financial hardship
and the loss of many services that would otherwise be provided
to the municipality's citizens;

(k) Only for a municipality that has the most severe
unfunded liability in its pension funds would the imposition of
the pension relief municipal occupational tax, the pension relief
municipal sales and service tax, the pension relief municipal
use tax or any combination of those taxes be an appropriate
method of addressing the unfunded liability;

(l) Only for a municipality that does not impose or ceases
to impose a business and occupation or privilege tax would the
imposition of an alternative municipal sales and service tax and
an alternative municipal use tax be appropriate;

(m) Only for a municipality that has the most severe
unfunded liability in its pension funds would the closure of its
existing pension and relief fund plan for policemen and
firemen to those newly employed and the creation of a defined
contribution plan for newly employed policemen and firemen
be appropriate; and

(n) Only for a municipality that has the most severe
unfunded liability in its pension funds, that closes its existing
pension and relief fund plan for policemen and firemen to those
newly employed and that creates a defined contribution plan
for newly employed police officers and firefighters, would the
issuance of bonds to address the unfunded liability of its
existing pension and relief fund plan for policemen and
firemen be appropriate.
(o) No amendment to this article enacted during the third extraordinary session of the Legislature held during calendar year two thousand five may be interpreted or construed to allow a municipality to adopt by ordinance a sales or use tax, by whatever name called, that imposes either tax prior to the first day of July, two thousand eight.

§8-13C-9. Restriction on use of certain revenues.

(a) All proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax imposed pursuant to this article shall be used solely for one of the following purposes:

(1) Directly reducing the unfunded actuarial accrued liability of policemen’s and firemen’s pension and relief funds of the qualifying municipality imposing the tax; or

(2) Meeting the principal, interest and any reserve requirement obligations of any bonds issued pursuant to section fourteen of this article.

(b) For any qualifying municipality that chooses to apply the proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes directly to reducing the unfunded actuarial accrued liability of policemen’s and firemen’s pension and relief funds, the qualifying municipality loses its authority to impose those taxes after:

(1) The municipality fails to annually fund, at a minimum, all normal costs of the qualifying municipality’s policemen’s and firemen’s pension and relief funds as determined by the consulting actuary as provided under section twenty-a, article twenty-two of this chapter; or
(2) The unfunded actuarial accrued liability of the qualifying municipality's policemen's and firemen's pension and relief funds is eliminated; or

(3) Sufficient moneys accrue from the proceeds of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any permitted combination of these taxes to eliminate the unfunded actuarial accrued liability of the qualifying municipality's policemen's and firemen's pension and relief funds.

(c) For any qualifying municipality that chooses to apply the proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes to the principal, interest and any reserve requirement and arbitrage rebate obligations on any bonds issued pursuant to section fourteen of this article, the qualifying municipality loses its authority to impose those taxes after:

(1) The principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds issued pursuant to section fourteen of this article are met;

(2) Sufficient moneys accrue from the proceeds of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any permitted combination of these taxes to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds issued pursuant to section fourteen of this article; and

(3) After retirement of bonds issued pursuant to section fourteen of this article, any unfunded actuarial accrued liability of the qualifying municipality's pension and relief funds for policemen and firemen is eliminated.

(a) Notwithstanding any other section of this code to the contrary and subject to subsection (b) of this section, any qualifying municipality, as that term is defined in section two of this article, has the following authority:

(1) To close its existing pension and relief fund plan for policemen and firemen provided in article twenty-two of this chapter for policemen and firemen hired on and after a future date to be set by the governing body of the municipality;

(2) To establish a defined contribution plan for police officers and firefighters hired on and after the future date set by the governing body of the municipality to close its existing pension and relief fund plan for policemen and firemen; and

(3) To issue revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen and to issue refunding bonds issued to refund, in whole or in part, bonds issued for such purpose.

(b) The authority granted in subsection (a) of this section is subject to the following:

(1) No qualifying municipality may close an existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section unless:

(A) The qualifying municipality issues revenue bonds for the purpose of eliminating the unfunded actuarial accrued
liability of the existing pension and relief fund plan for policemen and firemen; and

(B) The qualifying municipality establishes a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section;

(2) No qualifying municipality may establish a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section unless:

(A) The qualifying municipality closes its existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section; and

(B) The qualifying municipality issues revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen;

(3) No qualifying municipality may issue bonds pursuant to subdivision (3), subsection (a) of this section unless:

(A) The qualifying municipality closes its existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section; and

(B) The qualifying municipality establishes a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section;

(4) No qualifying municipality may exercise any authority provided in subsection (a) of this section unless it obtains a determination of the unfunded actuarial accrued liability of its existing pension and relief fund plans for policemen and firemen from the State Treasurer;
(5) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, the following applies:

(A) The proceeds of the revenue bonds shall be at least equal to the unfunded actuarial accrued liability as determined by the State Treasurer plus any reserve fund requirements and any costs, including accrued or capitalized interest, associated with issuing the bonds. All of the proceeds shall be applied to the payment of the unfunded actuarial accrued liability, the funding of reserve requirements and the payment of costs associated with the issuance of the bonds and may not be used for any other purpose;

(B) The proceeds of any refunding bonds shall be used to refund all or any portion of the revenue bonds authorized in this section, to fund any required reserve requirements for the refunding bonds and to pay costs of issuance associated with the refunding bonds and for no other purpose; and

(C) Notwithstanding any other provision of this code to the contrary, the proceeds of the bonds or refunding bonds shall be invested with the West Virginia Investment Management Board established under the provisions of article six, chapter twelve of this code.

(6) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, the qualifying municipality shall impose a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes at a rate projected to generate sufficient revenue to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds, subject to the following:
(A) This requirement is void after the qualifying municipality loses its authority to impose those taxes pursuant to subsection (b) or (c), section nine of this article; and

(B) If the revenue generated by a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax is insufficient to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds, the qualifying municipality shall not issue the bonds;

(7) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, all proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes shall be dedicated solely to paying the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds;

(8) If the qualifying municipality elects to close an existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section, all current and retired employees in the existing pension and relief fund plans for policemen and firemen shall remain in that plan and shall be paid all benefits of that plan in accordance with Part III, article twenty-two of this chapter;

(9) Any such revenue bonds or refunding bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding thirty years, as may be determined by the ordinance authorizing the issuance of the bonds. The bonds may be made redeemable before maturity, at the option of the municipality at not more than the par value thereof, plus a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance authorizing the
issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The ordinance shall determine the form of the bonds and shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of principal and interest thereof, which may be at any banking institution or trust company within or without the state. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from revenues collected by the municipality from the imposition of a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes and which the municipality may pledge as security for the bonds. All the bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of the state. The bonds shall be executed in such manner as the governing body of the municipality may direct. The bonds shall be sold by the municipality in such manner as may be determined to be for the best interest of the municipality. Any surplus of the bond proceeds over and above the cost of paying the unfunded liability, plus any amount required for reserves, capitalized interest and costs of issuance thereof or in the case of refunding bonds over and above the amount necessary to refund the existing bonds being refunded by such issue, plus any amount required for reserves, capitalized interest and costs of issuance thereof, shall be paid into the debt service fund for such bonds; and

(10) The defined contribution plan established by the municipality shall:

(A) Meet the federal qualification requirements of 26 U. S. C. §401 and related sections of the Internal Revenue Code as applicable to governmental plans;
(B) Set the amount of each employee's contribution and the amount of each employer's contribution;

(C) Require that the amount of annuity payments a retired member receives be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member of any other factors that normally govern annuity payments;

(D) Include detailed provisions that require the prudent and safe handling of the retirement funds;

(E) Provide retirement options; and

(F) Include any other provision and authorize any policy that the qualifying municipality determines is necessary or incidental to the establishment and operation of the defined contribution plan. The other provisions may include, but are not limited to, the authorization to contract with one or more private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day-to-day operations of the plan and to provide investments.

(c) If a qualifying municipality elects to establish a defined contribution plan pursuant to subdivision (2), subsection (a) of this section, the qualifying municipality shall also establish, by ordinance, mechanisms to provide disability benefits and death benefits for eligible members.

(d) The authority granted to a qualifying municipality pursuant to subsection (a) of this section to close its existing pension and relief fund plan for police officers and firefighters, to establish a defined contribution plan for police officers and firefighters and to issue revenue bonds shall terminate on the thirty-first day of December, two thousand five.
(e) The right of any person to a benefit provided under a defined contribution plan established by a qualifying municipality pursuant to this section shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever nor shall any assignment thereof be enforceable in any court with the exception that the benefits or contributions under the plan shall be subject to "qualified domestic relations orders" as that term is defined in 26 U. S. C. §414 with respect to governmental plans.

(f) The interest earned on any bonds issued under the authority granted in this section is exempt from any tax imposed under the provisions of this code.

(g) Bonds and refunding bonds issued pursuant to the authority provided by this section shall never constitute a direct and general obligation of the State of West Virginia and the full faith and credit of the state is not pledged to secure the payment of the principal and interest of such bonds. Bonds and refunding bonds issued under this section shall state on their face that the bonds or bonds do not constitute a debt of the State of West Virginia and that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia.

CHAPTER 8

(S. B. 3003 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed May 17, 2005; in effect July 8, 2005.] [Approved by the Governor on May 26, 2005.]
AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended, relating generally to the subsidization of active and retired state pool employees' public employees insurance premiums; authorizing subsidization of a portion of the aggregate cost-sharing percentages of premium between employers and active employees for a limited period by use of certain insurance policy surcharges; and authorizing subsidization of incremental costs for retired state pool employees from a reserve fund of the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the Finance Board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the Finance Board created by this article is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the Agency's estimated total financial requirements, taking into account all revenues projected to be made available to the Agency and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The Finance Board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by
the Finance Board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the Finance Board or the Director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the Finance Board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

(1) Maximum levels of reimbursement which the Public Employees Insurance Agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the Director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The Finance Board
may establish different levels of costs to retired employees
based upon length of employment with a participating em-
ployer, ability to pay or other relevant factors. The financial
plans may also include optional alternative benefit plans with
alternative types and levels of cost. The Finance Board may
develop policies which encourage the use of West Virginia
health care providers.

In addition, the Finance Board may allocate a portion of
the premium costs charged to participating employers to
subsidize the cost of coverage for participating retired employ-
ees, on such terms as the Finance Board determines are
equitable and financially responsible.

(d)(1) The Finance Board shall prepare an annual financial
plan for each fiscal year during which the Finance Board
remains in existence. The Finance Board Chairman shall
request the actuary to estimate the total financial requirements
of the Public Employees Insurance Agency for the fiscal year.

(2) The Finance Board shall prepare a proposed financial
plan designed to generate revenues sufficient to meet all
estimated program and administrative costs of the Public
Employees Insurance Agency for the fiscal year. The proposed
financial plan shall allow for no more than thirty days of
accounts payable to be carried over into the next fiscal year.
Before final adoption of the proposed financial plan, the
Finance Board shall request the actuary to review the plan and
to render a written professional opinion stating whether the
plan will generate sufficient revenues to meet all estimated
program and administrative costs of the Public Employees
Insurance Agency for the fiscal year. The actuary’s report shall
explain the basis of its opinion. If the actuary concludes that
the proposed financial plan will not generate sufficient reve-
nues to meet all anticipated costs, then the Finance Board shall
make necessary modifications to the proposed plan to ensure
that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the Finance Board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review such comments and shall finalize and approve the financial plan.

(4) Any financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her estimate of total revenues to the Finance Board no later than the fifteenth day of October of the preceding fiscal year: Provided, That, for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues. The Finance Board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the Governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the Director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the Finance Board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: Provided, however, That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.
(e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By the first day of January of each year the Finance Board shall submit to the Governor and the Legislature a prospective financial plan, for a period not to exceed five years, for the programs provided in this article. Factors that the Board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision (4), subsection (d) of this section and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Beginning in the plan year which commences on the first day of July, two thousand two, and in each plan year thereafter, until and including the plan year which commences on the first day of July, two thousand six, the prospective plans shall include incremental adjustments toward the ultimate level required in this subsection, in the aggregate cost-sharing percentages of premium between employers and employees: Provided, That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, the portion of the policy surcharge collected from certain fire and casualty insurers and transferred into the fund in the State Treasury of the Public Employees Insurance Agency pursuant to the provisions of section thirty-three, article three, chapter thirty-three of this code shall be used, in lieu of an increase in costs to active state pool employees, to subsidize any incremental adjustment in those employees’
portion of the aggregate cost-sharing percentages of premium
between employers and employees. The foregoing does not
prohibit any premium increase occasioned by an employee’s
increase in salary: Provided, however, That for the period
beginning the first day of July, two thousand five, through the
thirty-first day of December, two thousand five, in lieu of an
increase in costs to retired state pool employees, such funds as
are necessary to subsidize any increase in costs to retired state
pool employees shall be transferred from the reserve fund
established in section twenty-five of this article into the fund
in the State Treasury of the Public Employees Insurance
Agency. Effective in the plan year commencing on the first
day of July, two thousand six, and in each plan year thereafter,
the aggregate premium cost-sharing percentages between
employers and employees shall be at a level of eighty percent
for the employer and twenty percent for employees, except for
the employers provided in subsection (d), section eighteen of
this article whose premium cost-sharing percentages shall be
governed by that subsection. After the submission of the initial
prospective plan, the Board may not increase costs to the
participating employers or change the average of the premiums,
deductibles and copays for employees, except in the event of
a true emergency as provided in this section: Provided further,
That if the Board invokes the emergency provisions, the cost
shall be borne between the employers and employees in
proportion to the cost-sharing ratio for that plan year: And
provided further, That for purposes of this section, “emer-
gency” means that the most recent projections demonstrate that
plan expenses will exceed plan revenues by more than one
percent in any plan year.

(h) The Finance Board shall meet on at least a quarterly
basis to review implementation of its current financial plan in
light of the actual experience of the Public Employees Insur-
ance Agency. The Board shall review actual costs incurred,
any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The Finance Board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor’s estimate of general and special revenues available to the Agency, the Finance Board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

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CHAPTER 9

(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse)

[By Request of the Executive]

[Passed May 17, 2005; in effect July 9, 2005.]
[Approved by the Governor on May 26, 2005.]

AN ACT to repeal §20-11-5a of the Code of West Virginia, 1931, as amended, relating to a recycling assessment fee upon the disposal of solid waste.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to a recycling assessment fee upon the disposal of solid waste.
Section five-a, article eleven, chapter twenty of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 10

(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as contained in chapter 203, Acts of the Legislature, regular session, 2005, as amended, relating generally to the salaries of the Governor, Attorney General, State Treasurer, State Auditor, Commissioner of Agriculture and Secretary of State; and effective dates.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 of the Code of West Virginia, 1931, as amended, as contained in chapter 203, Acts of the Legislature, regular session, 2005, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

Beginning in the calendar year two thousand five, and for each calendar year after that, salaries for each of the state constitutional officers are as follows:
(1) The salary of the Governor is ninety-five thousand dollars per year;

(2) The salary of the Attorney General is eighty thousand dollars per year;

(3) The salary of the Auditor is seventy-five thousand dollars per year;

(4) The salary of the Secretary of State is seventy thousand dollars per year;

(5) The salary of the Commissioner of Agriculture is seventy-five thousand dollars per year; and

(6) The salary of the State Treasurer is seventy-five thousand dollars per year.
AN ACT making a supplementary appropriation of excess lottery revenue funds to the workers' compensation commission, fund 3460, fiscal year 2005, organization 0322, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, to fund 3460, fiscal year 2005, organization 0322, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS

Sec. 9. Appropriations from surplus accrued.

330—Workers' Compensation Commission

(WV Code Chapter 23)

Fund 3460 FY 2005 Org 0322

1 Self-Insured Security Pool -
2 Lottery Surplus .................. 072 $ 9,000,000

The above appropriation for Self-Insured Security Pool - Lottery Surplus may be transferred to fund 3440, fiscal year 2005, organization 0322, activity 999 and invested in the same manner as other Workers' Compensation Commission funds.

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 five, by amending language with no additional funds being appropriated.

CHAPTER 2

(H. B. 302 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]
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 five, to new items of appropriation designated to the department of revenue, insurance commissioner, fund 8883, fiscal year 2005, organization 0704, and to the national coal heritage area authority, fund 8869, fiscal year 2005, organization 0941, all supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The Governor has established the availability of federal funds for new programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, 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 DEPARTMENT OF REVENUE

4 283a—Insurance Commissioner

5 (WV Code Chapter 33)

6 Fund 8883 FY 2005 Org 0704

7 Act- Federal

8  activity Funds

9 1 Unclassified—Total .................. 096 $ 1,000,000
Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

298a—National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2005 Org 0941

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$ 600,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement these accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand five, by providing for new items of appropriation to be established therein to appropriate federal funds for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 3

(H. B. 303 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]

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 five, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2005, organization 0606, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

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 five, 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 five, to fund 8727, fiscal year 2005, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$399,679</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 five.

CHAPTER 4

(S. B. 3006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]

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, state department of education, fund 0313, fiscal year 2005, organization 0402, the department of education and the arts, division of culture and history, fund 0293, fiscal year 2005, organization 0432, and the department of military affairs and public safety, division of criminal justice services, fund 0546, fiscal year 2005, organization 0620, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of November, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand five; 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 five; 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 five, to fund 0313, fiscal year 2005, organization 0402, be supplemented and amended by increasing and adding new items of appropriation to the total appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

34—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2005 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increased Enrollment</td>
<td>$664,292</td>
</tr>
<tr>
<td>Surplus</td>
<td>059</td>
</tr>
<tr>
<td>Tax Assessment Errors</td>
<td>304,219</td>
</tr>
<tr>
<td>Surplus</td>
<td>065</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0293, fiscal year 2005, organization 0432, be supplemented and amended
by increasing and adding a new item of appropriation to the
total appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

41—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2005 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a Capital Outlay, Repairs and</td>
<td>General</td>
</tr>
<tr>
<td>7b Equipment - Surplus ..........</td>
<td>$ 1,600,000</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand five, to fund 0546, fiscal
year 2005, organization 0620, be supplemented and amended
by increasing and adding a new item of appropriation to the
total appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

61—Division of Criminal Justice Services
The purpose of this supplemental appropriation bill is to supplement, increase and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 5

(S. B. 3007 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state excess lottery revenue fund to a new item of appropriation designated to the West Virginia state police, fund 6394, fiscal year 2005, organization 0612, by supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill.
WHEREAS, The Governor submitted to the Legislature a statement of the state excess lottery revenue fund, dated the fifteenth day of November, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular and surplus appropriations for the fiscal year two thousand five; and

WHEREAS, It appears from the Governor’s statement of the state excess lottery revenue fund there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations from state excess lottery revenue fund.

3 246a—West Virginia State Police

4 (WV Code Chapter 15)

5 Fund 6394 FY 2005 Org 0612

6 1 Helicopter Purchase .................. 063 $3,900,000

7 The purpose of this supplementary appropriation bill is to supplement by amending and adding a new item of appropriation for the aforesaid account in the budget act for the fiscal year ending the thirtieth day of June, two thousand five, by providing for a new item of appropriation to be established
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 five, to the department of military affairs and public safety - West Virginia state police - surplus transfer account, fund 6519, fiscal year 2005, organization 0612, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of military affairs and public safety - West Virginia state police - surplus transfer account, fund 6519, fiscal year 2005, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; 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 five, to fund 6519, fiscal year 2005, organization 0612, be supplemented and amended by increasing the total appropriation as follows:
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

144—West Virginia State Police—

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2005 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2a Helicopter Purchase</td>
<td>$1,200,000</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 the fiscal year two thousand five.

CHAPTER 7

(S. B. 3013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of six million dollars from the revenue shortfall reserve fund, fund 7005, organization 0701, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand five, to the governor's office - civil contingent fund, fund 0105, fiscal year 2005, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 7005, organization 0701, be decreased by expiring the amount of six million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0105, fiscal year 2005, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

EXECUTIVE

3 8—Governor's Office—

4 Civil Contingent Fund
The purpose of this supplementary appropriation bill is to expire funds to the unappropriated surplus balance in the state fund, general revenue, and supplement and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 8

(S. B. 3014 — By Senator McCabe)

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to modifying the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four; limiting the availability of certain tax credits to qualified economic development and technology advancement centers; and authorizing the economic development authority to establish criteria for the determination of the allocation of certain tax credits by vote of the majority of the authority.
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, the total credits authorized for all companies may not exceed a total of one million dollars: And
provided further, That the capital base of any qualified company other than an economic development and technology advancement center qualified under the provisions of article twelve-a, chapter eighteen-b of this code shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies and centers in the order that the companies are qualified.

(2) Not more than two million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision: Provided, That for the fiscal year beginning on the first day of July, two thousand four, no credits authorized by this section may be allocated by the authority to one or more small business investment companies. 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: Provided, however, That for the fiscal year beginning on the first day of July, two thousand four, all of the credits allowed under subdivision (1) of this subsection shall be allocated only to one or more qualified economic development and technology advancement centers. 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: Provided further, That for the fiscal year beginning on the first day of July, two thousand four, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to 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 this 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: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter.

(3) Notwithstanding any provision of this code or legislative rule promulgated thereunder to the contrary, for the fiscal year beginning on the first day of July, two thousand four, the authority has the sole discretion to allocate or refuse to allocate tax credits authorized under this section to any qualified economic development and technology advancement center
upon its determination of the extent to which the center will fulfill the purposes of this article. The determination shall be based upon the application of the center, the extent to which the company or center fulfilled those purposes in prior years after receiving tax credits authorized under this section, the extent to which the center is expected to stimulate economic development and high technology research in the chemical industry and such other similarly related criteria as the authority may establish by vote of the majority of authority.

(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 categories by dollar amount of credit received are as follows:

(1) More than $1.00, but not more than $50,000;
(2) More than $50,000, but not more than $100,000;
(3) More than $100,000, but not more than $250,000;
(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 9

(H. B. 305 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed November 16, 2004; in effect from passage.] [Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §15-2B-3 and §15-2B-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-2B-14, all relating to DNA testing for convicts under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §15-2B-3 and §15-2B-6 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 §15-2B-14, all to read as follows:

ARTICLE 2B. DNA DATA.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.
§15-2B-14. Right to DNA testing.


1 As used in this article the following terms mean:
2 (a) “DNA” means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
(b) “DNA record” means DNA identification information stored in any state DNA database pursuant to this article. The DNA record is the result obtained from DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual’s DNA sample are also included as a “DNA record”.

(c) “DNA sample” means a tissue, fluid or other bodily sample, suitable for testing, provided pursuant to this article or submitted to the division laboratory for analysis pursuant to a criminal investigation.

(d) “FBI” means the federal bureau of investigation.

(e) “State DNA database” means all DNA identification records included in the system administered by the West Virginia state police.

(f) “State DNA databank” means the repository of DNA samples collected under the provisions of this article.

(g) “Division” means the West Virginia state police.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

(a) Any person convicted of an offense described in section one, four, seven, nine, nine-a (when that offense constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article two, chapter sixty-one of this code or section twelve, article eight of said chapter (when that offense constitutes a felony), shall provide a DNA sample to be used for DNA analysis as described in this article. Further, any person convicted of any offense described in article eight-b or eight-d of said chapter shall provide a DNA sample to be used for DNA analysis as described in this article.
(b) Any person presently incarcerated in a state correctional facility or a county or regional jail in this state after conviction of any offense listed in subsection (a) of this section shall provide a DNA sample to be used for purposes of DNA analysis as described in this article.

(c) Any person convicted of a violation of section five or thirteen, article two, chapter sixty-one of this code, section one, two, three, four, five, seven, eleven, twelve (when that offense constitutes a felony) or subsection (a), section thirteen, article three of said chapter, section three, four, five or ten, article three-e of said chapter or section three, article four of said chapter, shall provide a DNA sample to be used for DNA analysis as described in this article.

(d) Any person convicted of an offense which constitutes a felony violation of the provisions of article four, chapter sixty-a of this code; or of an attempt to commit a violation of section one or section fourteen-a, article two, chapter sixty-one of this code; or an attempt to commit a violation of article eight-b of said chapter shall provide a DNA sample to be used for DNA analysis as described in this article.

(e) The method of taking the DNA sample is subject to the testing methods utilized by the West Virginia state police crime lab.

(f) When a person required to provide a DNA sample pursuant to this section refuses to comply, the state shall apply to a circuit court for an order requiring the person to provide a DNA sample. Upon a finding of failure to comply, the circuit court shall order the person to submit to DNA testing in conformity with the provisions of this article.

(g) The West Virginia state police may, where not otherwise mandated, require any person convicted of a felony offense under the provisions of this code, to provide a DNA
sample to be used for the sole purpose of criminal identification
of the convicted person who provided the sample: Provided,
That the person is under the supervision of the criminal justice
system at the time the request for the sample is made. Supervi-
sion includes prison, the regional jail system, parole, probation,
home confinement, community corrections program, and work
release.

(h) No part of the genetic information that is authorized to
be collected pursuant to this article may be used for any
purpose other than to establish the identity of the individual.
The biological sample obtained to conduct the identity test not
necessary to conduct a present or future identity test shall be
destroyed following the performance of the initial identity test
analysis.

§15-2B-14. Right to DNA testing.

(a) A person convicted of a felony currently serving a term
of imprisonment may make a written motion before the trial
court that entered the judgment of conviction for performance
(DNA) testing.

(b) (1) An indigent convicted person may request appoint-
ment of counsel to prepare a motion under this section by
sending a written request to the court. The request must include
the person’s statement that he or she was not the perpetrator of
the crime and that DNA testing is relevant to his or her asser-
tion of innocence. The request must also include the person’s
statement as to whether he or she previously had appointed
counsel under this section.

(2) If any of the information required in subdivision (1) of
this section is missing from the request, the court shall return
the request to the convicted person and advise him or her that
the matter cannot be considered without the missing informa-
tion.
Upon a finding of indigency, the inclusion of information required in subdivision (1) of this section, and that counsel has not previously been appointed pursuant to this subdivision, the court shall appoint counsel. Counsel shall investigate and, if appropriate, file a motion for DNA testing under this section. Counsel represents the indigent person solely for the purpose of obtaining DNA testing under this section.

Upon a finding of indigency, and that counsel has been previously appointed pursuant to this subdivision, the court may, in its discretion, appoint counsel. Counsel shall investigate and, if appropriate, file a motion for DNA testing under this section. Counsel represents the person solely for the purpose of obtaining DNA testing under this section.

Nothing in this section provides for a right to the appointment of counsel in a post-conviction collateral proceeding or sets a precedent for any such right. The representation provided an indigent convicted person under this article is solely for the limited purpose of filing and litigating a motion for DNA testing pursuant to this section.

The motion shall be verified by the convicted person under penalty of perjury and must do the following:

(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.
(D) Reveal the results of any DNA or other biological testing previously conducted by either the prosecution or defense, if known.

(E) State whether any motion for testing under this section has been filed previously and the results of that motion, if known.

(2) Notice of the motion shall be served on the prosecuting attorney in the county of conviction and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within sixty days of the date on which the prosecuting attorney is served with the motion, unless a continuance is granted for good cause.

(d) If the court finds evidence was subject to prior DNA or other forensic testing, by either the prosecution or defense, it shall order the party at whose request the testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing.

(e) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial or accepted the convicted person's plea, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(f) The court shall grant the motion for DNA testing if it determines all of the following have been established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion;
(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect;

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;

(4) The convicted person has made a prima facie showing that the evidence sought for testing is material to the issue of the convicted person's identity as the perpetrator of or accomplice to, the crime, special circumstance, or enhancement allegation resulting in the conviction or sentence;

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if DNA testing results had been available at the time of conviction. The court in its discretion may consider any evidence regardless of whether it was introduced at trial;

(6) The evidence sought for testing meets either of the following conditions:

(A) The evidence was not previously tested;

(B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results;

(7) The testing requested employs a method generally accepted within the relevant scientific community;

(8) The evidence or the presently desired method of testing DNA were not available to the defendant at the time of trial or a court has found ineffective assistance of counsel at the trial court level;
The motion is not made solely for the purpose of delay.

If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. Testing shall be conducted by a DNA forensic laboratory in this state.

The result of any testing ordered under this section shall be fully disclosed to the person filing the motion and the prosecuting attorney. If requested by any party, the court shall order production of the underlying laboratory data and notes.

If testing was requested by the state or the individual is an indigent, the cost of DNA testing shall be borne by the state.

An order granting or denying a motion for DNA testing under this section is not to be appealable and is subject to review only through a petition for writ of mandamus or prohibition filed with the supreme court of appeals by the person seeking DNA testing or the prosecuting attorney. The petition shall be filed within twenty days of the court’s order granting or denying the motion for DNA testing. The court shall expedite its review of a petition for writ of mandamus or prohibition filed under this subsection.

DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court may require the DNA laboratory to give priority to the DNA testing ordered pursuant to this section over the laboratory’s other pending casework.

DNA profile information from biological samples taken from a convicted person pursuant to a motion for post-conviction DNA testing is exempt from any law requiring disclosure of information to the public.
(m) Notwithstanding any other provision of law, the right to file a motion for post-conviction DNA testing provided by this section is absolute and may not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendre.

CHAPTER 10

(H. B. 308 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §18-2E-5 and §18-2E-5c of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-15f of said code; to amend said code by adding thereto a new section, designated §18-5-46; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-2-12 of said code; to amend said code by adding thereto a new section, designated §18A-2-12a; and to amend and reenact §18A-5-1 and §18A-5-1a of said code, all relating to the process for improving education and removing impediments to improving performance and progress; making technical references, grammatical corrections and stylistic changes; refocusing school and county improvement plans; requiring unified school improvement plan boilerplate; adding requirement for standards; revising performance measures and specifying their use; modifying requirements for assessments; adding indicators of exemplary performance and progress; specifying use of efficiency indicators; reorienting system of education performance audits; changing policy for making on-site reviews of schools and school systems; modifying who office of education performance audits reports to; modifying salary cap for
office director; revising and adding items specified for compliance documentation on checklist format; modifying process for selection of schools and school systems for on-site review; open meetings exemption for state board during certain discussions; modifying limitation in scope of on-site review; modifying persons to be included in an on-site review; expanding on-site exit conferences and specifying purpose; modifying time limitations for on-site review reports; making certain findings and excluding certain areas from review by performance audits; further specifying conditions for student transfers from seriously impaired schools; granting certain authority for real estate transactions to state board during state intervention; clarifying rights of principal removed from seriously impaired school; specifying certain notice requirements by state board to process for improving education council; recording suspensions and expulsions on the West Virginia education information system; prohibiting a teacher from being required to change grade; exception; limiting state rules, policies and standards for exceptional children programs to federal requirements and directing report of review and comparison of laws to legislative oversight commission; restricting publication of lesson plans; setting forth general statement on relations between county boards and school personnel; and placing sole responsibility for proper student discipline with county boards and requiring county board policies.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-2E-5c of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-15f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-5-46; that §18-20-5 of said code be amended and reenacted; that §18A-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-12a; and that §18A-5-1 and §18A-5-1a of said code be amended and reenacted, all to read as follows:
CHAPTER 18. 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.

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

§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. — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) 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) 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) 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) In consideration of these findings, 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 the high quality standards are, at a minimum, being met and that a thorough and
efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis.

(5) The intent of the Legislature in enacting this section and section five-c of this article 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 the performance and progress of students, schools and school systems and, when necessary, to 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 a rule consistent with the provisions of this section and 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. Each respective plan shall be a five-year plan that includes the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The revised annual plan also shall identify any deficiency which is reported on the check lists identified in paragraph (G), subdivision (5), subsection (j) of this section including any deficit more than a casual deficit by the county board. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date
certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its web site or the West Virginia education information system an electronic unified school improvement plan boilerplate designed for use by all schools to develop a unified school improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

(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.

The standards shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.

(d) Annual performance measures. — The standards shall include annual measures of student, school and school system performance and progress. The following annual measures of student, school and school system performance and progress shall be the only measures for determining school accreditation and school system approval:

(1) The acquisition of student proficiencies as indicated by student performance and progress in grades three through eight, inclusive, and grade ten shall be measured by a uniform statewide assessment program. The indicators for student progress in reading and mathematics in grades kindergarten through second grade shall be measured by the informal assessment established by the West Virginia department of education or other assessments, as determined by the school curriculum team. If the school fails to meet adequate yearly progress in reading or mathematics for two consecutive years, the county superintendent, the school principal and the school curriculum team shall decide whether a different assessment should be used to verify that benchmarks are being met. If the
county superintendent, the school principal and the school curriculum team differ on what assessment is used, then each entity shall have one vote. Furthermore, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grades that are determined by the state board to be appropriate. It is the intent of the Legislature that in the future a grade eleven uniform statewide assessment be administered in lieu of the grade ten uniform statewide assessment. The state board shall perform an analysis of the costs and the benefits of administering the grade eleven uniform statewide assessment in lieu of the grade ten uniform statewide assessment. The analysis shall include a review of the need for end of course exams in grades nine through twelve. The state board shall report the results of the analysis to the legislative oversight commission on education accountability. The state board may provide other testing or assessment instruments applicable to grade levels kindergarten through grade twelve through the statewide assessment program for optional use by each school as determined by the school curriculum team to measure student performance and progress;

(2) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance. The following absences shall be excluded:

(A) Student absences excused in accordance with the state board rule promulgated pursuant to section four, article eight of this chapter;

(B) Students not in attendance due to disciplinary measures; and

(C) Absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority; and
(3) The high school graduation rate which shall be no less than eighty percent, or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia education information system on the fifteenth day of August.

(e) *Indicators of exemplary performance and progress.* — The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:

(1) The percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation;

(2) The percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and

(3) The percentage of students who successfully complete advanced placement, dual credit and honors classes.

(f) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools 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.

(g) 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 annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the governor, individually and collectively as the process for improving education council, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

(1) The assessment of student, school and school system performance and progress based on the annual measures set forth in subsection (d) of this section;
(2) The evaluation of records, reports and other information collected by the department upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system unified improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(h) 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.

The state board shall make accreditation information available to the Legislature, the governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.
(i) **Early detection and intervention programs.** — 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 under-achieving 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.

(j) **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, the state board shall establish an office of education performance audits consistent with the provisions of this section. The office of education performance audits shall be operated under the direction of the state board independently of the functions and supervision of the state department of education and state superintendent. The office of education performance audits shall report directly to and be responsible to the state board and the process for improving education council created in section five-c of this article 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 annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary cap 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 shall retain their benefits 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 performance audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures 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; 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 state board, and recommend to 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 of schools and school systems to meet the standards established by the state board, 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 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, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The school provides multi-cultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

(k) On-site reviews. —

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review.

Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session, and is not subject to the provisions of article nine-a, chapter six of this code, relating to open governmental proceedings. An on-site review shall be conducted by the office of education performance audits of a school or school system for the purpose of investi-
gating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary to improve performance and progress to meet the standard. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;

(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 allegation serious impairments in the quality of education 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 of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.
(2) 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.

(3) The office of education performance audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

(4) An on-site review of a school or school system shall include a person or persons from the department of education or a public education agency in the state who has expert knowledge and experience in the area or areas to be reviewed, and who has been trained and designated by the state board to perform such functions. If the size of the school or school system and issues being reviewed necessitate 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
process will evaluate compliance with the standards in a uniform, consistent and expert manner.

(5) The office of education performance audits shall reimburse a county board for the costs of substitutes required to replace county board employees while they are serving on a review team.

(6) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(7) The office of education performance audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The office of education performance audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A copy of the report shall be provided to the process for improving education council at its request.

(8) The Legislature finds that the accountability and oversight of the following activities and programmatic areas in the public schools is controlled through other mechanisms and that additional accountability and oversight are not only
unnecessary but counter productive in distracting necessary
resources from teaching and learning. Therefore, notwithstanding
any other provision of this section to the contrary, the
following activities and programmatic areas are not subject to
review by the office of education performance audits:

(A) Work-based learning;

(B) Use of advisory councils;

(C) Program accreditation and student credentials;

(D) Student transition plans;

(E) Graduate assessment form;

(F) Casual deficit;

(G) Accounting practices;

(H) Transportation services;

(I) Special education services;

(J) Safe, healthy and accessible facilities;

(K) Health services;

(L) Attendance director;

(M) Business/community partnerships;

(N) Pupil-teacher ratio/split grade classes;

(O) Local school improvement council, faculty senate,
student assistance team and curriculum team;

(P) Planning and lunch periods;
(Q) Skill improvement program;

(R) Certificate of proficiency;

(S) Training of county board members;

(T) Excellence in job performance;

(U) Staff development; and

(V) Preventive discipline, character education and student and parental involvement.

(I) School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or seriously impaired status.

(1) Full accreditation status shall be given to a school when the school’s performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (d) of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and 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 school’s performance and progress are 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 in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. 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 are below the level required for full accreditation, but the school’s unified improvement plan meets the following criteria:

(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;

(B) The plan has been approved by the state board; and

(C) The school is meeting the objectives and timeline specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school’s performance and progress meet or exceed the standards adopted by the state board pursuant to subsections (d) and (e) of this section. 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) Seriously impaired accreditation status shall be given to a school 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 meet a standard 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 recommen-
dations within sixty days of appointment for correction of the
impairment. When the state board approves the recommenda-
tions, 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,
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 eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; 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.
(m) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, following state intervention in the operation of the school to correct the impairment, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(n) 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 schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and 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 in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. 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 in accordance with subsection (b) of this section;

   (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 communicated to the county board. If progress in correcting the emergency, 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 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;

(o) 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 responsi-
bilities contained in subsection (n) 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.
(p) 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 perfor-
mance 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.
§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

(a) Process for improving education council. — There is hereby established the process for improving education council for the purpose of providing opportunities for consultation among state policy leaders on the process for improving education, including, but not limited to, determination of the things that students should know and be able to do as the result of a thorough and efficient education, the performance and progress of students toward meeting the high quality standards established by the state board, and any further improvements necessary to increase the capacity of schools and school systems to deliver a thorough and efficient education.

(b) Council membership. — The legislative oversight commission on education accountability, together with the governor, ex officio, or the governor’s designee, and the chancellor of the higher education policy commission, ex officio, or the chancellor’s designee, comprise the process for improving education council. Ex officio members are entitled to vote. The governor or the governor’s designee shall convene the council, as appropriate, and shall serve as chair. The council may meet at any time at the call of the governor or the governor’s designee.

(c) Compensation. — Members of the council shall serve without compensation, but shall be reimbursed as provided by law by their respective agencies 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 of their expenses.

(d) Powers of the council. —

The council has the following powers:
(1) To meet and consult with the state board, or their designees, and make recommendations on issues related to student, school and school system performance. The following steps are part of the consultation process:

(A) The state board shall notify each member of the council whenever the state board proposes to amend its rules on any of the following issues:

(i) High quality education standards and efficiency standards established pursuant to section five of this article;

(ii) Indicators of efficiency established pursuant to section five of this article; and

(iii) Assessment and accountability of school and school system performance and processes established pursuant to section five of this article.

(B) The notice to be given pursuant to paragraph (A) of this subdivision shall contain a summary and explanation of the proposed changes, including a draft of the proposal when available, and shall be sent at least fifteen days prior to filing the proposal with the secretary of state for public comment.

(C) If the governor, or the governor's designee, believes it is necessary for the council to meet and consult with the state board, or its designees, on changes proposed to any of the issues outlined in subdivision (1) of this subsection, he or she may convene a meeting of the council.

(D) If both the president of the Senate and the speaker of the House of Delegates believe it is necessary for the council to meet and consult with the state board, or its designees, they shall notify the governor who shall convene a meeting of the council.
(E) If the chancellor, or the chancellor’s designee, believes
that it is necessary for the council to meet and consult with the
state board, or its designees, he or she may request the governor
to convene a meeting of the council.

(2) To require the state board, or its designees, to meet with
the council to consult on issues that lie within the scope of the
council’s jurisdiction;

(3) To participate as observers in any on-site review of a
school or school system conducted by the office of education
performance audits; and

(4) To authorize any employee of the agencies represented
by council members to participate as observers in any on-site
review of a school or school system conducted by the office of
education performance audits.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

§18-5-46. Requiring teacher to change grade prohibited.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

(a) Prior to the admission of a pupil to any public school in
West Virginia, the county superintendent shall require the
pupil’s parent(s), guardian(s) or custodian(s) to provide, upon
registration, a sworn statement or affirmation indicating
whether the student is, at the time, under suspension or expul-
son from attendance at a private or public school in West
Virginia or another state. Any person willfully making a
materially false statement or affirmation shall be guilty of a
misdemeanor and, upon conviction, the penalty shall be the
same as provided for “false swearing” pursuant to section three,
article five, chapter sixty-one of this code.
(b) Prior to the admission of a pupil to any public school, the principal of that school or his or her designee shall consult the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code, to determine whether the pupil requesting admission is, at the time of the request for admission, serving a suspension or expulsion from another public school in West Virginia.

(c) The state board of education shall provide for the West Virginia Education Information System to disallow the recording of the enrollment of any pupil who is, at the time of attempted enrollment, serving a suspension or expulsion from another public school in West Virginia, and for that system to notify the user who has attempted to record the enrollment that the pupil may not be enrolled, and to notify that user of the reason therefor.

(d) Notwithstanding any other provision of this code to the contrary, any pupil who has been suspended or expelled from school pursuant to section one-a, article five, chapter eighteen-a of this code, or who has been suspended or expelled from a public or private school in another state, due to actions described in section one-a, article five, chapter eighteen-a of this code, may not be admitted to any public school within the state of West Virginia until the period of suspension or expulsion has expired.

§ 18-5-46. Requiring teacher to change grade prohibited.

No teacher may be required by a principal or any other person to change a student’s grade on either an individual assignment or a report card unless there is clear and convincing evidence that there was a mathematical error in calculating the student’s grade.
The state superintendent of schools shall organize, promote, administer and be responsible for:

1. Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

2. Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

3. Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the state board of education: Provided, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation. The state superintendent shall conduct a comprehensive review and comparison of the rules, policies and standards of the state with federal law and report the findings to the legislative oversight commission on education accountability at its February, two thousand five interim meeting or as soon thereafter as requested by the commission.

4. Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing
such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: Provided, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the state board of education, to the legislative oversight commission on education accountability no later than the first day of December, one thousand nine hundred ninety-five.

Nothing contained in this section shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

Article


5. Authority; Rights; Responsibility.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.
§18A-2-12a. Statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding.

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

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

(b) The system adopted by the state board of education for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.

(c) For purposes of this section, "professional personnel", "professional" or "professionals", means professional personnel as defined in section one, article one of this chapter.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the professional development project of the center for professional development created in section three, article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets such standards.

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

(1) The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals, or others;
(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn: Provided, That for school personnel with five or more years of experience, who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently: Provided, however, That a classroom teacher may exercise the option of being evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for individual professionals;

(C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance; and

(D) Serve as a basis for programs to increase the professional growth and development of professional personnel;

(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets such standards and other criteria for evaluation for each professional position evaluated. Effective the first day of July, two thousand three and thereafter, professional personnel, as appropriate, shall demonstrate competency in the knowledge and implementation of the technology standards adopted by the state board. If a professional fails to demonstrate competency, in the knowledge and implementation of these standards, he or she will be subject to an improvement plan to correct the deficiencies; and
(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional's recertification process.

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

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

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

(i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:

(1) Teach and reteach strategies;

(2) Write to learn activities;

(3) Cultural diversity;

(4) Color coding; or

(5) Any other similar items which are not required to serve as a guide to the teacher or substitute for daily instruction; and

(j) The Legislature finds that classroom teachers must be free of unnecessary paper work so that they can focus their time on instruction. Therefore, classroom teachers may not be required to keep records or logs of routine contacts with parents or guardians.

(k) Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the internet.
§18A-2-12a. Statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding.

(a) The Legislature makes the following findings:

(1) The effective and efficient operation of the public schools depends upon the development of harmonious and cooperative relationships between county boards and school personnel;

(2) Each group has a fundamental role to perform in the educational program and each has certain separate, distinct and clearly defined areas of responsibility as provided in chapters eighteen and eighteen-a of this code; and

(3) There are instances, particularly involving questions of wages, salaries and conditions of work, that are subject to disagreement and misunderstanding between county boards and school personnel and may not be so clearly set forth.

(b) The purpose of this section is to establish a statement of policy and practice for the county boards and school personnel, as follows, in order to minimize possible disagreement and misunderstanding:

(1) County boards, subject to the provisions of this chapter, chapter eighteen of this code and the policies and rules of the state board, are responsible for the management of the schools within their respective counties. The powers and responsibilities of county boards in setting policy and in providing management are broad, but not absolute;

(2) The school personnel shares the responsibility for putting into effect the policies and practices approved by the county board that employs them and the school personnel also have certain rights and responsibilities as provided in statute, and in their contracts;
(3) School personnel are entitled to meet together, form associations and work in concert to improve their circumstances and the circumstances of the schools;

(4) County boards and school personnel can most effectively discharge their total responsibilities to the public and to each other by establishing clear and open lines of communication. School personnel should be encouraged to make suggestions, proposals and recommendations through appropriate channels to the county board. Decisions of the county board concerning the suggestions, proposals and recommendations should be communicated to the school personnel clearly and openly;

(5) Official meetings of county boards are public meetings. School personnel are free to attend the meetings without fear of reprisal and should be encouraged to attend;

(6) All school personnel are entitled to know how well they are fulfilling their responsibilities and should be offered the opportunity of open and honest evaluations of their performance on a regular basis and in accordance with the provisions of section twelve of this article. All school personnel are entitled to opportunities to improve their job performance prior to the termination or transfer of their services. Decisions concerning the promotion, demotion, transfer or termination of employment of school personnel, other than those for lack of need or governed by specific statutory provisions unrelated to performance, should be based upon the evaluations, and not upon factors extraneous thereto. All school personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion; and

(7) All official and enforceable personnel policies of a county board must be written and made available to its employees.
ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.

(b) Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer or medical inspector of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases or has presented a certificate of health signed by the medical inspector or other proper health officer.
(c) The teacher shall have authority to exclude from his or her classroom or school bus any pupil who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a pupil; or who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any pupil excluded shall be placed under the control of the principal of the school or a designee. The excluded pupil may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the pupil may be readmitted and specifies the specific type of disciplinary action, if any, which was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of such action to the parent(s), guardian(s) or custodian(s). When a teacher excludes the same pupil from his or her classroom or from a school bus three times in one school year, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the pupil may be readmitted to the teacher’s classroom only after the principal, teacher and, if possible, the parent(s), guardian(s) or custodian(s) of the pupil have held a conference to discuss the pupil’s disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the pupil and inform the parent(s), guardian(s) or custodian(s) of the course of action. Thereafter, if the pupil’s disruptive behavior persists, upon the teacher’s request, the principal may, to the extent feasible, transfer the pupil to another setting.

(d) The Legislature finds that suspension from school is not appropriate solely for a pupil’s failure to attend class. Therefore, no pupil may be suspended from school solely for not attending class. Other methods of discipline may be used for the pupil which may include, but are not limited to, detention, extra class time or alternative class settings.
(e) Corporal punishment of any pupil by a school employee is prohibited.

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia board of education. Each board may modify such programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards of education may also establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students and any other program related to preventive discipline.

(g) For the purpose of this section: (1) "Pupil or student" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction; Provided, That, in the case of adults, the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; and (2) "teacher" shall mean all professional educators
as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.

(h) Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen of this code.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accor-
dance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a pupil from school, or from transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the uniform controlled substances act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a pupil from school, or transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a pupil, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or pupil; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school
rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may
suspend the pupil for a maximum of ten school days, including
the time prior to the hearing, if any, for which the pupil has
been excluded from school.

The principal shall report any suspension the same day it
has been decided upon, in writing, to the parent(s), guardian(s)
or custodian(s) of the pupil by regular United States mail. The
suspension also shall be reported to the county superintendent
and to the faculty senate of the school at the next meeting after
the suspension.

(e) Prior to a hearing before the county board, the county
board shall cause a written notice which states the charges and
the recommended disposition to be served upon the pupil and
his or her parent(s), guardian(s) or custodian(s), as the case may
be. The notice shall state clearly whether the board will attempt
at hearing to establish the student as a dangerous student, as
defined by section one, article one of this chapter. The notice
also shall include any evidence upon which the board will rely
in asserting its claim that the student is a dangerous student.
The notice shall set forth a date and time at which the hearing
shall be held, which date shall be within the ten-day period of
suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to
determine if the pupil should be reinstated or should or, under
the provisions of this section, must be expelled from school. If
the county board determines that the student should or must be
expelled from school, it may also determine whether the student
is a dangerous student pursuant to subsection (g) of this section.
At this, or any hearing before a county board conducted
pursuant to this section, the pupil may be represented by
counsel, may call his or her own witnesses to verify his or her
version of the incident and may confront and cross-examine
witnesses supporting the charge against him or her. Such a
hearing shall be recorded by mechanical means unless recorded
by a certified court reporter. Any such hearing may be post-
poned for good cause shown by the pupil but he or she shall
remain under suspension until after the hearing. The state
board may adopt other supplementary rules of procedure to be
followed in these hearings. At the conclusion of the hearing the
county board shall either: (1) Order the pupil reinstated
immediately at the end of his or her initial suspension; (2)
suspend the pupil for a further designated number of days; or
(3) expel the pupil from the public schools of the county.

(g) A county board that did not intend prior to a hearing to
assert a dangerous student claim, that did not notify the student
prior to the hearing that such a determination would be consid-
ered and that determines through the course of the hearing that
the student may be a dangerous student shall schedule a second
hearing within ten days to decide the issue. The hearing may be
postponed for good cause shown by the pupil, but he or she
remains under suspension until after the hearing.

A county board that expels a student, and finds that the
student is a dangerous student, may refuse to provide alternative
education. However, after a hearing conducted pursuant to this
section for determining whether a student is a dangerous
student, when the student is found to be a dangerous student, is
expelled and is denied alternative education, a hearing shall be
conducted within three months after the refusal by the board to
provide alternative education to reexamine whether or not the
student remains a dangerous student and whether the student
shall be provided alternative education. Thereafter, a hearing
for the purpose of reexamining whether or not the student
remains a dangerous student and whether the student shall be
provided alternative education shall be conducted every three
months for so long as the student remains a dangerous student
and is denied alternative education. During the initial hearing,
or in any subsequent hearing, the board may consider the
history of the pupil’s conduct as well as any improvements
made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the pupil; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party’s ability to provide sufficient notice to appear to a witness. A pupil remains under suspension until after the hearing in any case where a postponement occurs.

The county boards are directed to report the number of pupils determined to be dangerous students to the state board of education. The state board will compile the county boards’ statistics and shall report its findings to the legislative oversight commission on education accountability.
(i) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: Provided, That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil's case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

1. The extent of the pupil's malicious intent;
2. The outcome of the pupil's misconduct;
3. The pupil's past behavior history; and
4. The likelihood of the pupil's repeated misconduct.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act of 1990 (PL 101-476).

(l) Each suspension or expulsion imposed upon a pupil under the authority of this section shall be recorded in the
uniform integrated regional computer information system
(commonly known as the West Virginia Education Information
System) described in subsection (f), section twenty-six, article
two, chapter eighteen of this code.

(1) The principal of the school at which the pupil is enrolled
shall create an electronic record within twenty-four hours of the
imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include
the pupil’s name and identification number, the reason for the
suspension or expulsion, and the beginning and ending dates of
the suspension or expulsion.

(3) The state board of education shall collect and dissemin-
ate data so that any principal of a public school in West
Virginia can review the complete history of disciplinary actions
taken by West Virginia public schools against any pupil
enrolled or seeking to enroll at that principal’s school. The
purposes of this provision are to allow every principal to fulfill
his or her duty under subsection (b), section fifteen-f, article
five, chapter eighteen of this code to determine whether a pupil
requesting to enroll at a public school in West Virginia is
currently serving a suspension or expulsion from another public
school in West Virginia and to allow principals to obtain
general information about pupils’ disciplinary histories.

(m) Principals may exercise any other authority and
perform any other duties to discipline pupils consistent with
state and federal law, including policies of the state board of
education.

(n) Each county board is solely responsible for the adminis-
tration of proper discipline in the public schools of the county
and shall adopt policies consistent with the provisions of this
section to govern disciplinary actions.
AN ACT to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended, relating to facilitating implementation of the "Help America Vote Act of 2002"; implementing electronic voting systems; providing legislative findings; continuing the state election fund; establishing special revenue account; specifying criteria for obtaining a loan; providing for investment of fund moneys; allowing loans to counties for electronic voting systems and for upgrades of previously purchased electronic voting systems; specifying eligibility requirements for loans; giving authority to state election commission to waive matching moneys; authorizing emergency and legislative rules; limiting availability of loans; specifying duties of secretary of state; and authorizing methods for compelling repayment of loans.

Be it enacted by the Legislature of West Virginia:

That §3-1-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. LIMITS AND JURISDICTION.

§3-1-48. Legislative findings; state election fund; loans to counties; availability of funds; repayment of loans.

(a) Legislative findings. — The "Help America Vote Act of 2002", PL 107-252, 42 U. S. C. §15301, et seq., provides
funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines by two thousand six. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) State election fund. — The special revenue account created in the state treasury and known as the “State Election Fund” account is continued. Expenditures from the account shall be used by the secretary of state for the administration of this chapter in accordance with the provisions of 42 U. S. C. §15301, et seq., the “Help America Vote Act of 2002”, PL 107-252, in accordance with the provisions of article eleven, chapter four of this code.

(c) Establishment of special revenue account. — There is created in the state treasury a special revenue revolving fund account known as the “county assistance voting equipment fund” which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed eight million five hundred thousand dollars from the state election fund established under subsection (b) of this section pursuant to
37 legislative appropriation; any future funds received from the
38 federal government under the "Help America Vote Act of
40 acts providing funds to states to obtain, modify or improve
41 voting equipment and obtain necessary related services includ-
42 ing voting systems, technology and methods for casting and
43 counting votes; any funds appropriated by the Legislature or
44 transferred by any public agency as contemplated or permitted
45 by applicable federal or state law; and any accrued interest or
46 other return on the moneys in the fund. The balance remaining
47 in the fund at the end of each fiscal year shall remain in the
48 fund and not revert to the state general revenue fund.

49 (d) Use of funds. — The money in the fund shall be used
50 only in the manner and for the purposes prescribed in this
51 section. Notwithstanding any provision of law to the contrary,
52 funds in the county assistance voting equipment fund may not
53 be designated or transferred for any purpose other than those set
54 forth in this section.

55 (e) Administration of the fund. — The secretary of state
56 shall administer the fund with the approval of the state election
57 commission.

58 (f) Investment of fund. — The moneys of the fund shall be
59 invested pursuant to article six, chapter twelve of this code and
60 in such a manner that sufficient moneys are available as needed
61 for loans authorized under this section.

62 (g) Loans to counties. — The county assistance voting
63 equipment fund shall be used to make no-interest loans to
64 counties to obtain, modify or replace voting equipment,
65 software and necessary related services including voting
66 systems, technology and methods for casting and counting
67 votes: Provided, That any county commission that purchased an
68 electronic voting system prior to the thirteenth day of Novem-
69 ber, two thousand four, is eligible to apply for matching funds
under this section to upgrade the system: *Provided, however,*
That matching funds available for an upgrade shall not exceed
the amount available under subdivision (1) of this subsection
for the purchase of a new electronic voting system under the
secretary of state's authorized contract. The loans shall be
made under the following terms and conditions:

(1) The state election commission shall, subject to avail-
ability of funds, loan no more than fifty percent of the cost of
the voting equipment or services to any county commission:
*Provided,* That a portion or all of the county matching require-
ment may be waived in limited circumstances as determined by
the state election commission pursuant to this section.

(2) The county commission shall provide sufficient
documentation to establish to the satisfaction of the state
election commission that the county commission has at least
fifty percent of the money necessary to obtain the voting
equipment, software or services for which the loan is sought.

(3) The county commission shall enter into a contract with
the state election commission for the repayment of the loan
over a period not to exceed five years or the length of the
contract to obtain the equipment, software or services, whichever is less.

(4) The county commission shall use the loan for voting
equipment and services certified by the state election commis-
sion pursuant to the provisions of article four-a of this chapter
and authorized for use by the secretary of state.

(5) A county commission may apply for a loan on a form
provided by the secretary of state. The form shall, in addition
to requesting information necessary for processing the applica-
tion, state the deadline for submitting the application and the
eligibility requirements for obtaining a loan.
(6) The state election commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the secretary of state the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the state election commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of subdivision (3) of this subsection, the state election commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) Application. — An application for a loan shall be approved by the state election commission if the requirements of this section have been met.

(i) Rulemaking. — The secretary of state shall propose for promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) Availability of loans. — The state election commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the secretary of state or the national institute for standards and technology. The state election commission may not approve a loan for the purchase, lease, rental or other similar transaction to obtain electronic voting equipment, software or necessary related services unless obtained under a contract authorized by the secretary of state pursuant to rules promulgated under this section.
(k) Repayment of loans. — The secretary of state may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

CHAPTER 12

(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §33-48-2, §33-48-4, §33-48-6 and §33-48-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-48-7a, all relating to the West Virginia health insurance plan; placing the plan within the office of the insurance commissioner; exempting the plan from certain state purchasing requirements; authorizing the hiring of an executive director and exempting such director from the classified service; changing eligibility criteria for the plan; limiting the eligibility of recipients of the West Virginia children’s health insurance program; prohibiting balance billing of plan members by health care providers for covered services provided under the plan; authorizing the insurance commissioner to utilize department staff and resources in administering the plan; and creating a special revenue account known as the “West Virginia health insurance plan fund” for the purpose of receiving and expending moneys to be used in connection with the West Virginia health insurance plan.
Be it enacted by the Legislature of West Virginia:

That §33-48-2, §33-48-4, §33-48-6 and §33-48-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-48-7a, all to read as follows:

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-4. Eligibility.
§33-48-7. Funding of the plan.
§33-48-7a. Special revenue account created.


(a) There is hereby created within the department a body corporate and politic to be known as the West Virginia health insurance plan which shall be deemed to be an instrumentality of the state and a public corporation. The plan shall have perpetual existence and any change in the name or composition of the plan shall in no way impair the obligations of any contracts existing under this article.

(b) The plan shall operate subject to the supervision and control of the board. The board shall consist of the commissioner or his or her designated representative, who shall serve as an ex officio member of the board and shall be its chairperson, and six members appointed by the governor. At least two board members shall be individuals, or the parent, spouse or child of individuals, reasonably expected to qualify for coverage by the plan. At least two board members shall be representatives of insurers. At least one board member shall be a hospital administrator. A majority of the board shall be composed of individuals who are not representatives of insurers or health care providers.
(c) The initial board members shall be appointed as follows:

One third of the members to serve a term of two years; one third of the members to serve a term of four years; and one third of the members to serve a term of six years. Subsequent board members shall serve for a term of three years. A board member’s term shall continue until his or her successor is appointed.

(d) Vacancies in the board shall be filled by the governor. Board members may be removed by the governor for cause.

(e) Board members shall not be compensated in their capacity as board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(f) The board shall submit to the commissioner a plan of operation for the plan and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the plan. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this article must be made available. If the board fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the plan: Provided, That the plan shall be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option
to provide health insurance coverage for individuals eligible for the federal health care tax credit established by the federal Trade Adjustment Assistance Reform Act of 2002 (Section 35 of the Internal Revenue Code of 1986);

(2) Establish procedures for selecting an administrator in accordance with section six of this article;

(3) Establish procedures for the handling, accounting and auditing of assets, moneys and claims of the plan and the plan administrator;

(4) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment;

(5) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three years; and

(6) Provide for other matters as may be necessary and proper for the execution of the board's powers, duties and obligations under this article.

(h) The plan shall have the general powers and authority granted under the laws of this state to health insurers and, in addition thereto, the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this article, including the authority, with the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative
functions: Provided, That the provisions of article three, chapter five-a of this code relating to the division of purchasing of the department of administration do not apply to any contracts executed by or on behalf of the plan under this article;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the plan;

(3) Take such legal action as necessary:

(A) To avoid the payment of improper claims against the plan or the coverage provided by or through the plan;

(B) To recover any amounts erroneously or improperly paid by the plan;

(C) To recover any amounts paid by the plan as a result of mistake of fact or law; or

(D) To recover other amounts due the plan;

(4) Establish and modify, from time to time, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents’ referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan. Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(5) Issue policies of insurance in accordance with the requirements of this article;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design and any other function within the authority of the pool;
(7) Borrow money to effect the purposes of the plan. Any notes or other evidence of indebtedness of the plan not in default shall be legal investments for insurers and may be carried as admitted assets;

(8) Establish rules, conditions and procedures for reinsuring risks of participating insurers desiring to issue plan coverages in their own name. Provision of reinsurance shall not subject the plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;

(9) Employ and fix the compensation of employees, including an executive director of the plan. The executive director shall have overall management responsibility for the plan and is exempt from the classified service and not subject to the procedures and protections provided by articles six and six-a, chapter twenty-nine of this code;

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public;

(11) Provide for reinsurance of risks incurred by the plan;

(12) Issue additional types of health insurance policies to provide optional coverages, including medicare supplemental insurance;

(13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review and individual case management for the purpose of making the benefit plan more cost effective;

(14) Design, utilize, contract or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organiza-
tions, health maintenance organizations and other limited
network provider arrangements: Provided, That all contracts
with preferred provider organizations, health maintenance
organizations, other network providers or other health care
providers shall provide that plan participants are not personally
liable for the cost of services covered by the plan other than
applicable deductibles or copayments, including any balance
claimed by the provider to be owed as being the difference
between that provider's charge or charges and the amount
payable by the plan; and

(15) Adopt bylaws, policies and procedures as may be
necessary or convenient for the implementation of this article
and the operation of the plan.

(i) The board shall make an annual report to the governor
which shall also be filed with the Legislature. The report shall
summarize the activities of the plan in the preceding calendar
year, including the net written and earned premiums, plan
enrollment, the expense of administration, and the paid and
incurred losses.

(j) Study and recommend to the Legislature in January, two
thousand six, alternative funding mechanisms for the continua-
tion of the health plan for uninsurable individuals.

(k) Neither the board nor its employees shall be liable for
any obligations of the plan. No member or employee of the
board shall be liable, and no cause of action of any nature may
arise against them, for any act or omission related to the
performance of their powers and duties under this article unless
such act or omission constitutes willful or wanton misconduct.
The board may provide in its bylaws or rules for indemnifica-
tion of, and legal representation for, its members and employ-
ees.
§33-48-4. Eligibility.

(a) The following persons are eligible for plan coverage:

(1) Any individual who is and continues to be a resident of this state if evidence is provided; of a notice of rejection or refusal to issue substantially similar insurance for health reasons by one insurer or of a refusal by an insurer to issue insurance except at a rate exceeding the plan rate, except that a rejection or refusal by an insurer offering only stop loss, excess of loss or reinsurance coverage shall not be sufficient evidence under this subdivision;

(2) Any individual who is legally domiciled in this state and is eligible for the credit for health insurance costs under Section 35 of the Internal Revenue Code of 1986; and

(3) Any federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident of this state.

(b) The board shall promulgate a list of medical or health conditions for which a person is eligible for plan coverage without applying for health insurance coverage pursuant to subdivision (1), subsection (a) of this section. Persons who can demonstrate the existence or history of any medical or health conditions on the list promulgated by the board are not required to prove the evidence specified in said subdivision. The list shall be effective on the first day of the operation of the plan and may be amended, from time to time, as may be appropriate.

(c) Each dependent of a person who is eligible for plan coverage is also eligible for plan coverage.

(d) A person is not eligible for coverage under the plan if:

(1) The person has or obtains health insurance coverage substantially similar to or more comprehensive than a plan
policy or would be eligible to have coverage if the person elected to obtain it, except that:

(A) A person may maintain other coverage for the period of time the person is satisfying any preexisting condition waiting period under a plan policy; and

(B) A person may maintain plan coverage for the period of time the person is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the plan policy;

(2) The person is determined to be eligible for health care benefits under the state medicaid law or the West Virginia children’s health insurance program;

(3) The person has previously terminated plan coverage unless twelve months have lapsed since such terminations, except that this subdivision does not apply with respect to an applicant who is a federally defined eligible individual or with respect to an applicant who has exhausted annual benefits under the West Virginia children’s health insurance program;

(4) The plan has paid out one million dollars in benefits on behalf of the person;

(5) The person is an inmate or resident of a public institution, except that this subdivision does not apply with respect to an applicant who is a federally defined eligible individual; or

(6) The person’s premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider.

(e) Coverage shall cease:

(a) The board shall select a plan administrator through a competitive bidding process to administer the plan. The board shall evaluate bids submitted based on criteria established by the board which shall include:

(1) The plan administrator’s proven ability to handle health insurance coverage to individuals;

(2) The efficiency and timeliness of the plan administrator’s claim processing procedures;

(3) An estimate of total charges for administering the plan;

(4) The plan administrator’s ability to apply effective cost containment programs and procedures and to administer the plan in a cost efficient manner; and

(f) Except under the circumstance described in subsection (d) of this section, a person who ceases to meet the eligibility requirements of this section may be terminated at the end of the policy period for which the necessary premiums have been paid.
(5) The financial condition and stability of the plan administrator.

(b) (1) The plan administrator shall serve for a period specified in the contract between the plan and the plan administrator subject to removal for cause and subject to any terms, conditions and limitations of the contract between the plan and the plan administrator.

(2) At least one year prior to the expiration of each period of service by a plan administrator, the board shall invite eligible entities, including the current plan administrator to submit bids to serve as the plan administrator. Selection of the plan administrator for the succeeding period shall be made at least six months prior to the end of the current period.

(c) The plan administrator shall perform such functions relating to the plan as may be assigned to it, including:

(1) Determination of eligibility;

(2) Payment of claims;

(3) Establishment of a premium billing procedure for collection of premium from persons covered under the plan; and

(4) Other necessary functions to assure timely payment of benefits to covered persons under the plan.

(d) The plan administrator shall submit regular reports to the board regarding the operation of the plan. The frequency, content and form of the report shall be specified in the contract between the board and the plan administrator.

(e) Following the close of each calendar year, the plan administrator shall determine net written and earned premiums,
the expense of administration and the paid and incurred losses
for the year and report this information to the board and the
commission on a form prescribed by the commissioner.

(f) Notwithstanding any other provision in this section to
the contrary, the board may elect to designate the public
employees insurance agency as the plan administrator. If so
designated, the public employees insurance agency shall
provide the services set forth in subsection (c) of this section
and shall be subject to the reporting requirements of subsections
(d) and (e) of this section. The plan shall, if the public employ-
ees insurance agency is designated by the board as the plan
administrator, reimburse health care providers at the same
health care reimbursement rates then in effect for the West
Virginia public employees insurance agency and health care
providers are subject to the same prohibition against balance
billing of plan participants as set forth in section four, article
twenty-nine-d, chapter sixteen of this code.

§33-48-7. Funding of the plan.

(a) Premiums. —

(1) The plan shall establish premium rates for plan coverage
as provided in subdivision (2) of this subsection. Separate
schedules of premium rates based on age, sex and geographical
location may apply for individual risks. Premium rates and
schedules shall be submitted to the commissioner for approval
prior to use.

(2) The plan, with the assistance of the commissioner, shall
determine a standard risk rate by considering the premium rates
charged by other insurers offering health insurance coverage to
individuals. The standard risk rate shall be established using
reasonable actuarial techniques and shall reflect anticipated
experience and expenses for such coverage. Initial rates for
plan coverage shall not be less than one hundred twenty-five
percent of rates established as applicable for individual standard
risks. Subject to the limits provided in this subdivision,
subsequent rates shall be established to provide fully for the
expected costs of claims including recovery of prior losses,
expenses of operation, investment income of claim reserves and
any other cost factors subject to the limitations described
herein. In no event shall plan rates exceed one hundred fifty
percent of rates applicable to individual standard risks.

(b) Notwithstanding the provisions of subsection (c),
section eight, article twenty-nine-b, chapter sixteen of this code
and not to be construed as in conflict therewith, the health care
authority is authorized to increase the assessment obligation of
hospitals in an amount not to exceed a maximum of twenty-five
percent above the one tenth of one percent specified in said
subsection and the entire assessment, including the additional
assessment, shall be collected as specified in said subsection
Upon receipt of the additional assessment, the health care
authority shall transfer all proceeds generated from the addi-
tional assessment collected to the special revenue account
established in section seven-a of this article.

(c) The plan is authorized to receive and expend any federal
grant.

(d) With the consent of the board, the commissioner is
authorized to utilize his or her administrative staff and re-
sources in administering this article. The board shall reimburse
the commissioner for all costs of administrative and actuarial
services, supplies and other costs incurred by the commissioner
in implementing the provisions of this article.

§33-48-7a. Special revenue account created.

(a) There is hereby created a special revenue account in the
state treasury, designated the “West Virginia Health Insurance
Plan Fund”, which shall be an interest-bearing account and may
be invested in the manner permitted by article six, chapter
twelve of this code, with the interest income a proper credit to
the fund, unless otherwise designated in law. The fund shall be
administered by the commissioner, under the supervision and
control of the board, and used to pay all proper costs incurred
in implementing the provisions of this article, all administrative
costs of the plan, all claims and all proper ongoing costs of the
plan. Moneys deposited into this account are available for
expenditure as the commissioner may direct in accordance with
the provisions of this article.

(b) The following funds shall be paid into this account:

(1) All premium payments received from individuals
insured by the plan;

(2) All other payments, gifts or income from any source;
and

(3) Transfers from the health care authority of all proceeds
generated from the additional assessment collected pursuant to
subsection (b), section seven of this article at any time after the
first day of July, two thousand four.

CHAPTER 13

(S. B. 3001—By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §11B-2-15 of the Code of West
Virginia, 1931, as amended, relating to appropriation in certain
fiscal years of moneys to the bureau for medical services of the department of health and human resources from funds held in reserve for the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

That §11B-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15. Reserves for public employees insurance program.

(a) There is hereby continued a special revenue account in the state treasury, designated the “Public Employees Insurance Reserve Fund”, which is 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.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the public employees insurance agency: Provided, That in only the fiscal year beginning the first day of July, two thousand two, and in each of the next five fiscal years thereafter, and ending on the thirtieth day of June, two thousand eight, the moneys held in the fund may be appropriated to the bureau for medical services of the department of health and human resources.

(c) Annually each state agency, except for the higher education central office created in article four, chapter eighteen-b of this code; the higher education governing boards as defined in articles two and three of said chapter; and the state institutions of higher education as defined in section two,
article one of said chapter shall transfer one percent of its 
anualized expenditures from state funds, excluding federal 
funds based on filled full-time equivalents as determined by the 
state budget office as of the first day of April for that fiscal 
year, to the public employees insurance reserve fund. The 
secretary may exempt that transfer only upon a showing by the 
requesting agency that the continued operation of that agency 
is dependent upon receipt of the exemption.

(d) Annually the secretary shall provide a report to the 
governor and the Legislature on the amount of reserves 
established pursuant to the provisions of this section, the 
number of exemptions granted and the agencies receiving those 
exemptions.

CHAPTER 14

(Com. Sub. for S. B. 3003 — By Senators Tomblin, 
Mr. President, and Sprouse) 
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.] 
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §30-3-10 of the Code of West 
Virginia, 1931, as amended, relating to granting the board of 
medicine flexibility under special circumstances to issue a license 
to applicants who otherwise do not meet the requirement of the 
article; allowing granting of licensure where there are purely 
technical, nonmaterial errors or omissions in the application 
process; setting forth criteria for issuance of licenses in extraordi-
nary circumstances; requiring that those issued licenses under 
extraordinary circumstances have substantially equivalent
credentials; requiring a three-fourths vote for issuance of an extraordinary circumstances license; requiring reporting to president of the Senate and speaker of the House of Delegates of board's decision; application for extraordinary circumstances applications; and establishing first day of July, two thousand five, as the cut-off date for applying for extraordinary circumstances licensure.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;
(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and

(4) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of it, may accept in lieu of an examination of applicants the certificate of the national board of medical examiners: Provided, however, That the board is authorized to enter into reciprocity agreements with medical licensing authorities in other states, the District of Columbia, Canada or the Commonwealth of Puerto Rico and, for an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state or jurisdiction having reciprocity; (ii) has been engaged on a full-time professional basis in the practice of medicine within that state or jurisdiction for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, the board may permit licensure in this state by reciprocity. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery before being eligible for reexamination: Provided further, That an applicant is required to attain a passing score on all components or steps of the examination within a period of seven consecutive years: And provided further, That the board may, in its discretion, extend this period of seven consecutive years for up to three additional years for any
medical student enrolled in a dual MD-PhD program. The
board need not reject a candidate for a nonmaterial technical or
administrative error or omission in the application process that
is unrelated to the candidate’s professional qualifications as
long as there is sufficient information available to the board to
determine the eligibility of the candidate for licensure.

(c) In addition to the requirements of subsection (b) of this
section, any individual who has received the degree of doctor
of medicine or its equivalent from a school of medicine located
outside of the United States, the Commonwealth of Puerto Rico
and Canada to be licensed to practice medicine in this state
must also meet the following additional requirements and
limitations:

(1) He or she must be able to demonstrate to the satisfaction
of the board his or her ability to communicate in the English
language;

(2) Before taking a licensure examination, he or she must
have fulfilled the requirements of the educational commission
for foreign medical graduates for certification, or he or she must
provide evidence of receipt of a passing score on the examina-
tion of the educational commission for foreign medical gradu-
ates: Provided, That an applicant who: (i) Is currently fully
licensed, excluding any temporary, conditional or restricted
license or permit, under the laws of another state, the District of
Columbia, Canada or the Commonwealth of Puerto Rico; (ii)
has been engaged on a full-time professional basis in the
practice of medicine within the state or jurisdiction where the
applicant is fully licensed for a period of at least five years; and
(iii) is not the subject of any pending disciplinary action by a
medical licensing board and has not been the subject of
professional discipline by a medical licensing board in any
jurisdiction is not required to have a certificate from the
educational commission for foreign medical graduates;
(3) He or she must submit evidence to the board of either:
(i) Having successfully completed a minimum of two years of
graduate clinical training in a program approved by the accredi-
tation council for graduate medical education; or (ii) current
certification by a member board of the American board of
medical specialties.

(d) For an individual to be licensed to practice podiatry in
this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a
form provided by the board and remit to the board a reasonable
examination fee, the amount of the reasonable fee to be set by
the board. The application must, as a minimum, require a
sworn and notarized statement that the applicant is of good
moral character and that he or she is physically and mentally
capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and
receipt of the degree of doctor of podiatric medicine and its
equivalent from a school of podiatric medicine which is
approved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the
board, which examination can be related to a national standard.
The examination shall be in the English language and be
designed to ascertain an applicant’s fitness to practice podiatric
medicine. The board shall before the date of examination
determine what will constitute a passing score. If an applicant
fails to pass the examination on two occasions, he or she shall
successfully complete a course of study or training, as approved
by the board, designed to improve his or her ability to engage
in the practice of podiatric medicine, before being eligible for
reexamination: Provided, That an applicant is required to attain
a passing score on all components or steps of the examination
within a period of seven consecutive years; and
(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years' private podiatric clinical experience in lieu of this requirement.

(e) Notwithstanding any of the foregoing, the board may grant licenses to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant’s exceptional education, training and practice credentials, the applicant’s practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant’s education, training and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) That a license granted under these extraordinary circumstances is approved by a vote of three fourths of the members of the board;

(4) That orders denying applications for a license under this subsection are not appealable;

(5) That the board report to the president of the Senate and the speaker of the House of Delegates all decisions made pursuant to this subsection and the reasons for those decisions; and

(6) That the provisions of this subsection exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished by an act of the Legislature.
(f) All licenses to practice medicine and surgery granted prior to the first day of July, one thousand nine hundred ninety-one, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term “chiropody-podiatry” and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

CHAPTER 15

(H. B. 304 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 of the Code of West Virginia, 1931, as amended; and further amending said code by adding thereto a new section, designated §15-12-3a, all relating to sex offender registration; adding information related to motor vehicles owned or regularly operated by a registrant to the registry; providing definition of business days; requiring registration upon conviction, release or other disposition status; providing that sexually violent predators may petition for removal from the registry only if an underlying conviction is reversed or vacated;
clarifying permissible disclosure of information on the registry; clarifying duties of institution officials and persons required to register; and creating a penalty for any person to knowingly fail to report required information or to knowingly refuse or falsify required information.

Be it enacted by the Legislature of West Virginia:

That §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 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 §15-12-3a, all to read as follows:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.
§15-12-2a. Court determination of sexually violent predator.
§15-12-3. Change in registry information.
§15-12-3a. Petition for removal of sexually violent predator designation.
§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.
§15-12-6. Duties of institution officials.
§15-12-7. Information shall be released when person moves out of state.
§15-12-8. Failure to register or provide notice of registration changes; penalty.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively and prospectively.

3 (b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a statutory provision of another state, the United States code or the uniform code of military justice which requires proof of the same essential elements shall register as
set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:

(1) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an act of the Legislature during the year two thousand legislative session;

(2) Article eight-c;

(3) Sections five and six, article eight-d;

(4) Section fourteen, article two; or

(5) Sections six, seven, twelve and thirteen, article eight.

(c) Any person who has been convicted of a criminal offense and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) Persons required to register under the provisions of this article shall provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;
(3) The registrant’s social security number;

(4) A full-face photograph of the registrant at the time of registration;

(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints;

(7) Information related to any motor vehicle owned or regularly operated by a registrant; and

(8) Information relating to any internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the internet.

(e) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the commissioner of corrections, regional jail administrator, city or sheriff operating a jail or secretary of the department of health and human resources which releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register and send written notice of the release of the person to the state police within three business days of receiving the information. The notice must include the information required by said subsection. Any person having a duty to register for a qualifying offense shall register upon
Conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the state police whenever the state police obtain information that the person is subject to registration requirements.

(h) The state police shall maintain a central registry of all persons who register under this article and shall release
information only as provided in this article. The information required to be made public by the state police by subdivision (2), subsection (b), section five of this article is to be accessible through the internet. No information relating to internet accounts, screen names, user names or aliases a registrant has or uses may be released through the internet.

(i) For the purpose of this article, “sexually violent offense” means:

(1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code, which was repealed by an act of the Legislature during the two thousand legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.

(j) For purposes of this article, the term “sexually motivated” means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not
guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-12-2a. Court determination of sexually violent predator.

(a) The circuit court that has sentenced a person for the commission of a sexually violent offense or that has entered a judgment of acquittal of a charge of committing a sexually violent offense in which the defendant has been found not guilty by reason of mental illness, mental retardation or addiction shall make a determination whether:

(1) A person is a sexually violent predator; or

(2) A person is not a sexually violent predator.

(b) A hearing to make a determination as provided in subsection (a) of this section is a summary proceeding, triable before the court without a jury.
A proceeding seeking to establish that a person is a sexually violent predator is initiated by the filing of a written pleading by the prosecuting attorney. The pleading shall describe the record of the judgment of the court on the person’s conviction or finding of not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and shall set forth a short and plain statement of the prosecutor’s claim that the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

Prior to making a determination pursuant to the provisions of this section, the sentencing court may order a psychiatric or other clinical examination and, after examination, may further order a period of observation in an appropriate facility within this state designated by the court after consultation with the director of the division of health.

Prior to making a determination pursuant to the provisions of this section, the sentencing court shall request and receive a report by the board established pursuant to section two-b of this article. The report shall set forth the findings and recommendation of the board on the issue of whether the person is a sexually violent predator.

At a hearing to determine whether a person is a sexually violent predator, the person shall be present and shall have the right to be represented by counsel, introduce evidence and cross-examine witnesses. The offender shall have access to a summary of the medical evidence to be presented by the state. The offender shall have the right to an examination by an independent expert of his or her choice and testimony from the expert as a medical witness on his or her behalf. At the termination of the hearing the court shall make a finding of fact upon a preponderance of the evidence as to whether the person is a sexually violent predator.
(g) If a person is determined by the circuit court to be a sexually violent predator, the clerk of the court shall forward a copy of the order to the state police in the manner promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§15-12-3. Change in registry information.

When any person required to register under this article changes his or her residence, address, place of employment or occupation, vehicle information required by section two of this article, or school or training facility which he or she is attending, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia state police of the changes in the manner prescribed by the superintendent of state police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§15-12-3a. Petition for removal of sexually violent predator designation.

A proceeding seeking to remove a person’s designation as a sexually violent predator may be initiated by the filing of a petition by the person so designated in the original sentencing court. The petition shall set forth that the underlying qualifying conviction has been reversed or vacated. Upon receipt of proof that no qualifying conviction exists, the court shall enter an order directing the removal of the designation.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

(a) Within five business days after receiving any notification as described in this article, the state police shall distribute a copy of the notification statement to:
(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;

(2) The county superintendent of schools where the registrant resides, is employed or attends school or a training facility;

(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, is employed or attends school or a training facility;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, is employed or attends school or a training facility; and

(6) The federal bureau of investigation (FBI).

(b) Information concerning persons whose names are contained in the sexual offender registry is not subject to the requirements of the West Virginia freedom of information act, as set forth in chapter twenty-nine-b of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the state police shall notify the prosecuting attorney of the
county in which the person resides, is employed or attends a
school or training facility. The prosecuting attorney shall
cooperate with the state police in conducting a community
notification program which is to include publication of the
offender's name, photograph, place of residence, employment
and education or training, as well as information concerning the
legal rights and obligations of both the offender and the
community. Information relating to the victim of an offense
requiring registration may not be released to the public except
to the extent the prosecuting attorney and the state police
consider it necessary to best educate the public as to the nature
of sexual offenses: Provided, That no victim's name may be
released in any public notification pursuant to this subsection.
No information relating to internet accounts, screen names, user
names or aliases a registrant has or uses may be released to the
public with this notification program. The prosecuting attorney
and state police may conduct a community notification program
in the county of residence, employment or where a person is
attending school or a training facility of any person who is
required to register for life under the terms of subdivision (2),
subsection (a), section four of this article. Community notifica-
tion may be repeated when determined to be appropriate by the
prosecuting attorney;

(2) The state police shall maintain and make available to
the public at least quarterly the list of all persons who are
required to register for life according to the terms of subdivi-
sion (2), subsection (a), section four of this article. No informa-
tion concerning the identity of a victim of an offense requiring
registration or information relating to internet accounts, screen
names, user names or aliases a registrant has or uses may be
released with this list. The method of publication and access to
this list are to be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for
an order requiring the state police to release information about
persons residing in that county who are required to register under section two of this article. The court shall determine whether information contained on the list is relevant to public safety and whether its relevance outweighs the importance of confidentiality. If the court orders information to be released, it may further order limitations upon secondary dissemination by the resident seeking the information. In no event may information concerning the identity of a victim of an offense requiring registration or information relating to internet accounts, screen names, user names or aliases a registrant has or uses be released.

(c) The state police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the records will be used solely for law enforcement-related purposes. The state police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks.

(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

§15-12-6. Duties of institution officials.

In addition to the duties imposed by sections two and four of this article, the official in charge of the place of confinement shall inform any person required to register under this article,
§15-12-7. Information shall be released when person moves out of state.

A person who is required to register pursuant to the provisions of this article, who intends to move to another state or country shall at least ten business days prior to such move notify the state police of his or her intent to move and of the location to which he or she intends to move, or if that person is incarcerated he or she shall notify correctional officials of his or her intent to reside in some other state or country upon his or her release, and of the location to which he or she intends to move. Upon such notification, the state police shall notify law-enforcement officials of the jurisdiction where the person indicates he or she intends to reside of the information provided by the person under the provisions of this article.

§15-12-8. Failure to register or provide notice of registration changes; penalty.

(a) Except as provided in this section, any person required to register under this article who knowingly provides false information or who refuses to provide accurate information when so required by terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in the county or regional jail not more than one year, or both: Provided, That each time the person has a change in any of the registration information as required by this article and fails to register the change or changes, each
failure to register each separate item of information changed
shall constitute a separate offense.

(b) Any person required to register under this article who is
convicted of a second or subsequent offense of failing to
register or provide a change in any information as required by
this article or any person who is required to register for life
pursuant to subsection (2), subdivision (a), section four of this
article and who knowingly provides false information or who
refuses to provide accurate information when so required by
terms of this article or who knowingly fails to register or
knowingly fails to provide a change in information as required
by this article 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 five years.

(c) Any person required to register as a sexual predator who
knowingly provides false information or who refuses to provide
accurate information when so required by terms of this article
or who knowingly fails to register or knowingly fails to provide
a change in any information as required by this article is guilty
of a felony and, upon conviction thereof, shall, for a first
offense, be confined in a state correctional facility not less than
two years nor more than ten years and for a second or subse-
quent offense, is guilty of a felony and shall be confined in a
state correctional facility not less than five years nor more than
twenty years.

(d) In addition to any other penalty specified for failure to
register under this article, any person under the supervision of
a probation officer, parole officer or any other sanction short of
confinement in jail or prison who knowingly refuses to register
or who knowingly fails to provide a change in information as
required by this article shall be subject to immediate revocation
of probation or parole and returned to confinement for the
remainder of any suspended or unserved portion of his or her
original sentence.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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House Bills = 4 Digits

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# ACTS

**FIRST EXTRAORDINARY SESSION, 2005**

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