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GREGORY M. GRAY
Clerk of the House

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212 Main Unit
State Capitol
Charleston, West Virginia

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FOREWORD


Second Regular Session, 2006

The Second Regular Session of the 77th Legislature convened on January 11, 2006. The constitutional sixty-day limit on the duration of the session was midnight, March 11, 2006. The Governor issued Proclamations on March 8 and March 17, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned sine die on March 19, 2005.

Bills totaling 2,301 were introduced in the two houses during the session (1,506 House, 643 of which were carryover bills from the 2005 Regular session, and 795 Senate). The Legislature passed 266 bills, 135 House and 131 Senate.

The Governor vetoed four House bills (Com. Sub. for H. B. 4172, Authorizing the Department of Administration to promulgate legislative rules; Com. Sub. for H. B. 4256, Providing a procedure for removal of county, district or municipal officers; H. B. 4353, Requiring law enforcement officers have a valid complaint, signed by a magistrate or municipal judge, with a showing of probable cause before reporting said offense to the commissioner of the department of motor vehicles; H. B. 4728, Increasing the membership of the Environmental Protection Advisory Council from seven to eight members) and five Senate bills (Com. Sub. for S. B. 107, Relating to venue for certain suits against state; S. B. 370, Creating personal property tax exemption for certain property used exclusively in agriculture; Com. Sub. for S. B. 490, Providing gasoline excise tax exemption for certain county aging programs; S. B. 760, Allowing former WVU School of Mines’ Director serve on Mine Inspectors’ Examining Board; and S. B. 787, Creating Transportation Coordinating Council). The Legislature amended and again passed Com. Sub. for H. B. 4172 and reconsidered

[ III ]
and again passed S. B. 370, notwithstanding the objections of the Governor, leaving a net total of 259 bills, 132 House and 127 Senate, which became law.

There were 198 Concurrent Resolutions introduced during the session, 104 House and 94 Senate, of which 34 House and 22 Senate were adopted. There were 30 House Joint Resolutions (14 of which were carryover House Joint Resolutions) and 16 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 37 House Resolutions, and the Senate introduced 54 Senate Resolutions, of which 30 House and 52 Senate were adopted.

The Senate failed to pass 91 House bills passed by the House, and 49 Senate bills failed passage by the House.

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First Extraordinary Session, 2006

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., June 13, 2006, contained 13 items for consideration.

The Legislature passed 22 bills, 15 House bills and 7 Senate bills. The Legislature adopted 18 House Concurrent Resolutions and 4 Senate Concurrent Resolutions and the Senate adopted 6 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die at 4:58 p.m., June 14, 2006.

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Fourth Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session at 12:00 P.M., September 7, 2005, contained sixteen items for consideration.
The Legislature passed 21 bills, 13 House bills and 8 Senate bills. The House introduced House Concurrent Resolutions and the Senate introduced 4 Senate Concurrent Resolutions and 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die at 8:29 P.M., September 13, 2005.

* * * * * * * * * * *

**Fifth Extraordinary Session, 2005**

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., November 13, 2005, contained five items for consideration.

The Legislature passed 1 bill, **H. B. 501**, Relating to the West Virginia Employers’ Mutual Insurance Company. The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die at 6:45 P.M., November 14, 2005.

* * * * * * * * * * *

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

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

**GREGORY M. GRAY**

*Clerk of the House and*

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

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<td>Locke Wysong (D)</td>
<td>Charles Town</td>
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(D) Democrats ................................................. 68
(R) Republicans .............................................. 32

TOTAL ............................................................................. 100
## MEMBERS OF THE SENATE
### REGULAR SESSION, 2006

### OFFICERS

**President** — Earl Ray Tomblin, Chapmanville  
**Clerk** — Darrell E. Holmes, Charleston  
**Sergeant at Arms** — Howard Wellman, Bluefield  
**Doorkeeper** — Andrew J. Trail, Charleston

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<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
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<td>Andy McKenzie (R)</td>
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<td>J. Frank Deem (R)</td>
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<td>Brooks F. McCabe, Jr. (D)</td>
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(D) Democrats ......................................................... 21  
(R) Republicans ................................................... 13  
TOTAL ................................................................. 34

[ XXXVI]
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2006

STANDING

AGRICULTURE AND NATURAL RESOURCES
Beach (Agriculture Chair), Tabb (Agriculture Vice Chair), Stemple (Natural Resources Chair), Crosier (Natural Resources Vice Chair), Argento, Ennis, Fragale, Louisos, Martin, Eldridge, Paxton, Pethtel, Poling, Swartzmiller, Richard Thompson, Wells, Williams, Anderson, Canterbury, Evans, Hamilton, Leggett, Overington, Romine and Schoen.

BANKING AND INSURANCE
Ron Thompson (Banking Chair), Perry (Banking Vice Chair), H. White (Insurance Chair), Hrutkay (Insurance Vice Chair), Barker, Beach, Butcher, Cann, Ennis, Hartman, Hatfield, Iaquinta, Marshall, Morgan, Perdue, Spencer, Webster, Azinger, Canterbury, Carmichael, Frich, Hamilton, Roberts, Stevens and G. White.

CONSTITUTIONAL REVISION
Talbott (Chair), Webster (Vice Chair), Argento, Caputo, Craig, Crosier, Eldridge, Fragale, Houston, Hunt, Kominar, Louisos, Pino, Spencer, Varner, H. White, Anderson, Armstead, Blair, Ellem, Lane, Overington, Schoen and Sobonya.

EDUCATION
Campbell (Chair), Williams (Vice Chair), Beach, Crosier, Eldridge, Fragale, Longstreth, Louisos, Marshall, Paxton, Perry, Poling, Spencer, Stephens, Tabb, Wells, Wysong, Canterbury, Duke, Lane, Leggett, Roberts, Stevens, Sumner and Tansill.

FINANCE
Michael (Chair), Doyle (Vice Chair), Boggs, Browning, Cann, Frederick, Houston, Kominar, Leach, Palumbo, Proudfoot, Stalnaker, Susman, Ron Thompson, Varner, H. White, Williams,
Anderson, Ashley, Border, Carmichael, Evans, Hall, Wakim and G. White.

GOVERNMENT ORGANIZATION
Beane (Chair), Ennis (Vice Chair), Argento, Barker, Butcher, Ferrell, Hatfield, Hunt, Iaquinta, Manchin, Martin, Miley, Perdue, Swartzmiller, Talbott, Tucker, Yost, Blair, Frich, Porter, Romine, Rowan, Schoen, Trump and Walters.

HEALTH AND HUMAN RESOURCES
Perdue (Chair), Hatfield (Vice Chair), Boggs, Brown, DeLong, Frederick, Hrutkay, Leach, Long, Longstreth, Marshall, Miley, Moore, Pino, Susman, Tucker, Webster, Ashley, Border, Hall, Lane, Rowan, Schadler, Sumner and Wakim.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS
Pethtel (Industry and Labor Chair), Poling (Industry and Labor Vice Chair), Cann (Economic Development and Small Business Chair), Frederick (Economic Development and Small Business Vice Chair), Browning, Caputo, Craig, Fragale, Hartman, Martin, Miley, Moore, Palumbo, Perry, Talbott, Wysong, Yost, Blair, Carmichael, Frich, Howard, Sobonya, Stevens, Walters and G. White.

JUDICIARY
Amores (Chair), Craig (Vice Chair), Brown, Caputo, DeLong, Hartman, Hrutkay, Long, Mahan, Moore, Morgan, Pethtel, Pino, Stemple, Tabb, Rick Thompson, Webster, Armstead, Azinger, Ellem, Hamilton, Howard, Overington, Schadler and Sobonya.

PENSIONS AND RETIREMENT
Stalnaker (Cochair), Manchin (Vice Cochair), Browning, Frederick, Williams, Duke and Hall.

POLITICAL SUBDIVISIONS
Proudfoot (Chair), Susman (Vice Chair), Brown, Caputo, Ferrell, Houston, Hunt, Morgan, Palumbo, Perry, Stalnaker, Staton,

**ROADS AND TRANSPORTATION**
Boggs *(Chair)*, Butcher *(Vice Chair)*, Barker, Craig, Ennis, Ferrell, Kominar, Manchin, Martin, Miley, Paxton, Poling, Stephens, Susman, Rick Thompson, Ron Thompson, Wells, Ellem, Evans, Leggett, Porter, Roberts, Romine, Rowan and Tansill.

**RULES**
Kiss *(Chair)*, Amores, Beane, Browning, Campbell, Carmichael, Kominar, Leach, Mahan, Michael, Pino, Staton, Varner, Anderson, Armstead, Border, Hall and Trump.

**VETERANS AFFAIRS AND HOMELAND SECURITY**

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**JOINT COMMITTEES**

---

**ENROLLED BILLS**
Browning *(Cochair)*, Iaquinta *(Vice Cochair)*, Varner and Overington.

**GOVERNMENT AND FINANCE**
Kiss *(Cochair)*, Amores, Mahan, Michael, Staton, Hall and Trump.

**GOVERNMENT OPERATIONS**
Beane *(Cochair)*, Ennis *(Vice Cochair)*, Talbott, Blair and Leggett.
LEGISLATIVE RULE-MAKING REVIEW
Mahan (Cochair), Palumbo (Vice Cochair), Cann, Pino, Armstead and Overington.

RULES
Kiss (Cochair), Staton and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT
Cann (Cochair), Amores, Browning, Craig, Frederick, Kominar, Michael, Poling, Stalnaker, Azinger, Howard and L. White.

COMMISSION ON INTERSTATE COOPERATION
Caputo (Cochair), Tucker (Vice Cochair), Frederick, Varner, Blair and Walters.

COMMISSION ON SPECIAL INVESTIGATIONS
Kiss (Cochair), Michael, Staton, Howard and Trump.

FOREST MANAGEMENT REVIEW COMMISSION
Morgan (Cochair), Hartman (Vice Cochair), Proudfoot, Stemple, Williams and Canterbury.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Campbell (Cochair), Beach, Doyle, Perry, Williams and Anderson.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Leach (Cochair), Hatfield, Michael, Perdue, Susman and Hall.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT
Campbell (Cochair), Frederick, Stalnaker and Walters.
LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Perry (Cochair), Leach (Vice Cochair), Pino, Stemple and Roberts.
STANDING COMMITTEES OF THE SENATE
Regular Session, 2006

STANDING

AGRICULTURE
Edgell (Chair), Love (Vice Chair), Dempsey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Weeks.

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

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

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

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

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Dempsey (Vice Chair), Fanning, Foster, Helmick, Hunter, Jenkins, Kessler, Oliverio, Caruth, Deem, Guills, McKenzie and Weeks.

FINANCE
Helmick (Chair), Sharpe (Vice Chair), Bailey, Bowman, Chafin, Edgell, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Minear, Sprouse and Yoder.

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GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Chafin, Jenkins, Kessler, McCabe, Minard, Plymale, White, Boley, Harrison, Lanham, Minear and Weeks.

HEALTH AND HUMAN RESOURCES
Prezioso (Chair), Unger (Vice Chair), Bailey, Edgell, Foster, Hunter, Jenkins, McCabe, Sharpe, Barnes, Boley, Caruth, Guills and Weeks.

INTERSTATE COOPERATION
Jenkins (Chair), Dempsey (Vice Chair), Minard, Unger, Caruth, Harrison and Yoder.

JUDICIARY
Kessler (Chair), Oliverio (Vice Chair), Chafin, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks.

LABOR
Oliverio (Chair), White (Vice Chair), Edgell, Foster, Hunter, Love, Prezioso, Boley, Harrison, Lanham and Yoder.

MILITARY
Hunter (Chair), Dempsey (Vice Chair), Bailey, Fanning, Minard, Oliverio, Boley, Weeks and Yoder.

NATURAL RESOURCES
Fanning (Chair), White (Vice Chair), Bowman, Dempsey, Helmick, Love, McCabe, Plymale, Prezioso, Barnes, Caruth, Deem, Facemyer and Minear.

PENSIONS
Foster (Chair), McCabe (Vice Chair), Edgell, Plymale, Barnes, Deem and Lanham.

RULES
Tomblin (Chair), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, Boley, McKenzie, Minear and Sprouse.
TRANSPORTATION AND INFRASTRUCTURE
Unger (Chair), Jenkins (Vice Chair), Fanning, Love, Oliverio, White, Deem, Facemyer and McKenzie.

JOINT COMMITTEES

ENROLLED BILLS
White (Cochair), Bailey, Love, Sprouse and Yoder.

GOVERNMENT AND FINANCE
Tomblin (Cochair), Chafin, Helmick, Kessler, Sharpe, Deem and Sprouse.

GOVERNMENT OPERATIONS
Bowman (Cochair), Bailey (Vice Cochair), Helmick, Boley and Minear.

LEGISLATIVE RULE-MAKING REVIEW
Minard (Cochair), Fanning (Vice Cochair), Prezioso, Unger, Boley and Minear.

PENSIONS AND RETIREMENT
Foster (Cochair), McCabe (Vice Cochair), Edgell, Plymale, Barnes, Deem and Lanham.

RULES
Tomblin (Cochair), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT
McCabe (Cochair), Bowman, Chafin, Helmick, Kessler, Oliverio, Plymale, Prezioso, Unger, Facemyer, McKenzie and Minear.
COMMISSION ON INTERSTATE COOPERATION
Jenkins (Cochair), Dempsey (Vice Cochair), Minard, Unger, Caruth, Harrison and Yoder.

COMMISSION ON SPECIAL INVESTIGATIONS
Tomblin (Cochair), Chafin, Sharpe, Boley and Sprouse.

FOREST MANAGEMENT REVIEW COMMISSION
Helmick (Cochair), Love, Plymale, Facemyer and Minear.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Plymale (Cochair), Bailey, Edgell, Unger, Boley and Harrison.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Prezioso (Cochair), Hunter, Sharpe, Unger, Boley and Caruth.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT
Unger (Cochair), Kessler, McCabe and Sprouse.

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
Love (Cochair), Dempsey, Hunter, White and McKenzie.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-18a, relating to providing employers with qualified immunity from liability for disclosing to a prospective employer job-related information reasonably believed to be adverse concerning a current or former employee; requiring written disclosure of the job-related information; and providing for the correction of false or misleading information.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-18a, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-18a. Employer immunity from liability; disclosure of information regarding former employees.

(a) Any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer of the former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences: Provided, That the disclosure of such information pursuant to this subsection shall be in writing and a copy of any such disclosure shall be provided to the former or current employee at the time of disclosure.

(b) For the purposes of this section, the presumption of good faith is rebutted upon a showing, by a preponderance of the evidence, that the information disclosed was:

(1) Knowingly false;

(2) Disclosed with reckless disregard for the truth;

(3) Deliberately misleading;

(4) Rendered with malicious purpose toward the former or current employee; or

(5) Disclosed in violation of a nondisclosure agreement or applicable law.

(c) For purposes of this section, “job-related information” means information concerning a person’s education, training,
experience, qualifications, conduct and job performance which
is offered for the purpose of providing criteria to evaluate the
person’s suitability for employment.

(d) If an employer disclosed job-related information to a
prospective employer of a former or current employee that was
false or misleading, and if the current or former employee
requests, then the employer shall give corrected information to
every person or entity that is in the employer’s records as
having received the original information, with a copy thereof to
the former or current employee.

CHAPTER 2

(Com. Sub. for H. B. 4031 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §5A-3-33a of the Code of West Virginia, 1931, as
amended; to amend and reenact §5A-1-1 of said code; to amend
and reenact §5A-3-4, §5A-3-5, §5A-3-10, §5A-3-10a, §5A-3-11,
§5A-3-19, §5A-3-33d and §5A-3-45 of said code; to amend said
code by adding thereto six new sections, designated §5A-3-9a,
§5A-3-10b, §5A-3-10c, §5A-3-11a, §5A-3-11b and §5A-3-11c;
and to amend and reenact §5A-3C-11 of said code, all relating to
the Purchasing Division of the Department of Administration;
providing for the powers and duties of the director; defining
certain terms; providing for the director to promulgate legislative
rules on contract management procedures, division procedures for
oversight of contract management, cancellation of contracts and
selling surplus commodities by means of an internet auction site; increasing the annual vendor fee; establishing a fund for fees; providing for specification standards to include cost of maintenance and expected life of commodities; increasing the minimum contract amount requiring competitive bids; providing for competitive bids to be opened publicly; providing requirements for competitive bids; requiring spending units to report multiple contract awards to a single vendor; authorizing the director to conduct compliance reviews of spending units; providing for bids by electronic transmission; providing for bid solicitation requirements; modifying prohibition against awarding contracts to debtors of state; providing for best value procurement; providing for sole source procurement; providing requirements for open market purchases; increasing the maximum amount of purchases which may be made in the open market; providing requirements for contract awards; providing requirements for the delivery of bids to the Purchasing Division; deleting the requirements for duplicate bids; authorizing the director to engage in negotiations and discussions with responsible bidders and to obtain best and final offers; providing for contract awards to multiple vendors; authorizing the director to participate in, sponsor, conduct or administer cooperative purchasing agreements or consortia; providing grounds for debarment of vendors; providing for the disposition of surplus state property by means of an internet auction site; and providing that contracts executed pursuant to the Pharmaceutical Availability and Affordability Act of 2004 are not subject to state purchasing requirements.

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

That §5A-3-33a of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-1 of said code be amended and reenacted; that §5A-3-4, §5A-3-5, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-3-19, §5A-3-33d and §5A-3-45 of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §5A-3-9a, §5A-3-10b, §5A-3-10c, §5A-3-11a, §5A-3-11b and §5A-3-11c;
and that §5A-3C-11 of said code be amended and reenacted, all to read as follows:

Article
  1. Department of Administration.
  3. Purchasing Division.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

  1 For the purpose of this chapter:

  2 (1) “Commodities” means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of State Government.

  6 (2) “Contractual services” means telephone, telegraph, electric light and power, water and similar services.

  8 (3) “Debarment” means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.

  11 (4) “Director” means the director of the division referred to in the heading of the article in which the word appears.

  13 (5) “Electronic” means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

  15 (6) “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.

  20 (7) “Expendable commodities” means those commodities which, when used in the ordinary course of business, will
become consumed or of no market value within the period of one year or less.

(8) “Nonprofit workshops” means an establishment: (a) Where any manufacture or handiwork is carried on; (b) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market; and (d) which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

(9) “Printing” means printing, binding, ruling, lithographing, engraving and other similar services.

(10) “Record” means information that is inscribed on a read-only tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Removable property” means any personal property not permanently affixed to or forming a part of real estate.

(12) “Request for quotations” means a solicitation for a bid where cost is the primary factor in determining the award.

(13) “Responsible bidder” means a vendor who has the capability to fully perform the contract requirements, and the integrity and reliability which will assure good faith performance.

(14) “Responsive bidder” means a vendor who has submitted a bid which conforms in all material respects to the bid solicitation.
(15) “Secretary” means the Secretary of Administration.

(16) “Spending officer” means the executive head of a spending unit, or a person designated by him or her.

(17) “Spending unit” means a department, agency or institution of the State Government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(18) “The state and its subdivisions” means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(19) “Vendor” means any person or entity that is registered with the Purchasing Division to supply the state or its subdivisions with commodities or services and lessors of real property.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-4. Rules of director.

§5A-3-5. Purchasing section standard specifications—Promulgation and adoption by director; applicable to all purchases.

§5A-3-9a. Creation of a Fund.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

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

§5A-3-10b. Best value procurement.

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§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.

§5A-3-11a. Negotiation when all bids exceed available funds.

§5A-3-11b. Discussion and final offers.

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§5A-3-19. Purchases from federal government and other sources.
§5A-3-33d. Grounds for debarment.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

§5A-3-4. Rules of director.

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

(1) Authorize a spending unit to purchase specified commodities directly and prescribe the manner in which such purchases shall be made;

(2) Authorize, in writing, a spending unit to purchase commodities in the open market for immediate delivery in emergencies, define such emergencies and prescribe the manner in which such purchases shall be made and reported to the director; and for the purposes mentioned in subdivision (1) and this subdivision (2), the head of any spending unit, or the financial governing board of any institution, may, with the approval of the director, make requisitions upon the Auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for any such spending unit, and the Auditor shall draw his or her warrant upon the Treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the head of the spending unit or institution once every thirty days or more frequently if required by the State Auditor or director;

(3) Prescribe the manner in which commodities shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates of commodities, the future period which they are to cover, the form in which they shall be submitted and the manner of their authentication;
(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(6) Prescribe the amount of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of one hundred twenty-five dollars per fiscal year nor shall such fee be charged to persons seeking only reimbursement from a spending unit;

(8) Prescribe that each state contract entered into by the Purchasing Division shall contain provisions for liquidated damages, remedies, or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor;

(9) Prescribe contract management procedures for all state contracts except government construction contracts including, but not limited to, those set forth in article twenty-two, chapter five of this code;

(10) Prescribe procedures by which oversight is provided to actively monitor spending unit purchases, including, but not limited to, all technology and software commodities and contractual services exceeding one million dollars, approval of change orders and final acceptance by the spending units;
(11) Prescribe that each state contract entered into by the purchasing division contain provisions for cancellation of the contract upon thirty days’ notice to the vendor;

(12) Prescribe procedures for selling surplus commodities to the highest bidder by means of an internet auction site; and

(13) Provide for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article.

(b) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to prescribe qualifications to be met by any person who on and after the effective date of this section is to be employed in the Purchasing Division as a state buyer. The rules must provide that a person may not be employed as a state buyer unless he or she at the time of employment either is: (1) A graduate of an accredited college or university; or (2) has at least four years’ experience in purchasing for any unit of government or for any business, commercial or industrial enterprise. Persons serving as state buyers are subject to the provisions of article six, chapter twenty-nine of this code.

§5A-3-5. Purchasing section standard specifications – Promulgation and adoption by director; applicable to all purchases.

The director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities, which shall establish the quality to which commodities to be purchased and services to be contracted for by the state must conform. Standard specifications shall apply to every future purchase of or contract for the commodities described in the specifications and shall include information relating to the cost of maintenance and expected life of the commodity if the director determines there are nationally
accepted industry standards for the commodity. No purchases by any spending unit may be exempt from compliance with the standard specifications so established, but the director may exempt the purchase of particular items from the standard specifications if it is considered necessary and advisable. The director shall update the standard specifications, as necessary.

§5A-3-9a. Creation of a Fund.

The “Vendor Registration Payment Fund” is hereby redesignated and continued as the “Vendor Fee Fund,” and the balance remaining upon the effective date of this section shall remain upon redesignation. Moneys deposited in this fund shall be administered by the purchasing division and used for the purposes established in this article. Expenditures are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year beginning the first day of July, two thousand six, expenditures are authorized from deposits rather than pursuant to appropriations by the Legislature.

Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and used for other purposes by appropriation of the Legislature.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

(a) A purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.
(b) The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed twenty-five thousand dollars. No spending unit shall issue a series of requisitions or divide or plan procurements to circumvent this twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids. Any spending unit which awards multiple contracts for the same or similar commodity or service to an individual vendor over any twelve-month period, the total value of which exceed twenty-five thousand dollars, shall file copies of all contracts awarded to the vendor within the twelve preceding months with the director immediately upon exceeding the twenty-five thousand dollar limit, along with a statement explaining how the multiple contract awards do not circumvent the twenty-five thousand dollar threshold. If the spending unit does not immediately report to the director, the director may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on the first day of January and July of each year the spending units which have reported under this subsection and the findings of the director.

(c) The director may permit bids by electronic transmission to be accepted in lieu of sealed bids.

(d) Bids shall be solicited by public notice. The notice may be published by any advertising medium the director deems advisable. The director may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors.

(e) The director shall, without competitive bidding, purchase commodities and services produced and offered for
sale by nonprofit workshops, as defined in section one, article one of this chapter, which are located in this state: Provided, That such commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director with the advice of the committee on the purchase of commodities and services from the handicapped.

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

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

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

(1) “Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the workers’ compensation funds as defined in article two-c of chapter twenty-three of this code, penalty or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.
(2) "Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions.

(3) "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.

(4) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

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

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, amount owed to the workers’ compensation funds as defined in article two-c of chapter twenty-three of this
(d) All bids, contract proposals or contracts with the state or any of its political subdivisions submitted or approved under the provisions of this code shall include an affidavit that the vendor, prospective vendor or a related party to the vendor or prospective vendor does not owe any debt in an amount in excess of one thousand dollars or, if a debt is owed, that the provisions of subsection (c) of this section apply.

§5A-3-10b. Best value procurement.

(a) The director may utilize best value procurement to enter into a contract when he or she determines in writing that it is advantageous to the state.

(b) A solicitation for bids under best value procurement shall be made in the same manner as provided in section ten of this article.

(c) Best value procurement awards shall be based on criteria set forth in the solicitation including, but not limited to, price, the total cost of acquiring, operating, maintaining and supporting a commodity or service over its projected lifetime, the evaluated technical merit of the bidder’s bid or proposal, the bidder’s past performance, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

(d) The award must be made to the highest scoring responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the state, taking into consideration all evaluation factors set forth in the best value solicitation.
(e) The director may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in article twenty-two, chapter five of this code.

§5A-3-10c. Sole source procurement.

The director may award a contract without advertisement or competition if he or she determines in writing that there is only one source for the required commodity or service. The director may require the submission of cost or pricing data in connection with an award under this section. Prior to an award under this section, the spending unit requesting the procurement shall provide written documentation to the director setting forth the basis for the sole source procurement and the specific efforts made to determine the availability of other sources. Prior to a final determination by the director, the registered vendors will be notified of the commodity or service being sought and the vendors will be provided an opportunity to indicate an interest in bidding on such a commodity or service, to establish whether the commodity or service is, in fact, available only from a sole source. On an annual basis, the director shall report the spending units who have determined a sole source for their commodities or services, the type of commodity or service and the determination made by the director.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.

(a) The director may make a purchase of commodities, printing, and services of twenty-five thousand dollars or less in amount in the open market, but the purchase shall, wherever
possible, be based on at least three competitive bids, and shall include the cost of maintenance and expected life of the commodities if the director determines there are nationally accepted industry standards for the commodities being purchased.

(b) The director may authorize spending units to purchase commodities, printing and services in the amount of two thousand five hundred dollars or less in the open market without competitive bids: Provided, That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased.

c) Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article and may not be altered or withdrawn after the appointed hour for the opening of the bids.

d) A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board’s “Minimum Standards for Design and Equipment of School Buses.” County boards of education may select from those
bidders who have been awarded contracts and shall pay the
difference between the state aid formula amount and the actual
cost of bus replacement. Any or all bids may be rejected.

(f) If all bids received on a pending contract are for the
same unit price or total amount, the director has the authority to
reject all bids, and to purchase the required commodities,
printing and services in the open market, if the price paid in the
open market does not exceed the bid prices.

(g) The bid must be received by the Purchasing Division
prior to the specified date and time of the bid opening. The
failure to deliver or the nonreceipt of the bid by the Purchasing
Division prior to the appointed date and hour shall result in the
rejection of the bid. The vendor is solely responsible for the
receipt of bid by the Purchasing Division prior to the appointed
date and hour of the bid opening. All bids will be opened
publicly by two or more persons from the Purchasing Division.
Vendors will be given notice of the day, time and place of the
public bid opening. Bids may be viewed immediately after
being opened.

(h) After the award of the order or contract, the director, or
someone appointed by him or her for that purpose, shall
indicate upon the successful bid that it was the successful bid.
Thereafter, the copy of each bid in the possession of the director
shall be maintained as a public record, shall be open to public
inspection in the office of the director and may not be destroyed
without the written consent of the Legislative Auditor.

§5A-3-11a. Negotiation when all bids exceed available funds.

(a) Spending units shall include the maximum budgeted
amount available for each purchase in a requisition submitted
to the Purchasing Division. No person may disclose this
maximum budgeted amount to any vendor prior to the award of
a contract. If all bids submitted pursuant to a solicitation exceed
the funds available for the purchase, and the director determines
in writing that there are no additional funds available from any
source to permit an award to the responsive and responsible
bidder and the best interest of the state will not permit the delay
attendant to a resolicitation under revised specifications or for
revised quantities, then a negotiated award may be made as set
forth in this section.

(1) If the director determines in writing that there is only
one responsive and responsible bidder, he or she may negotiate
the price for a noncompetitive award or the specifications for a
noncompetitive award based solely on the original purpose of
the solicitation.

(2) If the Purchasing Division solicits bids with a request
for quotation and there is more than one bidder, the director
may negotiate with bidders determined in writing to be respon-
sive and responsible, based on criteria contained in the bid
invitation: Provided, That the director must negotiate first with
the lowest bidder. If the director does not award the bid to the
lowest bidder, he or she may close negotiations with that bidder
and enter into negotiations with the next lowest bidder, and may
continue to do so in like manner with the remaining responsive
and responsible bidders. The director may not extend an offer
to any bidder that is not first extended to the prior bidders in
order of rank.

(3) If the Purchasing Division solicits bids utilizing a best
value procurement, as set forth in section ten-b of this section,
and there is more than one bidder, the director may negotiate
with bidders determined in writing to be responsive and
responsible, based on criteria contained in the bid invitation:
Provided, That the director must negotiate first with the highest
scoring bidder. If the director does not award the bid to the
highest scoring bidder, he or she may close negotiations with
that bidder and enter into negotiations with the next highest
scoring bidder, and may continue to do so in like manner with
the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(b) After negotiations occur pursuant to subsection(a) of this section, if the director determines that more than fifteen percent of the value of the bid must be renegotiated by revising the specifications of the original solicitation, only a resolicitation may be initiated or the solicitation may be withdrawn.

(c) The director may not renegotiate with any bidder after closing negotiations with that bidder and entering into negotiations with the next bidder.

§5A-3-11b. Discussion and final offers.

(a) As provided in the bid solicitation, the director may conduct discussions with, and obtain best and final offers from, responsive and responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Bidders must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing bidders.

(b) The following contracts are exempt from this section:

(1) Government construction contracts, including, but not limited to, those set forth in article twenty-two, chapter five of this code; and

(2) The purchase of supplies and material.
§5A-3-11c. Multiple awards.

The director may elect to award a contract to one or more responsive and responsible bidders if the director determines in writing that a single award to an individual bidder would be insufficient: Provided, That the basis for the selection among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the state.

§5A-3-19. Purchases from federal government and other sources.

(a) Notwithstanding any other provision of this article, the director may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous. At the discretion of the director, bids may be solicited to determine whether participation in such a cooperative purchasing agreement or consortium is financially advantageous.

(b) The Department of Administration may approve administrative fees, not to exceed the amount of fifty thousand dollars, necessary to participate in a cooperative purchasing agreement. Fees which exceed fifty thousand dollars are subject to the competitive bid requirements of this article.

§5A-3-33d. Grounds for debarment.

Grounds for debarment are:

(1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;
(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property in connection with the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the workers’ compensation funds, as defined in article two-c of chapter twenty-three of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the bureau of employment programs or the Insurance Commission, the director may waive debarment under section thirty-three-f of this article: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found
38 to be in violation of an applicable licensing law after notice,
39 opportunity to be heard and other due process required by law;

40 (7) The vendor is an active and knowing participant in
41 dividing or planning procurements to circumvent the twenty-
42 five thousand dollar threshold requiring a sealed bid or other-
43 wise avoid the use of a sealed bid; or

44 (8) Violation of the terms of a public contract or subcon-
45 tract for:

46 (A) Willful failure to substantially perform in accordance
47 with the terms of one or more public contracts;

48 (B) Performance in violation of standards established by
49 law or generally accepted standards of the trade or profession
50 amounting to intentionally deficient or grossly negligent
51 performance on one or more public contracts;

52 (C) Use of substandard materials on one or more public
53 contracts or defects in construction in one or more public
54 construction projects amounting to intentionally deficient or
55 grossly negligent performance, even if discovery of the defect
56 is subsequent to acceptance of a construction project and
57 expiration of any warranty thereunder;

58 (D) A repeated pattern or practice of failure to perform so
59 serious and compelling as to justify debarment; or

60 (E) Any other cause of a serious and compelling nature
61 amounting to knowing and willful misconduct of the vendor
62 that demonstrates a wanton indifference to the interests of the
63 public and that caused, or that had a substantial likelihood of
64 causing, serious harm to the public.

§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;

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.

(7) Selling the commodities to the highest bidder by means
of an internet auction site approved by the director, as set forth
in an emergency rule pursuant to the provisions of chapter
twenty-nine-a of this code.

(c) Upon the transfer of commodities or expendable
commodities between departments, or upon the sale of com-
modities or expendable commodities to an eligible organiza-
tion, 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 organiza-
tion 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 costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property disposed of or sold pursuant to the provisions of this section.

(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.
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.

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.

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.


§5A-3C-11. Agency’s management ability continued.

(a) Nothing contained in this article may be construed to limit the ability of the various state agencies to enter into contracts or arrangement or to otherwise to manage their pharmacy programs until such time as the programs created or authorized pursuant to this article are implemented.

(b) The provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article.

CHAPTER 3

(Com. Sub. for H. B. 4444 — By Mr. Speaker, Mr. Kiss, and Delegates Cann, Stemple, Pethtel, Swartzmiller and H. White)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, relating to permitting land grant university researchers performing research to plant ginseng seed and to dig, collect or gather ginseng on state public lands; prohibiting cultivation on state parks or wildlife management
areas; providing exceptions to the permit requirements for
growing and digging ginseng; allowing for certification of
existing ginseng plantings; and establishing an annual expiration
date for ginseng dealer permits.

Be it enacted by the Legislature of West Virginia:

That §19-1A-3a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3a. Providing criminal penalties for the illegal possession
of uncertified ginseng.

(a) (1) The Legislature finds that ginseng trade must be
controlled in order to protect the survival of wild ginseng as
evidenced by its listing in Appendix II of the Convention on
International Trade in Endangered Species of Wild Fauna and
Flora. It is the policy of this state to regulate the commerce in
ginseng in a manner that protects the survival of wild ginseng.

(2) For purposes of this section:

(A) “Certified” means the ginseng carries a certificate of
origin issued by the director which allows the export from West
Virginia of ginseng legally harvested in this state;

(B) “Commercial use” means to sell or to use ginseng for
financial gain;

(C) “Cultivated ginseng” means ginseng that is purpose-
fully planted in beds under artificial shade using standard
horticultural practices such as mechanical tillage, fertilization,
weed control, irrigation and pesticides;

(D) “Dealer” means a person who purchases ginseng for
purposes of commercial use;
(E) “Digger” means a person who digs, collects or gathers wild ginseng by searching woodlands to find the plants;

(F) “Director” means the Director of the Division of Forestry;

(G) “Division” means the Division of Forestry;

(H) “Export” means the movement of ginseng from state to state as well as sending it abroad;

(I) “Ginseng” means cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng;

(J) “Green ginseng” means a fresh wild ginseng root that has not been intentionally subjected to a drying process and from which most natural moisture has not been removed by drying.

(K) “Grower” means a person who purposefully plants and grows cultivated ginseng, woods grown ginseng or wild simulated ginseng for purposes of commercial use: Provided, That a grower does not include a digger who plants wild ginseng seed from the wild ginseng plants he or she digs, collects or gathers;

(L) “Harvest” means to dig, collect or gather ginseng;

(M) “Person” means an individual, corporation, partnership, firm or association;

(N) “Rootlets” means woods grown or wild simulated one to two-year old ginseng roots commonly sold as transplants to growers;

(O) “Wild ginseng” means Panax quinquefolius L. that is not grown or nurtured by a person regardless of the putative origin of the plants: Provided, That wild ginseng may originate
from seeds planted by a digger at the same site from which the digger harvests the wild ginseng;

(P) “Wild simulated ginseng” means ginseng that is purposefully planted in the woods without a bed being prepared and without the use of any chemical weed, disease or pest control agents;

(Q) “Woods grown ginseng” means ginseng that is purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

(3) (A) The Division of Forestry shall regulate the growing, digging, collecting, gathering, possessing and selling of ginseng.

(B) The division may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this section including the amount of any permit fee.

(C) For purposes of regulating the growing, harvesting and commercial use of ginseng, a division employee may enter upon any public or private property, other than a dwelling house, at reasonable times, in order to inspect the ginseng operation or records. A person may not obstruct or hinder the employee in the discharge of his or her enforcement duties.

(D) All moneys received from permit fees and civil penalties assessed pursuant to this section shall be credited to the special account within the Division of Forestry to be used for the purposes set forth in section three of this article.

(E) The site plats required to be submitted to the division and other information identifying the specific location of
ginseng plants are not open to public inspection pursuant to article one, chapter twenty-nine-b of this code since they disclose information having a significant commercial value.

(b) (1) The digging season for wild ginseng begins on the first day of September and ends on the thirtieth day of November of each year. It is unlawful for a person to dig, collect, or gather wild ginseng between the first day of December and the thirty-first day of August of the following year.

(2) A person digging, collecting, or gathering wild ginseng upon the enclosed or posted lands of another person shall first obtain written permission from the landowner, tenant or agent, and shall carry the written permission on his or her person while digging, collecting or gathering wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect, or gather wild ginseng from the property of another without the written permission of the landowner.

(3) A person digging, collecting or gathering wild ginseng shall plant the seeds from the wild ginseng plants at the time and at the site from which the wild ginseng is harvested. It is unlawful to remove wild ginseng seeds from the site of collection.

(4) It is unlawful to dig, collect or gather wild ginseng less than five years old.

(5) A person may not rescue wild ginseng plants endangered by ground-disturbing activities unless he or she has first obtained a moving permit from the division. The person shall provide the reason for moving the plants, the current location of the plants, the proposed new planting site and other information required by the division.

(6) It is unlawful to plant ginseng or ginseng seed and to dig, collect or gather ginseng on West Virginia public lands,
except by land grant university researchers performing research or demonstration projects regarding the growing, cultivating or harvesting of ginseng: Provided, That it is unlawful for anyone to plant ginseng or ginseng seed and to dig, collect, or gather ginseng on state wildlife management areas or on state parks.

(c) (1) A person may not act as a grower unless he or she has obtained a grower’s permit from the division.

(2) Prior to planting cultivated, woods grown or wild simulated ginseng, a grower shall:

(A) Submit to the director a plat of the exact planting location prepared by a licensed surveyor or a registered forester as defined in article nineteen, chapter thirty of this code, along with information verifying the name of the landowner: Provided, That if the grower is not the landowner, the grower shall also submit written permission from the landowner to grow and harvest cultivated, woods grown or wild simulated ginseng on that property.

(B) Obtain a written determination from the director certifying that the planting area is free from wild ginseng; and

(C) Submit other information required by the division.

(3) A grower shall keep accurate and complete records on each ginseng planting on forms provided by the division. The records shall be available for inspection by a division employee and shall be submitted to the division at intervals established by rule by the division. A grower shall maintain records for a period of not less than ten years. The information required to be kept shall include:

(A) The origin of ginseng seed, rootlets or plants;
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(B) The location of purposefully planted cultivated, wild
simulated and woods grown ginseng and a site plat of the
planting;

(C) The original of the director’s determination that the site
was free from wild ginseng at the time of planting;

(D) The date each site was planted;

(E) The number of pounds of seeds planted, or the number
and age of rootlets, or both; and

(F) Other information required by the division.

(4) A grower may harvest cultivated ginseng on or after the
effective date of this section throughout the year.

(5) A grower may harvest wild simulated and woods grown
ginseng from the first day of September through the thirtieth
day of November of each year.

(6) It is unlawful for a person to dig, collect or gather wild
simulated and woods grown ginseng between the first day of
December and the thirty-first day of August.

(7) It is unlawful to dig, collect and gather wild simulated
and woods grown ginseng less than five years old.

(8) A grower shall comply with the certification procedures
set forth in subdivision (f) of this section.

(9) For planting locations in existence prior to the first day
of July, two thousand five, provide proof of having purchased
ginseng seed, rootlets, or plants for planting for a minimum of
one or more of the five years immediately prior to the first day
of July, two thousand five, and sign a certification that to the
best of his or her knowledge, no wild ginseng existed on the site
at the time the ginseng was planted: Provided, That no grower
may certify a planting location in existence prior to the first day of July, two thousand five under this provision after the thirty-first day of December, two thousand nine.

(d) (1) A person may not act as a dealer unless he or she has obtained a dealer’s permit from the division.

(2) A dealer shall keep accurate and complete records on his or her ginseng transactions on forms provided by the division. A dealer is required to maintain a record of all persons, including a digger, grower and dealer, involved in each purchase or sale transaction and shall include the name, address, permit number, and a copy of each ginseng certification issued by the division. All records shall be available for inspection by a division employee. A dealer shall maintain records for a period of not less than ten years. In addition, a dealer is required to report the following information to the division monthly:

(A) The date of the transaction;

(B) The type of ginseng, whether wild, cultivated, woods grown or wild simulated ginseng;

(C) Whether the ginseng is dried or green at the time of the transaction;

(D) The weight of the ginseng;

(E) The county from which the ginseng was harvested;

(F) The identification number from the state ginseng certification; and

(G) Other information required by the division.

(3) A dealer shall include a West Virginia export certificate, numbered by the division, with each shipment of ginseng transported out-of-state.
(4) A dealer may not import out-of-state ginseng into this state unless the ginseng is accompanied by a valid export certificate issued by the state of origin. A dealer must return uncertified ginseng to the state of origin within fifteen calendar days.

(5) It is unlawful to include false information on any certificate or record required to be completed or maintained by this section. All ginseng harvested in West Virginia must be certified by the director before being transported or shipped out-of-state.

(e) (1) A person may not act as a grower or act as a dealer unless he or she has been issued the appropriate permit by the division. A person must obtain a separate permit for each activity. Permit applications shall be made on forms provided by the division. The application for a permit shall be accompanied by the applicable permit fee. The division shall assign a permit number to each person granted a permit and it shall keep records of the permits issued.

(2) Permits expire on the thirty-first day of December of each year for growers and the thirty-first day of August of each year for dealers. All permits must be renewed annually. Renewal forms will be mailed to current permit holders. The failure to receive a renewal form does not relieve the permit holder of the obligation to renew. The division may require a late fee when renewal is received more than sixty days after the expiration of the current permit.

(3) The permit holder shall notify the division of any changes in the information on the permit.

(f) All ginseng harvested in this state shall be certified as to type, whether wild, cultivated, woods grown or wild simulated, and to its origin, weight and lawful harvest. Other information may be required for ginseng to be certified by the division to
comply with the Convention on International Trade in Endangered Species of Wild Fauna and Flora to allow for its export:

Provided, That live one and two-year old cultivated, woods grown or wild simulated rootlets sold by growers for propagation purposes within the United States are not regarded as harvested and are exempt from the certification requirement. All ginseng, except cultivated ginseng, must be certified or weight receipted by the first day of April of the year following harvest: Provided, however, That no ginseng may be certified between the first day of January through the thirty-first day of March unless the person requesting certification displays a valid permit. It is unlawful for a person to have in his or her possession uncertified wild ginseng from the first day of April through the thirty-first day of August.

(g) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code designed to implement the ginseng certification process.

(h) The division may, by order entered in accordance with the provisions of article five, chapter twenty-nine-a, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the division finds that a grower or dealer has violated any provision of this section or a legislatively approved rule.

(i) The division may assess a civil penalty against a person who violates any provision of this section or a provision of a legislatively approved rule. The division may assess a monetary penalty of not less than one hundred dollars nor more than five hundred dollars.

(j) Any person violating a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred dollars nor more than
one thousand dollars, or confined in jail not more than six
months, or both. The court, in imposing the sentence of a
person convicted of an offense under this section, shall order
the person to forfeit all ginseng involved in the offense.

(k) It is the duty of the prosecuting attorney of the county
in which the violation occurred to represent the division, to
institute proceedings, and to prosecute the person charged with
the violation.

CHAPTER 4

(H. B. 4368 — By Delegates Amores, Palumbo, Brown and Schadler)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §60-8-18 of the Code of West
Virginia, 1931, as amended, relating to the alleged violations of
Alcohol Beverage Control Administration (ABCA) rules, orders
and related code provisions by persons and entities holding
licenses to sell or serve wine; clarifying the code provisions to
clearly provide for the investigation of licensee’s alleged viola-
tion of rules or orders issued by the ABCA Commissioner; and
providing expanded alternative sanction options to the ABCA
Commissioner for certain violations.

Be it enacted by the Legislature of West Virginia:

That §60-8-18 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.
§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure upon refusal, revocation, suspension or other sanction.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth below.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee’s license;

(B) Suspend the licensee’s license for a period determined by the commissioner not to exceed twelve months; or

(C) Place the licensee on probation for a period not to exceed twelve months; and,

(D) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee’s license.

(b) If a distributor fails or refuses to keep in effect the bond required by section twenty-nine of this article, the commissioner shall automatically suspend the distributor’s license until
the bond required by section twenty is furnished to the commis-
sioner, at which time the commissioner shall vacate the

suspension.

(c) Whenever the commissioner refuses to issue a license,
or suspends or revokes a license, places a licensee on probation
or imposes a monetary penalty, he or she shall enter an order to
that effect, and cause a copy of the order to be served in person
or by certified mail, return receipt requested, on the licensee or
applicant.

(d) Any applicant or licensee, as the case may be, adversely
affected by the order has a right to a hearing before the commis-
sioner, a written demand for hearing is served upon the com-
missioner within ten days following the receipt of the commis-
sioner’s order by the applicant or licensee. Timely service of a
demand for a hearing upon the commissioner operates to
suspend the execution of the order with respect to which a
hearing has been demanded, except an order suspending a
license under the provisions of subsection (b) of this section.
The person demanding a hearing shall give security for the cost
of the hearing in a form and amount as the commissioner may
reasonably require. If the person demanding the hearing does
not substantially prevail in such hearing or upon judicial review
thereof as provided in subsections (g) and (h) of this section,
then the costs of the hearing shall be assessed against him or her
by the commissioner and may be collected by an action at law
or other proper remedy.

(e) Upon receipt of a timely served written demand for a
hearing, the commissioner shall immediately set a date for the
hearing and notify the person demanding the hearing of the
date, time and place of the hearing, which shall be held within
thirty days after receipt of the demand. At the hearing the
commissioner shall hear evidence and thereafter enter an order
supporting by findings of facts, affirming, modifying or
vacating the order. Any such order is final unless vacated or
modified upon judicial review thereof.
(f) The hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(g) Any applicant or licensee adversely affected by an order entered following a hearing has the right of judicial review of the order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(h) The judgment of a circuit court reviewing the order of the commissioner 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-a of this code.

(i) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

CHAPTER 5

(S. B. 112 — By Senators Prezioso, Sharpe, Hunter, Foster, Unger, Jenkins, Plymale, Helmick, Dempsey, White, Fanning, Sprouse, Deem, Yoder, Facemyer, Love, Bowman and Minard)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5R-7, relating to
establishing an Alzheimer’s Disease Registry within West Virginia University to act as a central information database for policy and planning relative to Alzheimer’s disease.

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 §16-5R-7, to read as follows:

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-7. Establishment of a central registry.

(a) To the extent funds are available, the Governing Board of the West Virginia University shall establish an Alzheimer’s Disease Registry to collect information concerning alzheimer’s disease and related disorders. The purpose of the registry shall be to provide a central database of information to assist in the development of public policy and planning. The information collected by the registry shall be analyzed to prepare reports and perform studies as necessary when such data identifies information useful in developing policy.

(b) All reporting sources, including hospitals, physicians, facilities, clinics or other similar units diagnosing or providing treatment or care for alzheimer’s disease and related disorders, shall provide a report of each case to the Alzheimer’s Disease Registry in the format specified.

(c) All information reported pursuant to this section is confidential and shall be used only for the purposes set forth herein. A report provided to the Alzheimer’s Disease Registry that discloses the identity of the individual being treated shall only be released in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996. No liability of any kind or character for damages or other relief shall arise or be enforced against any reporting source by reason
of having provided the information or material to the Alzheimer’s Disease Registry.

(d) The governing board shall propose rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement this section. The rules shall include, but not be limited to: (1) The content and design of all forms and reports required by this section; (2) the type of information to be collected and maintained; (3) the procedures for disclosure of nonidentifying data to other appropriate research entities; (4) the manner in which reporting entities or individuals, including families, may be contacted by the registry for additional relevant information; and (5) any other matter necessary to the administration of this section.

CHAPTER 6

(Com. Sub. for S. B. 125 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 19, 2006; in effect from passage.] [Approved by the Governor on March 24, 2006.]

AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

Title
I. General Provisions.
II. Appropriations.
III. Administration.
§ 1. General policy.—The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year two thousand seven.

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

“Governor” shall mean the governor of the state of West Virginia.

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

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

The “fiscal year two thousand seven” shall mean the period from the first day of July, two thousand six, through the thirtieth day of June, two thousand seven.

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

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.
“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter eleven-b of the code.

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

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

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

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

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

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

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

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

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

“Current expenses” shall mean operating costs other than
personal services and shall not include equipment, repairs and
alterations, buildings or lands.
Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

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

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

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

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

*Investing the power of the purse with the Legislature, the founding fathers recognized the inherent political nature of budgeting and established the Legislature to function as a crucible for the venting and vetting of political tensions and ideas, the improvement of good ideas and the imperilment of bad ones. By design, each of the 134 legislators functions as a check and balance, if not contributor to, the policies and appropriations under his or her consideration. Also unique to the Legislative Branch is its division into committees, parties.*

*CLERK’S NOTE: The Governor struck language on line 73 through line 169.*
and-caucuses-and-designation-of-individuals-as-minority-and
majority-leaders-and-whips,-each-facilitating-consideration-of
important-and-political-ideas;-its-two-houses,-extensive-rules;
procedural-requirements,-committee-structure-and-the-executive
veto,-reduction-and-deletion-powers,-all-designed-to-ensure
prudence-and-ensnare-imprudent-proposals;-the-two-year
election-cycle-of-the-House;-staggered-terms-of-the-Senate-and
the-size-and-geographical-nature-of-Legislative-districts,-each
contributing-to-the-superior-representative-nature-of-this-branch
of-government;-and-its-function-as-a-check-and-balance-on-the
Executive;-each-of-which-contributes-to-the-Legislature’s
unique-ability-to-process-these-inherently-political-decisions.
Unchecked-and-unlimited-executive-authority-to-modify-the
State-budget-through-transfers-to-undesignated-budget-activities
would-not-lend-to-minimizing-waste,-reducing-spending-and
balancing-the-maintenance-of-taxes-against-the-derived-benefit
and-would-circumvent-the-fundamental-Constitutional-design
embodied-in-the-doctrine-of-the-separation-of-powers;-the
budget-process-itself-and-the-protections-provided-within-the
Legislature’s-architecture.-Even-more-fundamentally,-such
approach-would-serve-to-erode-the-very-delegation-of-democ-

While-bureaucrats-possess-extensive-knowledge-of-their
programs-and-populations,-they-are-not-qualified-to-determine
the-highest-uses-of-the-people’s-resources.-Their-views-of-the
State-are-appropriately-centric-to-their-specific-programs-and
roles,-and-their-universes-are-appropriately-small-and-contained:
Bureaucrats-tend-to-approach-these-decisions-with-a-bias-toward
spending-and-enhancing-their-own-programs-and-comforts:
Bureaucrats-are-not-accountable-to-the-voters-and-do-not-make
decisions-within-a-forum-designed-for-challenge,-debate,-
consensus-and-regional-representation.-For-these-and-other
reasons-the-Governor’s-proposed-method-for-rededicating
monies-saved-due-to-efficiencies-is-hereby-declined:
However, it continues to be the expectation of the Legislature that West Virginia's Governor and public managers will do everything in their power to improve the efficiency and effectiveness of State government. While providing the best possible value back to the citizens of the State should be the primary motive of every public official and employee, the Legislature hereby declares that in its formulation of the Fiscal Year 2008 budget and supplemental amendments to this 2007 budget, it will duly consider spending unit recommendations for alternate usage of efficiency savings when a spending unit can document an efficiency savings to one or more General Revenue line-items and justify its recommendation for an alternative use. The Legislative Auditor shall prescribe forms and procedures for spending units to recommend alternate uses; receive and disseminate these requests and otherwise administer these provisions. The purpose of making government more efficient is not merely to provide more resources to be spent on other initiatives. In making these recommendations for alternate usage of efficiency savings, public officials and employees shall be sensitive to the tax burden shouldered by West Virginia citizens and businesses and the many unmet needs affecting their health, safety and welfare. While the Legislature may be predisposed to granting a spending unit's recommendation, its consideration of the need for tax relief and the merit of other possible uses of these resources is absolutely indispensable and nondelegable.

In further exercise of its responsibilities, the Legislature includes in this budget certain appropriations in line-items which more specifically describe the purposes for which the appropriations are made than are described in the more general line-items proposed by the executive. In the event these more specific items or parts thereof are disapproved, the funds appropriated for those purposes may not be expended for any other purposes than those which were disapproved, except for such purposes as may be provided by enactment of a supple-

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mentary appropriation bill. The Constitution vests the power of
the purse, the power to appropriate public funds, solely in the
legislative branch of this State's government. The inclusion of
more specific line-items in an appropriations bill is a means by
which the Legislature effectively decreases items of appropri-
tation proposed by the executive for other purposes. The exercise
of the power of the executive to disapprove specific items or
parts thereof of appropriations bills can not operate to increase
appropriations of the money contained in those items for other
purposes, a result which the executive may not achieve by
either direct or indirect means under the Constitution of this
State. The expenditure of funds for purposes other than those
contained in a line-item disapproved by the Governor would be
an unconstitutional appropriation of public funds and a usurpa-
tion of the power of appropriation reserved exclusively to the
legislative branch. It is the intent of the Legislature to resist any
encroachment of the power to appropriate devolved upon and
entrusted to the legislative branch by the citizens of this State
through their Constitution.

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

Appropriations classified in any of the above categories
shall be expended only for the purposes as defined above and
only for the spending units herein designated: Provided, That
the secretary of each department shall have the authority to
transfer within the department those general revenue funds
appropriated to the various agencies of the department: Pro-
vided, however, That no more than five percent of the general
revenue funds appropriated to any one agency or board may be
transferred to other agencies or boards within the department:
Provided further, That the secretary of each department and the
director, commissioner, executive secretary, superintendent,
chairman or any other agency head not governed by a depart-
mental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to “personal services” and “employee benefits” to other lines within the same account and no funds from other lines shall be transferred to the “personal services” line: And provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer general revenue funds appropriated to “annual increment” to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with article five, chapter five of the code: And provided further, That no authority exists hereunder to transfer funds into line-items to which no funds are legislatively appropriated: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary or other appropriate agency head may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund for the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

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

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§17. General school fund.
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SECTION 2. Appropriations from state road fund.
SECTION 3. Appropriations from other funds.
SECTION 4. Appropriations from lottery net profits.
SECTION 5. Appropriations from state excess lottery revenue.
SECTION 6. Appropriations of federal funds.
SECTION 7. Appropriations from federal block grants.
SECTION 8. Awards for claims against the state.
SECTION 9. Appropriations from surplus accrued.
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SECTION 11. State improvement fund appropriations.
SECTION 12. Specific funds and collection accounts.
SECTION 13. Appropriations for refunding erroneous payment.
SECTION 15. Appropriations for local governments.
SECTION 16. Total appropriations.
SECTION 17. General school fund.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2007 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R) . . . . . . . 003</td>
<td>$ 1,010,000</td>
</tr>
<tr>
<td>Item Description</td>
<td>Code</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td>005</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>Contingent Fund (R)</td>
<td>021</td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>064</td>
</tr>
<tr>
<td>Computer Supplies (R)</td>
<td>101</td>
</tr>
<tr>
<td>Computer Systems (R)</td>
<td>102</td>
</tr>
<tr>
<td>Printing Blue Book (R)</td>
<td>103</td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td>399</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2006 are to remain in full force and effect and are hereby reappropriated to June 30, 2007. Any balances so reappropriated may be transferred and credited to the fiscal year 2007 accounts.

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

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

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

For duties imposed by law and by the senate, the clerk of the senate shall be paid a monthly salary as provided by the senate resolution, unless increased between sessions under the authority of the president, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the senate.

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

2—House of Delegates

Fund 0170 FY 2007 Org 2200

1 Compensation of Members (R) ............ 003 $2,270,000
2 Compensation and Per Diem of Officers and Employees (R) ................. 005 680,000
The appropriations for the house of delegates for the fiscal year 2006 are to remain in full force and effect and are hereby reappropriated to June 30, 2007. Any balances so reappropriated may be transferred and credited to the fiscal year 2007 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2007 Org 2300

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$6,845,189</td>
</tr>
<tr>
<td>Legislative Printing</td>
<td>800,000</td>
</tr>
<tr>
<td>Legislative Rule-Making</td>
<td></td>
</tr>
<tr>
<td>Review Committee</td>
<td>155,000</td>
</tr>
<tr>
<td>Legislative Computer System</td>
<td>900,000</td>
</tr>
<tr>
<td>Joint Standing Committee on Education</td>
<td>88,000</td>
</tr>
<tr>
<td>Tax Reduction and Federal Funding Increased</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>22,000</td>
</tr>
<tr>
<td>Total</td>
<td>$18,810,189</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2006 are to remain in full force and effect and are hereby...
reappropriated to June 30, 2007. Any balances so
reappropriated may be transferred and credited to the fiscal year
2007 accounts.

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

The appropriation for the Tax Reduction and Federal
Funding Increased Compliance (TRAFFIC) (fund 0175, activity
642) is intended for possible general state tax reductions or the
offsetting of any reductions in federal funding for state pro-
grams.

Of the unexpended balance of the appropriation for
Supplement for PERS and TRS 2006 - Surplus (fund 0175,
activity 679) reappropriated for expenditure in FY2007,
$7,987,000 shall be transferred to the Teachers Employers
Contribution Collection Account (fund 2607), and $2,013,000
shall be transferred to the Income Fund (fund 2501). This
appropriation, in addition to the $30 million of statutory
transfers, is intended to fully fund the one-time supplements to
retirement benefits of the annuitants described in West Virginia
Code §5-10-22i and §18-7A-26t as enacted by House Bill No.
4846 (2006 Regular Session). According to the Actuarial Note
to HB 4846, this combined funding of $40 million will be
sufficient to provide no more than a three percent one-time
supplement.

JUDICIAL

4—Supreme Court—
### General Judicial

**Fund 0180 FY 2007 Org 2400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R)</td>
<td>001</td>
<td>$56,183,746</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment (R)</td>
<td>004</td>
<td>550,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>17,280,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>17,413,444</td>
</tr>
<tr>
<td>5</td>
<td>Judges’ Retirement System (R)</td>
<td>110</td>
<td>2,333,000</td>
</tr>
<tr>
<td>6</td>
<td>Retirement Systems-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Unfunded Liability</td>
<td>775</td>
<td>3,701,000</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>374,015</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$97,835,328</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2004, 2005 and 2006 are to remain in full force and effect and are hereby reappropriated to June 30, 2007. Any balances so reappropriated may be transferred and credited to the fiscal year 2007 accounts.

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

The appropriations for the Judges’ Retirement System and Retirement Systems-Unfunded Liability are to be transferred to the consolidated public retirement board, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.

### EXECUTIVE

5—**Governor’s Office**

(WV Code Chapter 5)

**Fund 0101 FY 2007 Org 0100**
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,423,506</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Governor</td>
<td>002</td>
<td>95,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>16,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>714,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,464,425</td>
</tr>
<tr>
<td>6</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>170,200</td>
</tr>
<tr>
<td>7</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>28,732</td>
</tr>
<tr>
<td>8</td>
<td>Southern Governors’ Association</td>
<td>314</td>
<td>25,000</td>
</tr>
<tr>
<td>9</td>
<td>Pharmaceutical Cost</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Management Council (R)</td>
<td>796</td>
<td>501,800</td>
</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
<td>245,870</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$5,684,533</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), Publication of Papers and Transition Expenses—Surplus (fund 0101, activity 359), Publication of Papers and Transition Expenses (fund 0101, activity 465), Capital Outlay, Repairs and Equipment (fund 0101, activity 589), JOBS Fund (fund 0101, activity 665), and Pharmaceutical Cost Management Council (fund 0101, activity 796) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2007 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total (R)</td>
<td>096</td>
<td>$581,779</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0102, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.
6 Funds are to be used for current general expenses, including
7 compensation of employees, household maintenance, cost of
8 official functions and additional household expenses occasioned
9 by such official functions.

7—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2007 Org 0100

1 Business & Economic Development
2 Stimulus (R) ....................... 586 $ 0
3 Civil Contingent Fund ............... 614 0
4 Total ................................. $ 0

5 Any unexpended balances remaining in the appropriation
6 for Stream Restoration—Surplus (fund 0105, activity 078),
7 Business and Economic Development Stimulus—Surplus (fund
8 0105, activity 084), Civil Contingent Fund—Total (fund 0105,
9 activity 114), Civil Contingent Fund—Total—Surplus (fund
10 0105, activity 238), Civil Contingent Fund— Surplus (fund
11 0105, activity 263), Business and Economic Development
12 Stimulus (fund 0105, activity 586), and Civil Contingent Fund
13 (fund 0105, activity 614) at the close of the fiscal year 2006 are
14 hereby reappropriated for expenditure during the fiscal year

16 From this appropriation there may be expended, at the
17 discretion of the governor, an amount not to exceed one
18 thousand dollars as West Virginia’s contribution to the inter-
19 state oil compact commission.

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

8—Auditor’s Office—

**General Administration**

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 0116 FY 2007 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $2,139,732</td>
</tr>
<tr>
<td>2 Salary of Auditor .......... 002 75,000</td>
</tr>
<tr>
<td>3 Annual Increment .......... 004 37,265</td>
</tr>
<tr>
<td>4 Employee Benefits .......... 010 769,039</td>
</tr>
<tr>
<td>5 Unclassified ............... 099 623,326</td>
</tr>
<tr>
<td>6 BRIM Premium ............... 913 15,428</td>
</tr>
<tr>
<td>7 Total ...................... $3,659,790</td>
</tr>
</tbody>
</table>

9—Treasurer’s Office

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 0126 FY 2007 Org 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $1,859,078</td>
</tr>
<tr>
<td>2 Salary of Treasurer ....... 002 75,000</td>
</tr>
<tr>
<td>3 Annual Increment .......... 004 25,000</td>
</tr>
<tr>
<td>4 Employee Benefits .......... 010 614,996</td>
</tr>
<tr>
<td>5 Unclassified (R) .......... 099 849,756</td>
</tr>
<tr>
<td>6 Abandoned Property Program .... 118 290,184</td>
</tr>
<tr>
<td>7 Tuition Trust Fund (R) .... 692 150,880</td>
</tr>
<tr>
<td>8 Tuition Trust Fund- .........</td>
</tr>
<tr>
<td>9 Unfunded Liability .......... 698 0</td>
</tr>
<tr>
<td>10 BRIM Premium ............... 913 33,419</td>
</tr>
<tr>
<td>11 Total ...................... $3,898,313</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

### 10—Department of Agriculture

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund 0131 FY 2007 Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001  $3,789,370</td>
</tr>
<tr>
<td>2 Salary of Commissioner ...... 002  75,000</td>
</tr>
<tr>
<td>3 Annual Increment .......... 004  82,632</td>
</tr>
<tr>
<td>4 Employee Benefits .......... 010  1,518,466</td>
</tr>
<tr>
<td>5 Animal Identification Program .... 039  201,755</td>
</tr>
<tr>
<td>6 State Farm Museum ......... 055  110,000</td>
</tr>
<tr>
<td>7 Unclassified (R) .......... 099  888,701</td>
</tr>
<tr>
<td>8 Gypsy Moth Program (R) .... 119  982,571</td>
</tr>
<tr>
<td>9 Huntington Farmers Market .. 128  50,000</td>
</tr>
<tr>
<td>10 Black Fly Control (R) .... 137  804,882</td>
</tr>
<tr>
<td>11 Donated Foods Program ..... 363  50,000</td>
</tr>
<tr>
<td>12 Predator Control .......... 470  195,000</td>
</tr>
<tr>
<td>13 Logan Farmers Market ...... 501  40,900</td>
</tr>
<tr>
<td>14 Bee Research ............. 691  32,421</td>
</tr>
<tr>
<td>15 Farmers Markets ........... 743  0</td>
</tr>
<tr>
<td>16 Microbiology Program (R) ... 785  155,931</td>
</tr>
<tr>
<td>17 Moorefield Agriculture Center (R) ... 786  1,112,762</td>
</tr>
<tr>
<td>18 BRIM Premium ............. 913  130,804</td>
</tr>
<tr>
<td>19 WV Food Banks ............ 969  100,000</td>
</tr>
<tr>
<td>20 Seniors’s Farmers’ Market Nutrition</td>
</tr>
<tr>
<td>21 Coupon Program ........... 970  65,000</td>
</tr>
<tr>
<td>22 Total ...................... $10,386,195</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified-Surplus (fund 0131, activity 097), Unclassified
(fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

From the above appropriation for WV Food Banks (activity 969), the full appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

III—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2007 Org 1400

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$476,713</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>9,300</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>183,779</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>455,101</td>
</tr>
<tr>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>5,880,741</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>12,969</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$7,018,603</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Soil Conservation Projects—Surplus (fund 0132, activity 269), and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.
12—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2007 Org 1400

1 Unclassified-Total ................. 096 $ 646,614

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

13—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2007 Org 1400

1 Programs & Awards for
2 4-H Clubs and FFA/FHA .......... 577 $ 15,000
3 Commissioner’s Awards
4 and Programs .................... 737 $43,650
5 Total .......................... $ 58,650

14—Department of Agriculture—

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2007 Org 1400

1 Unclassified-Total ................. 096 $110,000
### 15—Attorney General

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

**Fund 0150 FY 2007 Org 1500**

| 1 | Personal Services (R) | 001 | $2,042,780 |
| 2 | Salary of Attorney General | 002 | 80,000 |
| 3 | Annual Increment | 004 | 46,284 |
| 4 | Employee Benefits (R) | 010 | 773,098 |
| 5 | Unclassified (R) | 099 | 356,716 |
| 6 | Better Government Bureau | 740 | 300,310 |
| 7 | BRIM Premium | 913 | 118,590 |
| 8 | Total | | $3,717,778 |

Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010), and Unclassified (fund 0150, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

#### 16—Secretary of State

(WV Code Chapters 3, 5 and 59)

**Fund 0155 FY 2007 Org 1600**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$627,495</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>$70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$11,950</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$236,436</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$123,325</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$41,356</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$1,110,562</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) and Administrative Law Division Improvements (fund 0155, activity 880) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

#### 17—State Election Commission

(WV Code Chapter 3)

**Fund 0160 FY 2007 Org 1601**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$10,275</td>
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</table>

#### DEPARTMENT OF ADMINISTRATION

#### 18—Department of Administration—

**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0186 FY 2007 Org 0201**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$288,772</td>
</tr>
</tbody>
</table>
2 Lease Rental Payments ............... 516 16,000,000
3 Design-Build Board ................ 540 19,068
4 Efficiency Savings .................. 799 0
5 BRIM Premium ...................... 913 13,171
6 Total ................................ $16,321,011

Any unexpended balances remaining in the appropriations for Program Review (fund 0201, activity 086) and Financial Advisor (fund 0201, activity 304) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2007 Org 0205

1 Unclassified-Total-Transfer ............ 402 $ 150,517,000

Any unexpended balance remaining in the appropriation for Pension Merger Administrative Costs (fund 0195, activity 429) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

The above appropriation for Unclassified-Total-Transfer (fund 0195, activity 402) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601) only after all other funding required by Title II-Appropriations, Section One, Appropriations from General Revenue have been satisfied as determined by the Director of the Budget. Further, the above appropriation shall not be considered in the aggregate...
eligible for consideration of the five percent secretary transfer authority granted in “Title I - General Provisions, Sec. 3. Classifications and appropriations.”

Should the actual revenues accruing to the General Revenue Fund be insufficient to fully fund all appropriations of “Title II- Appropriations, Section One, Appropriations from General Revenue,” the appropriation to the Unclassified-Total-Transfer (fund 0195, activity 402) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Unclassified-Total-Transfer (fund 0195, activity 402).

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.

20—Division of Finance
(WV Code Chapter 5A)

Fund 0203 FY 2007 Org 0209

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<thead>
<tr>
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<td>Annual Increment</td>
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<td>838</td>
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<tr>
<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>140,713</td>
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<tr>
<td>GAAP Project (R)</td>
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<td>893,971</td>
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<td>BRIM Premium</td>
<td>913</td>
<td>20,696</td>
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<tr>
<td>Total</td>
<td></td>
<td>$1,191,325</td>
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</table>
Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2007 Org 0211

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
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<td>Annual Increment</td>
<td>004</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>231,448</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>487,767</td>
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<tr>
<td>Fire Service Fee</td>
<td>126</td>
<td>14,000</td>
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<td>112,481</td>
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<td><strong>Total</strong></td>
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<td><strong>$1,409,277</strong></td>
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</table>

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2007 Org 0213

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</thead>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 910,219</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>12,228</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>292,255</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>279,712</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>6,167</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,500,581</strong></td>
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</table>

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

(WV Code Chapter 29)

Fund 0214 FY 2007 Org 0217

1 Unclassified-Total .................. 096 $ 31,000
2 To pay expenses for members of the commission on
3 uniform state laws.

24-Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2007 Org 0219

1 Personal Services .................. 001 $ 625,335
2 Annual Increment .................. 004 8,100
3 Employee Benefits ................. 010 173,167
4 Unclassified ...................... 099 154,567
5 BRIM Premium ...................... 913 4,133
6 Total .......................... $ 965,302

25-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2007 Org 0220

1 Unclassified ....................... 099 $ 696,596
2 BRIM Premium ...................... 913 3,404
3 Total .......................... $ 700,000

26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2007 Org 0221
APPROPRIATIONS

1 Personal Services .................. 001 $ 533,108
2 Annual Increment ................... 004 6,350
3 Employee Benefits .................. 010 189,335
4 Unclassified ........................ 099 308,712
5 Appointed Counsel Fees and
6 Public Defender Corporations ...... 127 0
7 Public Defender Corporation (R) ... 352 14,727,936
8 Appointed Counsel-Public Defender
9 Conflicts ............................ 568 2,100,000
10 Appointed Counsel Fees (R) ........ 788 11,185,417
11 BRIM Premium ...................... 913 23,262
12 Total ............................... $29,074,120

Any unexpended balances remaining in the above appropriations for Public Defender Corporations (fund 0226, activity 352) and Appointed Counsel Fees (fund 0226, activity 788) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

(WV Code Chapter 5A)

Fund 0233 FY 2007 Org 0224

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

28-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2007 Org 0225

1 Employees Subsidy ................... 922 $ 2,800,000

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

29-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2007 Org 0228

<table>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Forensic Medical Examinations (R)</td>
<td>$141,593</td>
</tr>
<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>$84,672</td>
</tr>
<tr>
<td>Total</td>
<td>$226,265</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683) and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

30-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2007 Org 0230

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total (R)</td>
<td>$10,966,703</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0588, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

DEPARTMENT OF COMMERCE

31-Division of Tourism
Any unexpended balances remaining in the appropriations for Tourism Special Projects-Surplus (fund 0246, activity 293) and Tourism-Special Projects (fund 0246, activity 859) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

32-Division of Forestry

Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

33-Geological and Economic Survey
Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

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

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2007 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$3,967,506</td>
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<tr>
<td>Annual Increment</td>
<td>63,218</td>
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<tr>
<td>Employee Benefits</td>
<td>1,191,418</td>
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<tr>
<td>ARC-WV Home of Your Own Alliance</td>
<td>40,000</td>
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<tr>
<td>Southern WV Career Center</td>
<td>191,750</td>
</tr>
<tr>
<td>Unclassified</td>
<td>1,431,181</td>
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<tr>
<td>Partnership Grants (R)</td>
<td>1,950,000</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>200,000</td>
</tr>
<tr>
<td>Local Economic Development Partnerships (R)</td>
<td>1,870,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>167,308</td>
</tr>
<tr>
<td>Institute for Software Research</td>
<td>76,213</td>
</tr>
<tr>
<td>Mid-Atlantic Aerospace Complex (R)</td>
<td>176,783</td>
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<tr>
<td>Guaranteed Work Force Grant (R)</td>
<td>2,247,000</td>
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<tr>
<td>Mingo County Surface Mine Project</td>
<td>125,000</td>
</tr>
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</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>#</th>
<th>Program</th>
<th>Budget 18/19</th>
<th>Budget 19/20</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Robert C. Byrd Institute for Advanced/ Flexible Manufacturing-Technology</td>
<td>367</td>
<td>519,800</td>
</tr>
<tr>
<td>19</td>
<td>Outreach and Programs for Environmental and Advanced Technologies</td>
<td>389</td>
<td>74,300</td>
</tr>
<tr>
<td>20</td>
<td>Advantage Valley</td>
<td>390</td>
<td>38,300</td>
</tr>
<tr>
<td>21</td>
<td>WV High Tech Consortium</td>
<td>391</td>
<td>159,570</td>
</tr>
<tr>
<td>22</td>
<td>Charleston Farmers Market</td>
<td>476</td>
<td>100,000</td>
</tr>
<tr>
<td>23</td>
<td>Industrial Park Assistance (R)</td>
<td>480</td>
<td>650,000</td>
</tr>
<tr>
<td>24</td>
<td>International Offices (R)</td>
<td>593</td>
<td>690,644</td>
</tr>
<tr>
<td>25</td>
<td>Grant Programs</td>
<td>694</td>
<td>0</td>
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<tr>
<td>26</td>
<td>Small Business Development</td>
<td>703</td>
<td>273,187</td>
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<tr>
<td>27</td>
<td>WV Manufacturing Extension Partnership</td>
<td>731</td>
<td>144,000</td>
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<tr>
<td>28</td>
<td>Polymer Alliance</td>
<td>754</td>
<td>115,000</td>
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<tr>
<td>29</td>
<td>National Institute of Chemical Studies</td>
<td>805</td>
<td>70,500</td>
</tr>
<tr>
<td>30</td>
<td>Local Economic Development Assistance (R)</td>
<td>819</td>
<td>6,050,000</td>
</tr>
<tr>
<td>31</td>
<td>Community College Workforce</td>
<td>878</td>
<td>1,000,000</td>
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<tr>
<td>32</td>
<td>BRIM Premium</td>
<td>913</td>
<td>26,096</td>
</tr>
<tr>
<td>33</td>
<td>Hardwood Alliance Zone</td>
<td>992</td>
<td>42,600</td>
</tr>
<tr>
<td>34</td>
<td>Regional Councils</td>
<td>784</td>
<td>440,000</td>
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<tr>
<td>35</td>
<td>Mainstreet Program</td>
<td>794</td>
<td>50,000</td>
</tr>
<tr>
<td>36</td>
<td>I-79 Development Council</td>
<td>824</td>
<td>50,000</td>
</tr>
<tr>
<td>37</td>
<td>Total</td>
<td></td>
<td>$24,191,374</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism—Unclassified—Surplus (fund 0256, activity 075), Partnership Grants (fund 0256, activity 131), Local Economic Development Partnerships (fund 0256, activity 133), Mid-Atlantic Aerospace Complex (fund 0256, activity 231), Guaranteed Work Force Grant (fund 0256, activity 242), Local Economic Development Assistance—Surplus (fund 0256,
The above appropriation to Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of section fourteen, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty-four thousand dollars per county served by an economic development corporation or authority.

From the above appropriation for the Community College Workforce Development (activity 878), $200,000 shall be expended on the Mine Training Program in Southern West Virginia.

35-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2007 Org 0308

1 Personal Services ......................... 001 $1,670,441
2 Annual Increment ......................... 004 26,747
### 36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2007 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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</tr>
<tr>
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<td>Annual Increment</td>
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<td>217,186</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,128,299</td>
</tr>
<tr>
<td>4</td>
<td>Gypsy Moth Suppression Program – Wildlife Management Areas</td>
<td>014</td>
<td>42,997</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>9,173</td>
</tr>
<tr>
<td>6</td>
<td>Litter Control Conservation Officers</td>
<td>564</td>
<td>154,171</td>
</tr>
<tr>
<td>7</td>
<td>Upper Mud River Flood Control</td>
<td>654</td>
<td>180,890</td>
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<td>8</td>
<td>Law Enforcement</td>
<td>806</td>
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<tr>
<td>9</td>
<td>BRIM Premium</td>
<td>913</td>
<td>308,815</td>
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<td>10</td>
<td>Fish Hatchery Improvements</td>
<td>825</td>
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<tr>
<td>11</td>
<td>Total</td>
<td></td>
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</table>

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

### 37-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2007 Org 0314

<table>
<thead>
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<th>Item</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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### Appropriations

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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>72,400</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,545,333</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>152,003</td>
</tr>
<tr>
<td>5</td>
<td>WV Diesel Equipment Commission</td>
<td>712</td>
<td>38,034</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>74,610</td>
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<td>$6,012,536</td>
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</table>

#### 38-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

<table>
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<tr>
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<th>Amount</th>
</tr>
</thead>
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<tr>
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<td>750</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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</table>

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

(WV Code Chapter 22)

<table>
<thead>
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<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>099</td>
<td>$63,352</td>
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<tr>
<td>2</td>
<td>Coal Forum</td>
<td>664</td>
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</tr>
<tr>
<td>3</td>
<td>Total</td>
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#### 40-Department of Commerce-

##### Office of the Secretary

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$401,800</td>
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</tbody>
</table>


### Appropriations

2 Efficiency Savings .......................... 799 0
3 Total ................................. $ 401,800

**41-Governor's Workforce Investment Office**

(Executive Order 5-05)

Fund 0608 FY 2007 Org 0331

1 Southern WV Career Center ............ 071 $ 0
2 Guaranteed Work Force Grant (R) .... 242 0
3 Community College Workforce
4 Development (R) ....................... 878 0
5 Total ................................. $ 0

**DEPARTMENT OF EDUCATION**

**42-State Department of Education**

*School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2007 Org 0402

1 Personal Services .......................... 001 $ 223,679
2 Annual Increment ........................... 004 3,700
3 Employee Benefits .......................... 010 86,700
4 Unclassified ............................... 099 1,982,376
5 Total ................................. $ 2,296,455

**43-State FFA-FHA Camp and Conference Center**

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2007 Org 0402

1 Personal Services .......................... 001 $ 579,168
2 Annual Increment 004 15,750
3 Employee Benefits 010 243,000
4 Unclassified 099 142,000
5 BRIM Premium 913 38,987
6 Total $1,018,905

44-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2007 Org 0402

1 Personal Services 001 $3,149,009
2 Annual Increment 004 35,468
3 Employee Benefits 010 993,000
4 Unclassified (R) 099 3,400,000
5 34/1000 Waiver 139 400,000
6 Increased Enrollment 140 6,400,000
7 Safe Schools 143 2,000,000
8 Teacher Mentor (R) 158 500,000
9 National Teacher Certification (R) 161 223,800
10 Allowance for County Transfers 264 967,986
11 Technology Repair
12 and Modernization 298 1,000,000
13 HVAC Technicians 355 460,803
14 Early Retirement
15 Notification Incentive 366 150,000
16 Teacher Reimbursement 573 200,000
17 Hospitality Training 600 400,000
18 Low Student Enrollment Allowance 615 450,000
19 HI-Y Youth in Government 616 100,000
20 Foreign Student Education (R) 636 85,381
21 State Teacher of the Year 640 41,008
22 Principals Mentorship 649 75,000
23 Allowance for Work
24 Based Learning 744 60,000
Ch. 6] APPROPRIATIONS

25 Teachers-Unclassified ................. 753 0
26 21st Century Learners .................. 886 2,700,000
27 BRIM Premium .......................... 913 357,557
28 Regional Education ......................
29 Service Agencies ....................... 972 4,200,000
30 Sparse Population Allocation .......... 973 525,000
31 Educational Program Allowance ....... 996 250,000
32 High Acuity Health Care ................
33 Needs Program ......................... 920 1,000,000
34 School Nurse Funding ................... 921 1,404,530
35 Pilot Program of Structured in-school 
36 Alternatives ............................ 826 100,000
37 Total ................................... $31,628,542

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

Any unexpended balances remaining in the appropriations for Collaborative Resource Allocation (fund 0313, activity 041), Educational Achievement Incentive (fund 0313, activity 042), Unclassified-Surplus (fund 0313, activity 097), Unclassified (fund 0313, activity 099), Teacher Mentor (fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), and Foreign Student Education (fund 0313, activity 636) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2006. It shall be available to those counties whose population falls at or below 2.5 students per square mile and which have more than 650 square miles for transportation purposes.

From the above appropriation for Educational Program Allowance (activity 996), $100,000 shall be expended for
Webster County Board of Education for Hacker Valley and $150,000 for the Randolph County Board of Education for Pickens School.

From the above appropriation for Low Student Enrollment Allowance, funds shall be allocated to county boards of education in accordance with the provisions of §18-9A-22 of the Code of West Virginia.

The above appropriation for Hospitality Training (activity 600), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

45-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2007 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 2007</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Special Education-Counties</td>
<td>159</td>
<td>$7,271,757</td>
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<tr>
<td>Special Education-Institutions</td>
<td>160</td>
<td>3,411,278</td>
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<tr>
<td>Education of Juveniles Held in</td>
<td></td>
<td></td>
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<tr>
<td>Predispositional Juvenile</td>
<td></td>
<td></td>
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<tr>
<td>Detention Centers</td>
<td>302</td>
<td>549,243</td>
</tr>
<tr>
<td>Education of Institutionalized</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juveniles and Adults (R)</td>
<td>472</td>
<td>12,846,002</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$24,078,280</td>
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</table>

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, activity 472) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.
From the above appropriation for Education of Institutionalized Juveniles and Adults (activity 472), funding shall be provided to Beckley and Burlington Centers at an amount no less than the allocations disbursed during Fiscal Year 2004.

From the above appropriation for Education of Institutionalized Juveniles and Adults (activity 472), an additional $200,000 has been provided for the Burlington Center.

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

46-State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2007 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Other Current Expenses</td>
<td>022</td>
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<tr>
<td>Professional Educators</td>
<td>151</td>
<td>794,196,310</td>
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<td>Service Personnel</td>
<td>152</td>
<td>259,242,494</td>
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<td>Fixed Charges</td>
<td>153</td>
<td>98,391,184</td>
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<tr>
<td>Transportation</td>
<td>154</td>
<td>51,792,029</td>
</tr>
<tr>
<td>Administration</td>
<td>155</td>
<td>3,088,910</td>
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<tr>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>33,000,000</td>
</tr>
<tr>
<td>Basic Foundation Allowances</td>
<td></td>
<td>$1,375,392,353</td>
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<tr>
<td>Less Local Share</td>
<td></td>
<td>(345,548,621)</td>
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<tr>
<td>Total Basic State Aid</td>
<td></td>
<td>$1,029,843,732</td>
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<tr>
<td>Public Employees' Insurance Matching</td>
<td>012</td>
<td>198,740,538</td>
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<tr>
<td>Teachers' Retirement System</td>
<td>019</td>
<td>29,420,500</td>
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<tr>
<td>Retirement Systems-</td>
<td></td>
<td></td>
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<tr>
<td>Unfunded Liability</td>
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<td>333,941,000</td>
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<td>School Building Authority</td>
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<td>23,345,983</td>
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<tr>
<td>Total</td>
<td></td>
<td>$1,615,291,753</td>
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</tbody>
</table>
### 47-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

**Fund 0390 FY 2007 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$944,568</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>17,086</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>356,000</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,210,000</td>
</tr>
<tr>
<td>Wood Products-Forestry Vocational Program</td>
<td>146</td>
<td>56,220</td>
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<tr>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>124,263</td>
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<tr>
<td>Vocational Aid</td>
<td>148</td>
<td>15,796,223</td>
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<tr>
<td>Adult Basic Education</td>
<td>149</td>
<td>3,523,665</td>
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<tr>
<td>Program Modernization</td>
<td>305</td>
<td>725,000</td>
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<tr>
<td>Technical and Secondary Program</td>
<td>330</td>
<td>270,148</td>
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<td>Improvement Staff</td>
<td>339</td>
<td>302,991</td>
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<tr>
<td>GED Testing</td>
<td>761</td>
<td>0</td>
</tr>
<tr>
<td>Vocational Programs</td>
<td>769</td>
<td>82,284</td>
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<tr>
<td>Aquaculture Support</td>
<td>839</td>
<td>13,000</td>
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<tr>
<td>FFA Grant Awards</td>
<td>840</td>
<td>300,000</td>
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<tr>
<td>Pre-Engineering Academy Program</td>
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<tr>
<td>Total</td>
<td></td>
<td>$23,721,448</td>
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</table>

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

(WV Code Chapters 18 and 18A)

**Fund 0573 FY 2007 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$369,911</td>
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<td>Annual Increment</td>
<td>004</td>
<td>3,200</td>
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</table>
### Ch. 6] Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>102,017</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>141,000</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>616,128</td>
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</table>

#### 49-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 0320 FY 2007 Org 0403**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>7,485,046</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,950</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,950,293</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,609,332</td>
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<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>81,347</td>
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<td>Total</td>
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</table>

#### DEPARTMENT OF EDUCATION AND THE ARTS

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

*Office of the Secretary*

(WV Code Chapter 5F)

**Fund 0294 FY 2007 Org 0431**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>790,725</td>
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<tr>
<td>2</td>
<td>Center for Professional Development (R)</td>
<td>115</td>
<td>2,003,718</td>
</tr>
<tr>
<td>3</td>
<td>Governor’s Honor Academy (R)</td>
<td>478</td>
<td>500,450</td>
</tr>
<tr>
<td>4</td>
<td>Professional Development Collaborative</td>
<td>629</td>
<td>950,000</td>
</tr>
<tr>
<td>5</td>
<td>Efficiency Savings</td>
<td>799</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Energy Express</td>
<td>861</td>
<td>450,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>4,509</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>4,699,402</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294 activity 115), Center for Professional Development-Principals’ Academy (fund 0294, activity 415), Governor’s Honor Academy (fund 0294, activity 478), and CPD-Math Initiative (fund 0294, activity 517) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

51-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2007 Org 0432

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>49,030</td>
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<td>010</td>
<td>1,011,154</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>492,664</td>
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<tr>
<td>Culture and History Programming</td>
<td>732</td>
<td>292,945</td>
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<tr>
<td>Capital Outlay and Maintenance</td>
<td>755</td>
<td>200,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>56,542</td>
</tr>
<tr>
<td>Historical Highway Marker Program</td>
<td>844</td>
<td>75,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$4,578,822</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment—Surplus (fund 0293, activity 677) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

The Unclassified appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a, article three, and chapter twelve of the code.
All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the arts fund and historical preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

52-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2007 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$943,093</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>29,700</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>367,411</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>228,087</td>
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<tr>
<td>5</td>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>161,576</td>
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<td>6</td>
<td>BRIM Premium</td>
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<td>29,772</td>
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<tr>
<td>7</td>
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<td>$1,759,639</td>
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</tbody>
</table>

53-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2007 Org 0439

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>56,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,072,090</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,042,966</td>
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<tr>
<td>5</td>
<td>Mountain Stage</td>
<td>249</td>
<td>300,000</td>
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<tr>
<td>6</td>
<td>Capital Outlay and Maintenance</td>
<td>755</td>
<td>100,000</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>71,856</td>
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<td>Total</td>
<td></td>
<td>$5,650,951</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0300, activity 099) at the close of the fiscal
year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

The Educational Broadcasting Authority is to continue assistance to the Allegheny Mountain Radio/WVNR.

54-State Board of Rehabilitation -

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2007 Org 0932

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>134,049</td>
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<tr>
<td>Independent Living Services</td>
<td>009</td>
<td>24,000</td>
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<td>Employee Benefits</td>
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<td>2,776,615</td>
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<tr>
<td>Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
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<tr>
<td>Supported Employment</td>
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<tr>
<td>Extended Services</td>
<td>206</td>
<td>119,032</td>
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<tr>
<td>Ron Yost Personal Assistance Fund (R)</td>
<td>407</td>
<td>340,000</td>
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<tr>
<td>Employment Attendant</td>
<td></td>
<td></td>
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<tr>
<td>Care Program</td>
<td>598</td>
<td>179,000</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>200,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>67,033</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$12,676,580</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for the Unclassified-Surplus (fund 0310, activity 097), Ron Yost Personal Assistance Fund (fund 0310, activity 407), and Capital Outlay and Maintenance (fund 0310, activity 755) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

Any unexpended balance remaining in the appropriation for Technology-Related Assistance Revolving Loan Fund for
23 Individuals with Disabilities (fund 0310, activity 766) is hereby reappropriated for expenditure during the fiscal year 2007 and may be transferred to a special account for the purpose of disbursement or loan.

27 From the above appropriation for Workshop Development (activity 163), funds shall be used exclusively with the private non-profit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those 31 organizations.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

55-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2007 Org 0311

1 Personal Services ...................... 001 $ 71,930
2 Annual Increment ...................... 004 400
3 Employee Benefits .................... 010 20,925
4 Unclassified .......................... 099 45,916
5 Total ................................. $ 139,171

56-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2007 Org 0313

1 Personal Services ...................... 001 $ 3,444,562
2 Annual Increment ...................... 004 50,703
3 Employee Benefits .................... 010 1,191,146
4 Unclassified .......................... 099 905,444
5 Dam Safety ............................ 607 204,225
6 WV Contribution to River Commissions    776  148,485
7 Efficiency Savings                    799    0
8 Office of Water Resources
9 Non-Enforcement Activity           855  1,118,255
10 BRIM Premium                       913    56,802
11 Welch DEP Office
12 Continuing Operation              993  79,115
13 Total                              $7,198,737

57-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2007 Org 0325

1 Unclassified                         099  $ 94,210
2 BRIM Premium                         913  2,916
3 Total                                $ 97,126

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES

58-Department of Health and Human Resources-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2007 Org 0501

1 Unclassified                         099  $ 139,883
2 Women’s Commission                  191  133,942
3 Commission for the Deaf
4 and Hard of Hearing                 704  269,034
5 Efficiency Savings                  799    0
6 Total                                $ 542,859

7 Any unexpended balance remaining in the appropriation for
8 the Rural Health Care Providers Revolving Loan Fund-Surplus
9 (fund 0400, activity 674) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

59-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2007 Org 0506

<table>
<thead>
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<th>Service Description</th>
<th>Fund</th>
<th>FY 2007 Org 0506</th>
<th>Budgeted Amount</th>
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<td>Level 1, 2 and 3 Trauma Centers</td>
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<tr>
<td>Women, Infants and Children</td>
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<td>Basic Public Health</td>
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<td>Cancer Registry</td>
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<td>CARDIAC Project</td>
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<td>State EMS Technical Assistance</td>
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<td>EMS Program for Children</td>
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<td>Statewide EMS Program Support</td>
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<td>Primary Care Centers-</td>
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<td>Mortgage Finance</td>
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<td>Center for End of Life</td>
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<td>Women’s Right to Know</td>
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<td>Pediatric Dental Services</td>
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<td>Adult Influenza Vaccine</td>
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<td>Tuberculosis Control</td>
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26 Maternal and Child Health Clinics,  
27 Clinicians and Medical Contracts  
28 and Fees (R) ......................... 575 4,625,371  
29 Epidemiology Support .................. 626 1,137,038  
30 Primary Care Support .................. 628 7,385,091  
31 Grant Programs ......................... 694 0  
32 State Aid to Local Health Departments  702 10,700,718  
33 Health Right Free Clinics .............. 727 2,749,336  
34 Child and Family Services .............. 736 0  
35 Healthy Lifestyles ..................... 778 68,000  
36 Emergency Response Entities  
37 Special Projects ....................... 822 800,000  
38 Assistance to Primary Health Care  
39 Centers Community  
40 Health Foundation ..................... 845 1,400,000  
41 Osteoporosis and Arthritis Prevention .. 849 280,000  
42 BRIM Premium .......................... 913 211,214  
43 Total .................................. $ 61,122,865  

Any unexpended balances remaining in the appropriations for Unclassified (fund 0407, fiscal year 1997, activity 099) and Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

From the Unclassified line item, $50,000 shall be expended for the West Virginia Aids Coalition.

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

Included in the above appropriation for Primary Care Centers-Mortgage Finance is $50,000 for the mortgage payment
for the Lincoln Primary Care Center, Inc.; $53,140 for the mortgage payment for the Monroe Health Center; $42,564 for the mortgage payment for Roane County Family Health Care, Inc.; $25,000 for the mortgage payment for the Tug River Health Association, Inc.; $48,000 for the mortgage payment for the Primary Care Systems (Clay); $10,800 for the mortgage payment for the Belington Clinic; $30,000 for the mortgage payment for the Tri-County Health Clinic; $15,000 for the mortgage payment for Valley Health Care (Randolph); $58,560 for the mortgage payment for Valley Health Systems, Inc. (Woman’s Place and Harts Health Clinic); $46,958 for the mortgage payment for Ritchie County Primary Care Association, Inc.; $8,000 for the mortgage payment for Northern Greenbrier Health Clinic; $12,696 for the mortgage payment for the Women’s Care, Inc. (Putnam); $25,000 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $20,000 for the mortgage payment for the North Fork Clinic (Pendleton); $40,000 for the mortgage payment for the Pendleton Community Care; $27,000 for the mortgage payment for South Branch Health Facility (Upper Tract); $38,400 for the mortgage payment for Clay-Battelle Community Health Center; $33,600 for the mortgage payment for Mountaineer Health Clinic in Paw Paw; $13,000 for the mortgage payment for the St. George Medical Clinic; $28,000 for the mortgage payment for the Bluestone Health Center; $45,000 for the mortgage payment for Wheeling Health Right; $48,000 for the mortgage payment for the Minnie Hamilton Health Care Center, Inc.; and $54,000 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.

From the above appropriation for State Aid to Local Health Departments $20,000 shall be used, along with any grants that may be obtained, for the purpose of contracting with an independent consultant to conduct a comprehensive study, administered by Local Health Inc., of the revenues of the state’s local health departments to develop a method for the distribu-
tion of state funds to local health departments that will best serve the citizens of the state.

Also included in the above appropriation for State Aid to Local Health Departments is the additional money required to annualize the pay raise provided during the fourth extraordinary session of the Legislature, two thousand five for all health department employees.

60-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Item Description</th>
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<td>Special Olympics</td>
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<td>26,074</td>
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<tr>
<td>Behavioral Health Program-</td>
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<tr>
<td>Unclassified (R)</td>
<td>219</td>
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<td>Family Support Act</td>
<td>221</td>
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<td>Institutional Facilities Operations</td>
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<td>Capital Outlay (R)</td>
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<td>Capital Outlay and Maintenance</td>
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<td>Colin Anderson</td>
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<td>Community Placement (R)</td>
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<td>Renaissance Program</td>
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Any unexpended balances remaining in the appropriations for Behavioral Health Program-Unclassified (fund 0525, activity 219), Capital Outlay (fund 0525, activity 511), Capital Outlay, Repairs and Equipment-Surplus (fund 0525, activity 677), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.
The secretary shall, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health-hospital services revenue account (fund 5156, activity 335) and tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2006, the sum of one hundred sixty thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

Additional funds have been appropriated in fund 5124, fiscal year 2007, organization 0506 and fund 5156, fiscal year 2007, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

Included in the appropriation to Institutional Facilities Operations (fund 0525, activity 335), an amount of $10,200,000 has been added to offset any potential cash shortfall in the division of health, tobacco settlement expenditure fund (fund 5124, org 0506, activity 335). The $10,200,000 or any amount thereof may only be expended to the extent the cash balance and the cash receipts are less than the appropriation in the tobacco settlement expenditure fund (fund 5124, org 0506, activity 335).

61-Division of Health-

West Virginia Drinking Water Treatment
(WV Code Chapter 16)

Fund 0561 FY 2007 Org 0506

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

3 The above appropriation for Drinking Water Treatment Revolving Fund-Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving-Administrative Expense Fund as provided by chapter sixteen of the code.

62-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2007 Org 0510

1 Personal Services ......................... 001 $ 689,517
2 Annual Increment .......................... 004 16,000
3 Employee Benefits ....................... 010 224,705
4 Unclassified .............................. 099 261,293
5 BRIM Premium .............................. 913 19,326
6 Total .................................... $ 1,210,841

63-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2007 Org 0511

1 Personal Services ......................... 001 $ 21,417,512
2 Annual Increment .......................... 004 620,313
3 Employee Benefits ....................... 010 8,526,308
4 Unclassified .............................. 099 13,469,104
5 Child Care Development .................. 144 1,254,213
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<td>6</td>
<td>Medical Services Contracts and Office of Managed Care</td>
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<td>Medical Services (R)</td>
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<td>Family Preservation Program</td>
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<td>11</td>
<td>Family Resource Networks (R)</td>
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<td>12</td>
<td>Domestic Violence Legal Services Fund</td>
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<td>13</td>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
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<td>Child Protective Services Case Workers</td>
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<td>Child Welfare System</td>
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<td>Child Support Enforcement</td>
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<td>Medicaid Auditing</td>
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<td>Child Care Maintenance of Effort Match</td>
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<td>23</td>
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<td>24</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
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<td>25</td>
<td>Indigent Burials (R)</td>
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<td>Rural Hospitals Under 150 Beds</td>
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Any unexpended balances remaining in the appropriations for Social Services-Surplus (fund 0403, activity 082), Medical Services (fund 0403, activity 189), Family Resource Networks (fund 0403, activity 274), and Indigent Burials (fund 0403, activity 851) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

From the above appropriation for Medical Services (fund 0403, activity 189) an amount not to exceed $15,000,000 may be transferred to the Division of Health—Tobacco Settlement Expenditure Fund—Institutional Facilities Operations (fund 5124, activity 335) in order to offset any cash flow shortfalls that may occur due to the timing of deposits into the Tobacco Settlement Expenditure Fund. Any funds so transferred from fund 0403 to fund 5124 shall be reimbursed to fund 0403 no later than June 1, 2007.

From the above appropriation for Medical Services (fund 0403, activity 189) an amount not to exceed $3,700,000 shall be designated for the Title XIX Waiver for Senior Citizens.

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

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than five percent of the funds appropriated to one line item may be transferred to other line items: Provided, however, That no funds from other line items shall be transferred to the personal services line item.
From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), $500,000 shall be divided equally and distributed among the thirteen (13) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV).

Any unexpended balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), shall be distributed according to the formula established by the Family Protection Services Board.

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

The above appropriation for Family Resource Networks (activity 274) is to be subject to the control and oversight of the Governor’s Cabinet on Children and Families and may only be administered and disbursed by the Division of Human Services upon the delegation of this authority to the Division of Human Services by the Governor’s Cabinet on Children and Families as provided by West Virginia Code §5-26-4(4) for the benefit of family resource networks, early parent education services and starting points centers.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

64-Department of Military Affairs and Public Safety-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2007 Org 0601

1 Unclassified (R) ....................... 099  $ 508,197
Any unexpended balance remaining in the appropriation for Unclassified (fund 0430, activity 099) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

65-Adjutant General-

State Militia

(FW Code Chapter 15)

Fund 0433 FY 2007 Org 0603

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<th>Item</th>
<th>Description</th>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
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<td>5</td>
<td>College Education Fund (R)</td>
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<td>6</td>
<td>Mountaineer ChalleNGe Academy</td>
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<td>1,200,000</td>
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<td>7</td>
<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, activity 099), College Education Fund (fund 0433, activity 232), and Armory Capital Improvements—Surplus (fund 0433, activity 325) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2007 Org 0603

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

67-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2007 Org 0605

1 Personal Services .................. 001 $160,549
2 Annual Increment .................. 004 1,744
3 Employee Benefits .................. 010 214,202
4 Unclassified ....................... 099 188,806
5 Salaries of Members of West Virginia Parole Board 227 455,000
6 BRIM Premium ...................... 913 16,310
7 Total ............................. $1,036,611

68-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2007 Org 0606

1 Personal Services .................. 001 $299,696
2 Annual Increment .................. 004 3,450
3 Employee Benefits .................. 010 114,238
4 Radiological Emergency Preparedness 554 30,000
5 Federal Funds/Grant Match (R) ........ 749 742,344
6  Mine and Industrial Accident Rapid Response Call Center 781 297,480
7  Early Warning Flood System (R) 877 510,584
9  BRIM Premium 913 35,158
Total $2,032,950

Any unexpended balances remaining in the appropriations for Flood Reparations (fund 0443, activity 400), Federal Funds/Grant Match (fund 0443, activity 749), Federal Settlement-Surplus (fund 0443, activity 876), Early Warning Flood System (fund 0443, activity 877), and Homeland Security Grant Match—Surplus (fund 0443, activity 957) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

69-Division of Corrections-

Central Office

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

Fund 0446 FY 2007 Org 0608

1  Personal Services 001 $ 366,701
2  Annual Increment 004 5,775
3  Employee Benefits 010 121,535
4  Unclassified 099 97,594
Total $ 591,605

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

70-Division of Corrections-

Correctional Units
### Appropriations

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

**Fund 0450 FY 2007 Org 0608**

<table>
<thead>
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<td>Charleston Work Release</td>
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<td>Beckley Correctional Center</td>
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<td>Huntington Work Release</td>
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<td>Anthony Center</td>
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<td>Huttonsville Correctional Center</td>
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<td>Northern Correctional Facility</td>
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<td>Inmate Medical Expenses (R)</td>
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<td>Pruntytown Correctional Center</td>
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<td>Payments to Federal, County and/or Regional Jails</td>
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<td>Corrections Academy</td>
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<td>Martinsburg Correctional Center</td>
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<td>Special Services</td>
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<td>Contractual Correctional Services</td>
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<td>Stephens Correctional Facility</td>
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<td>Denmar Correctional Facility</td>
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<td><strong>Total</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Payments to Federal, County and/or Regional Jails-Surplus (fund 0450, activity 008), Capital Outlay (fund 0450, activity 511), Inmate Medical Expenses (fund 0450, activity 535),
Capital Outlay and Maintenance (fund 0450, activity 755), and Inmate Medical Expenses—Surplus(fund 0450, activity 846) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

The commissioner of corrections shall, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment.

The commissioner of corrections shall also have the authority to transfer between line items appropriated to the individual correctional units above and may transfer funds from the individual units to Payments to Federal, County and/or Regional Jails (fund 0450, activity 555) or Inmate Medical Expenses (fund 0450, activity 535).

From the above appropriation to Unclassified, on July 1, 2006, the sum of three hundred thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

71-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2007 Org 0612

1 Personal Services ....................... 001 $34,840,740
2 Annual Increment ....................... 004 199,000
3 Employee Benefits ...................... 010 7,412,504
<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
</tr>
<tr>
<td>Communications and Other Equipment (R)</td>
<td>558</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
</tr>
<tr>
<td>Retirement Systems-Unfunded Liability</td>
<td>775</td>
</tr>
<tr>
<td>Handgun Administration Expense</td>
<td>747</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance</td>
<td>755</td>
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<tr>
<td>Automated Fingerprint Identification System</td>
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<td>BRIM Premium</td>
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<tr>
<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Trooper Class (fund 0453, activity 521), Communications and Other Equipment (fund 0453, activity 558), Barracks Maintenance and Construction-Surplus (fund 0453, activity 669), and Law Enforcement-Special Projects (fund 0453, activity 787) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

From the above appropriation for Capital Outlay and Maintenance, the sum of $250,000 shall be utilized for the construction of a new detachment in Calhoun County, provided that the Calhoun County Board of Education is willing to donate the land for the site to the State Police, and provided further that any site preparation needed on the site shall be completed as part of the donation.

From the above appropriation for Unclassified, an amount not less than $25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.
### Fund 0456 FY 2007 Org 0613

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>32,880</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>415,876</td>
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<td>Unclassified</td>
<td>099</td>
<td>77,217</td>
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<tr>
<td>Veterans’ Field Offices</td>
<td>228</td>
<td>175,985</td>
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<tr>
<td>Veterans’ Nursing Home</td>
<td>286</td>
<td>5,437,815</td>
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<tr>
<td>Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,000</td>
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<tr>
<td>Veterans’ Reeducation Assistance</td>
<td>329</td>
<td>211,604</td>
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<tr>
<td>Veterans’ Grant Program (R)</td>
<td>342</td>
<td>150,000</td>
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<tr>
<td>Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
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<tr>
<td>Educational Opportunities for Children of Deceased Veterans</td>
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<td>100,000</td>
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Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), and Veterans’ Bonus (fund 0456, activity 483) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

### 73-Division of Veterans’ Affairs-

*Veterans’ Home*
Ch. 6] APPROPRIATIONS

(WV Code Chapter 9A)

Fund 0460 FY 2007 Org 0618

<table>
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<td>4</td>
<td>Unclassified</td>
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<td>33,609</td>
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<td>Total</td>
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74-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2007 Org 0619

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<th>Description</th>
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<td>1</td>
<td>Safe Schools Hotline—Total</td>
<td>093</td>
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75-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2007 Org 0620

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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>81,958</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>129,583</td>
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<td>5</td>
<td>Community Corrections (R)</td>
<td>561</td>
<td>800,000</td>
</tr>
<tr>
<td>6</td>
<td>Statistical Analysis Program</td>
<td>597</td>
<td>49,228</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>1,660</td>
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<td>8</td>
<td>Total</td>
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<td>$1,308,489</td>
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Any unexpended balances remaining in the appropriations for Community Corrections—Surplus(fund 0546, activity 060) and Community Corrections (fund 0546, activity 561) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.
### Appropriations

**76-Division of Juvenile Services**

**(WV Code Chapter 49)**

**Fund 0570 FY 2007 Org 0621**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity No.</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Robert L. Shell Juvenile Center (R)</td>
<td>267</td>
<td>$1,950,077</td>
</tr>
<tr>
<td>Central Office (R)</td>
<td>701</td>
<td>2,198,945</td>
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<tr>
<td>Juvenile Services Operations</td>
<td>742</td>
<td>0</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance</td>
<td>755</td>
<td>500,000</td>
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<tr>
<td>Southern WV Youth Diagnostic Center (R)</td>
<td>792</td>
<td>1,943,734</td>
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<tr>
<td>Gene Spadaro Juvenile Center (R)</td>
<td>793</td>
<td>1,953,473</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>113,016</td>
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<tr>
<td>WV Industrial Home for Youth (R)</td>
<td>979</td>
<td>10,732,462</td>
</tr>
<tr>
<td>Davis Center (R)</td>
<td>980</td>
<td>2,731,677</td>
</tr>
<tr>
<td>Eastern Juvenile Center (R)</td>
<td>981</td>
<td>2,039,960</td>
</tr>
<tr>
<td>Northern Juvenile Center (R)</td>
<td>982</td>
<td>1,195,265</td>
</tr>
<tr>
<td>North Central Juvenile Center (R)</td>
<td>983</td>
<td>1,733,467</td>
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<tr>
<td>Southern Juvenile Center (R)</td>
<td>984</td>
<td>1,797,896</td>
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<tr>
<td>Tiger Morton Juvenile Center (R)</td>
<td>985</td>
<td>1,916,326</td>
</tr>
<tr>
<td>Donald Kuhn Juvenile Center (R)</td>
<td>986</td>
<td>1,731,523</td>
</tr>
<tr>
<td>J.M. “Chick” Buckbee Juvenile Center (R)</td>
<td>987</td>
<td>1,872,217</td>
</tr>
<tr>
<td>Salem Canine (R)</td>
<td>988</td>
<td>91,191</td>
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<tr>
<td>Davis Canine (R)</td>
<td>989</td>
<td>86,701</td>
</tr>
<tr>
<td>The Academy</td>
<td>990</td>
<td>130,622</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$34,718,552</strong></td>
</tr>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0570, activity 099), Robert L. Shell Juvenile Center (fund 0570, activity 267), Donald R. Kuhn Diagnostic Center (fund 0570, activity 283), Central Office (fund 0570, activity 701), Southern WV Youth Diagnostic Center (fund 0570, activity 792), Gene Spadaro Juvenile Center (fund 0570, activity 793), WV Industrial Home for Youth (fund 0570, activity 979), Davis Center (fund 0570, activity 980),
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31 Eastern Regional Juvenile Center (fund 0570, activity 981),
32 Northern Regional Juvenile Center (fund 0570, activity 982),
33 North Central Regional Juvenile Center (fund 0570, activity
34 983), Southern Regional Juvenile Center (fund 0570, activity
35 984), Tiger Morton Center (fund 0570, activity 985), Donald R.
36 Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick"
37 Buckbee Juvenile Center (fund 0570, activity 987), Salem
38 Canine (fund 0570, activity 988), Davis Canine (fund 0570,
39 activity 989), The Academy (fund 0570, activity 990), and Mt.
40 Hope Juvenile Center (fund 0570, activity 991) at the close of
41 the fiscal year 2006 are hereby reappropriated for expenditure
42 during the fiscal year 2007.

43 The director shall, within fifteen days after the close of each
44 six-month period of said fiscal year, file with the legislative
45 auditor and the department of revenue an itemized report of
46 expenditures made during the preceding six-month period. Such
47 report shall include the total expenditures made for personal
48 services, annual increment, current expenses, repairs and
49 alterations, and equipment.

50 From the above appropriations, on July 1, 2006, the sum of
51 fifty thousand dollars shall be transferred to the department of
52 agriculture-land division as advance payment for the purchase
53 of food products; actual payments for such purchases shall not
54 be required until such credits have been completely expended.

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

77-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2007 Org 0622

1 Personal Services ....................... 001 $ 995,511
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Activity</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>14,250</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>377,766</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td></td>
<td>451,150</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td>7,707</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td></td>
<td>$1,846,384</td>
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</table>

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, activity 070) and Unclassified (fund 0585, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

**DEPARTMENT OF REVENUE**

*78-Office of the Secretary*

*(WV Code Chapter 11)*

**Fund 0465 FY 2007 Org 0701**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Activity</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>$629,783</td>
</tr>
<tr>
<td>2</td>
<td>Revenue Shortfall Reserve</td>
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<tr>
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<td>Fund-Transfer</td>
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<td></td>
<td>0</td>
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<tr>
<td>4</td>
<td>Efficiency Savings</td>
<td>799</td>
<td></td>
<td>0</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td></td>
<td>$629,783</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0465, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

*79-Tax Division*

*(WV Code Chapter 11)*

**Fund 0470 FY 2007 Org 0702**

<table>
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<tr>
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<th>Description (R)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R)</td>
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<table>
<thead>
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<th>Item</th>
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</thead>
<tbody>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>259,060</td>
</tr>
<tr>
<td>3 Employee Benefits (R)</td>
<td>010</td>
<td>4,615,192</td>
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<tr>
<td>4 Unclassified (R)</td>
<td>099</td>
<td>6,360,469</td>
</tr>
<tr>
<td>5 GIS Development Project (R)</td>
<td>562</td>
<td>150,000</td>
</tr>
<tr>
<td>6 Remittance Processor (R)</td>
<td>570</td>
<td>381,015</td>
</tr>
<tr>
<td>7 Multi State Tax Commission</td>
<td>653</td>
<td>77,958</td>
</tr>
<tr>
<td>8 BRIM Premium</td>
<td>913</td>
<td>14,420</td>
</tr>
<tr>
<td>9 Total</td>
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<td>$24,644,706</td>
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</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), Tax Technology Upgrade (fund 0470, activity 094), Unclassified-Surplus (fund 0470, activity 097), Unclassified (fund 0470, activity 099), Integrated Tax Accounting System (fund 0702, activity 292), Tax Technology Upgrade-Surplus (fund 0470, activity 450), GIS Development Project (fund 0470, activity 562), and Remittance Processor (fund 0470, activity 570) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

80-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2007 Org 0703

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified (R)</td>
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<td>$1,111,333</td>
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<td>2 Pay Equity Reserve</td>
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<td>$250,000</td>
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<tr>
<td>3 Total</td>
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<td>$1,361,333</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified—Total(fund 0595, activity 096) and Unclassified (fund 0595, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.
81-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2007 Org 0709

1 Unclassified-Total (R) ................. 096 $ 659,564

2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 0593, activity 096) at the close of the
4 fiscal year 2006 is hereby reappropriated for expenditure during
5 the fiscal year 2007.

82-Division of Professional and Occupational Licenses-

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2007 Org 0933

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

DEPARTMENT OF TRANSPORTATION

83-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2007 Org 0804

1 Unclassified .......................... 099 $ 2,918,992
2 BRIM Premium .......................... 913 253,309
3 Total ................................. $ 3,172,301

4 From the above appropriation for Unclassified (activity
5 099), $30,000 shall be expended for improvements at the
6 Duffield Station.
84-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2007 Org 0805

1 Unclassified (R) ................. 099 $ 1,258,342
2 Federal Funds/Grant Match (R) .... 749 1,265,000
3 Total ................................ $ 2,523,342

Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

85-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2007 Org 0806

1 Unclassified (R) ................. 099 $ 432,360
2 BRIM Premium .................... 913 599
3 Total .............................. $ 432,959

Any unexpended balances remaining in the appropriations for Unclassified-Total (fund 0581, activity 096) and Unclassified (fund 0581, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

86-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2007 Org 0807

1 Unclassified (R) ................. 099 $1,366,394
Civil Air Patrol ........................................... 234 $105,258
Total ................................................... $1,471,652

Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

From the above appropriation for Unclassified, the sum of $110,000 shall be distributed equally to each of the eleven local Civil Air Patrol Squadrons.

**HIGHER EDUCATION**

87-West Virginia Council for

*Community and Technical College Education*

*Control Account*

(WV Code Chapter 18B)

**Fund 0596 FY 2007 Org 0420**

<table>
<thead>
<tr>
<th>Institution</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>New River Community and Technical College</td>
<td>358</td>
<td>$4,429,955</td>
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<tr>
<td>of Bluefield State College</td>
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<td></td>
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<tr>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>707,600</td>
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<tr>
<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>1,990,948</td>
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<td>Fairmont State Community and Technical College</td>
<td>421</td>
<td>7,892,952</td>
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<td>Shepherd Community and Technical College</td>
<td>434</td>
<td>0</td>
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<tr>
<td>West Virginia State Community and Technical College</td>
<td>445</td>
<td>3,074,167</td>
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<td>Southern West Virginia Community and Technical College</td>
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## APPROPRIATIONS

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</thead>
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<td>15</td>
<td>West Virginia Northern Community and Technical College</td>
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<td>West Virginia University Institute</td>
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<td>for Technology Community and</td>
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<td></td>
<td>Technical College</td>
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<td>18</td>
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</tr>
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<td></td>
<td>Technical College</td>
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<td>5,483,460</td>
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<td>19</td>
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<td></td>
<td>Technical College</td>
<td>885</td>
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<tr>
<td></td>
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<td>2,531,131</td>
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<tr>
<td>20</td>
<td>College Transition Program</td>
<td>887</td>
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<tr>
<td></td>
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<td>333,500</td>
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<tr>
<td>21</td>
<td>West Virginia Advance Workforce</td>
<td>893</td>
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<td></td>
<td></td>
<td>2,000,000</td>
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<td>22</td>
<td>College Transition Program</td>
<td>894</td>
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<tr>
<td></td>
<td></td>
<td>1,000,000</td>
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<tr>
<td>23</td>
<td>Total</td>
<td>894</td>
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<tr>
<td></td>
<td></td>
<td>$55,754,240</td>
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</table>

Any unexpended balance remaining in the appropriation for the West Virginia Council for Community and Technical Education (fund 0596, activity 392) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

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

88-Higher Education Policy Commission-

Administration-

Control Account

(WV Code Chapter 18B)

**Fund 0589 FY 2007 Org 0441**

<table>
<thead>
<tr>
<th>Code</th>
<th>Unclassified</th>
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</tr>
</thead>
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<td>Appropriation Description</td>
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<tr>
<td>2</td>
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<tr>
<td>3</td>
<td>VISTA E-Learning (R)</td>
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<tr>
<td>4</td>
<td>PROMISE Scholarship—Transfer</td>
<td>800</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
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<tr>
<td>6</td>
<td>Higher Education Grant Program</td>
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<td>7</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Higher Education-Special Projects (fund 0589, activity 488), VISTA E-Learning (fund 0589, activity 519), and Vice Chancellor for Health Sciences-Rural Health Initiative Program and Site Support (fund 0589, activity 595) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

The above appropriation for PROMISE Scholarship-Transfer (activity 800) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by chapter eighteen-c, article seven, section seven.

89-Higher Education Policy Commission-

System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2007 Org 0442

<table>
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<th></th>
<th>Description</th>
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<tr>
<td>2</td>
<td>Eastern Division</td>
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<td>3</td>
<td>Marshall Medical School</td>
<td>173</td>
<td>9,062,522</td>
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<td>4</td>
<td>WVU—School of Health Sciences</td>
<td>174</td>
<td>13,195,226</td>
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<td>5</td>
<td>WVU School of Health Sciences -</td>
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<td>6</td>
<td>Charleston Division</td>
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<td>Program Support (R)</td>
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<tr>
<td>9 Bluefield State College</td>
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<td>5,133,813</td>
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<tr>
<td>10 Concord University</td>
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<td>11 Fairmont State University</td>
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<td>14 West Liberty State College</td>
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<td>16 Marshall University</td>
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<td>17 Marshall University Medical School</td>
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<td>1,015,462</td>
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<tr>
<td>18 BRIM Subsidy</td>
<td>460</td>
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<td>19 West Virginia University</td>
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<tr>
<td>20 West Virginia University School of Medicine BRIM Subsidy</td>
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<td>21 West Virginia University Institute for Technology</td>
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<td>7,925,335</td>
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<tr>
<td>22 State Priorities-Brownfield Professional Development (R)</td>
<td>531</td>
<td>800,000</td>
<td></td>
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<tr>
<td>23 West Virginia University—Potomac State</td>
<td>994</td>
<td>4,149,540</td>
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<td>24 Total</td>
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<td>$257,131,482</td>
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</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0586, activity 177), Jackson’s Mill (fund 0586, activity 461), State Priorities-Brownfield Professional Development (fund 0586, activity 531), and Jackson’s Mill-Surplus (fund 0586, activity 842) at the close of fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

Included in the above appropriation for WVU—School of Health Sciences is $511,105 for the WVU Charleston Division Poison Control Hotline. This amount shall be enhanced by an allocation for the director’s salary as well as in-kind assistance. These amounts shall be allocated equally among the four quarters of the fiscal year for disbursement to the WVU-Charleston Division Poison Control Hotline. Included in the appropriation for West Virginia University is funding for the WVU College of Law, which shall continue to operate as the State’s exclusive public college of law. Also included is $800,000 for the Blanchette Rockefeller Project.

Included in the above appropriation for West Virginia University is $34,500 for the Marshall and WVU Faculty and Course Development International Study Project, $246,429 for the WVU Law School—Skills Program, $147,857 for the WVU Coal and Energy Research Bureau, $19,714 for the WVU College of Engineering and Mineral Resources—Diesel Training—Transfer, $165,000 for the WVU-Sheep Study/Potomac Equine Program, $500,000 for the Mining Engineering Program, $500,000 for the Center for Multiple Sclerosis Program, $75,000 for Reedsville Farm for capital improvements and equipment, $75,000 for Stewarts Town Farm for capital improvements and equipment, $200,000 for Reymann Memorial Farm for capital improvements and equipment, $100,000 for the Completion of an arena at Reymann Memorial Farm, $80,000 for a Landscape Architect at Davis College of Forestry Agriculture and Consumer Sciences, $100,000 for the WVU-Soil Testing Program, $100,000 for a veterinarian, 50,000 for the WVU Cancer Study, 220,000 for the WVU Petroleum Engineering Program and $100,000 for the rifle team.
Included in the above appropriation for Marshall Medical School is $417,351 for the Marshall University Forensic Lab and $175,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University-Southern WV CTC 2+2 Program and $795,597 for the Marshall University Autism Training Center.

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

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

Included in the above appropriation for WVU-Potomac State is $50,000 for maintenance, repairs and equipment and $75,000 for Potomac State Farms for maintenance, repairs and equipment.

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

From the above appropriations to the respective medical schools, the line items for BRIM subsidies funding shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to each institution as part of the full cost of their malpractice insurance coverage.

90-Higher Education Policy Commission—

Legislative-

Funding Priorities
Any unexpended balances remaining in the appropriations for Higher Education—Special Projects (fund 0591, activity 488), Independently Accredited Community and Technical College Development (fund 0591, activity 491), and Research Challenge (fund 0591, activity 502) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

The above appropriation shall be allocated only to the State’s post-secondary institutions with compacts approved by the Higher Education Policy Commission or West Virginia Council for Community and Technical College Education, as stated in §18B-1A-5.

Total TITLE II, Section 1-

General Revenue ................ $3,629,099,788

Sec. 2. Appropriations from state road fund.-From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter eleven-b of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand seven.

DEPARTMENT OF TRANSPORTATION

91-Division of Motor Vehicles

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

Fund 9007 FY 2007 Org 0802
### State Road Activity Fund

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>214,525</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,901,381</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$17,617,666</td>
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<tr>
<td>Total</td>
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<td>$37,332,555</td>
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</tbody>
</table>

#### 92-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2007 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
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<tr>
<td>Maintenance</td>
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<td>256,700,000</td>
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<tr>
<td>Maintenance, Contract Paving and Secondary Road</td>
<td>272</td>
<td>37,000,000</td>
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<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>30,000,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>275</td>
<td>2,000,000</td>
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<tr>
<td>Equipment Revolving</td>
<td>276</td>
<td>15,000,000</td>
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<tr>
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<td>277</td>
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<tr>
<td>Interstate Construction</td>
<td>278</td>
<td>84,000,000</td>
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<tr>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>325,700,000</td>
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<tr>
<td>Appalachian Programs</td>
<td>280</td>
<td>150,000,000</td>
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<tr>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>25,000,000</td>
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<tr>
<td>Highway Litter Control</td>
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<td>1,664,000</td>
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<tr>
<td>PSC Weight Enforcement</td>
<td>345</td>
<td>4,667,295</td>
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<tr>
<td>Total</td>
<td></td>
<td>$1,015,231,295</td>
</tr>
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</table>

The above appropriation for PSC Weight Enforcement (activity 345) shall be transferred to the Public Service Commission Fund (fund 8623).
The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

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

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

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

From the above appropriation, $125,000 is for King Coal Highway Authority; $125,000 is for Coal Field Expressway Authority; $100,000 is for Coal Heritage Highway Authority; $100,000 is for Coal Heritage Area Authority; $25,000 is for Little Kanawha River Parkway; $50,000 is for Midland Trail Scenic Highway Association; $57,000 is for Shawnee Parkway
Authority; $100,000 is for Corridor G Highway Authority; $125,000 is for Corridor H Authority, and $200,000 is for repairs to Pennco Road.

Additionally, the department shall assist the Federal Government in the construction, engineering and financing of an access road to the Beckley Veterans Administration Medical Center.

Sec. 3. Appropriations from other funds.-From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, eleven-b of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand seven.

LEGISLATIVE

93-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2007 Org 2300

<table>
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<th>Activity</th>
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<tr>
<td>Annual Increment</td>
<td>$5,000</td>
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<tr>
<td>Employee Benefits</td>
<td>$75,000</td>
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<td>Unclassified</td>
<td>$55,603</td>
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<tr>
<td>Economic Loss Claim</td>
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<tr>
<td>Payment Fund (R)</td>
<td>$2,921,500</td>
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<tr>
<td>Total</td>
<td>$3,271,103</td>
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</table>

*CLERK’S NOTE: The Governor struck language on line 52 through line 53.
Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

EXECUTIVE

94-Auditor’s Office-

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2007 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td>Personal Services</td>
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<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
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</table>

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

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

95-Auditor’s Office-

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2007 Org 1200
Ch. 6] APPROPRIATIONS 141

1 Personal Services .................. 001 $ 1,083,357
2 Annual Increment ................... 004 14,700
3 Employee Benefits ................. 010 357,839
4 Unclassified ...................... 099 1,391,122
5 Total .......................... $ 2,847,018

96-Auditor’s Office-

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2007 Org 1200

1 Unclassified-Total ................. 096 $ 400,000

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

97-Auditor’s Office-

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2007 Org 1200

1 Unclassified-Total ................. 096 $ 1,216,702

98-Auditor’s Office-

Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2007 Org 1200

1 Personal Services ................. 001 $ 1,931,509
### APPROPRIATIONS

<table>
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<th>Code</th>
<th>Amount</th>
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<tr>
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**99-Treasurer’s Office**

**College Prepaid Tuition and Savings Program**

**Administrative Account**

(WV Code Chapter 18)

**Fund 1301 FY 2007 Org 1300**

<table>
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<tr>
<th></th>
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**100-Treasurer’s Office**

**Technology Support and Acquisition**

(WV Code Chapter 12)

**Fund 1329 FY 2007 Org 1300**

<table>
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**101-Department of Agriculture**

**Agriculture Fees Fund**

(WV Code Chapter 19)

**Fund 1401 FY 2007 Org 1400**

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<td>3</td>
<td>Employee Benefits</td>
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</table>
### 102-Department of Agriculture -

**West Virginia Rural Rehabilitation Program**

(WV Code Chapter 19)

**Fund 1408 FY 2007 Org 1400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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### 103-Department of Agriculture -

**General John McCausland Memorial Farm**

(WV Code Chapter 19)

**Fund 1409 FY 2007 Org 1400**

<table>
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<tr>
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</table>

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

### 104-Department of Agriculture -

**Farm Operating Fund**

(WV Code Chapter 19)

**Fund 1412 FY 2007 Org 1400**

<table>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
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### 105-Department of Agriculture -

**Donated Food Fund**
APPROPRIATIONS [Ch. 6

(WV Code Chapter 19)

Fund 1446 FY 2007 Org 1400

1 Unclassified-Total ................. 096 $3,062,331

106-Department of Agriculture-
Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2007 Org 1400

1 Unclassified-Total ................. 096 $25,000

107-Attorney General-
Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2007 Org 1500

1 Personal Services ................. 001 $252,718
2 Annual Increment ................. 004 1,965
3 Employee Benefits ................. 010 80,436
4 Unclassified ...................... 099 134,749
5 Total ........................... $469,868

108-Attorney General-
Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2007 Org 1500

1 Unclassified-Total ................. 096 $231,123
109-Attorney General-

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2007 Org 1500

1 Unclassified-Total ................. 096 $ 755,000

110-Secretary of State-

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2007 Org 1600

1 Personal Services ................. 001 $ 1,136,600
2 Annual Increment ................. 004 10,300
3 Employee Benefits ............... 010 332,645
4 Unclassified ..................... 099 1,055,306
5 Total ............................ $ 2,534,851

111-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 1614 FY 2007 Org 1600

1 Any unexpended balance remaining in the appropriation for
2 Unclassified-Total (fund 1614, activity 096) at the close of the
3 fiscal year 2006 is hereby reappropriated for expenditure during
4 the fiscal year 2007.

DEPARTMENT OF ADMINISTRATION

112-Office of the Secretary-
**APPROPRIATIONS**

**Tobacco Settlement Fund**

(WV Code Chapter 4)

Fund 2041 FY 2007 Org 0201

1 Tobacco Settlement Fund-Transfer . . . . 902  $25,400,000

2 The above appropriation for Tobacco Settlement Fund-
3 Transfer shall be transferred to the Division of Health (fund
4 5124, org 0506) for expenditure.

**113-Division of Information Services and Communications**

(WV Code Chapter 5A)

Fund 2220 FY 2007 Org 0210

1 Personal Services .................. 001  $10,519,733
2 Annual Increment .................. 004  145,000
3 Employee Benefits ................. 010  3,190,588
4 Unclassified ....................... 099  3,440,000
5 Total ............................. $17,295,321

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

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

14 *From-the-above-fund,-the-provisions-of-West-Virginia
15 Code-$11B-2-18-shall-not-operate-to-permit-expenditures-in
16 excess-of-the-funds-authorized-for-expenditure-herein.*

*CLERK’S NOTE: The Governor struck language on line 14 through line 16.*
### 114-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2007 Org 0222

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>001</td>
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<td>004</td>
<td>58,190</td>
</tr>
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<td>Employee Benefits</td>
<td>010</td>
<td>916,528</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>974,509</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,593,684</strong></td>
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</table>

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

### 115-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2007 Org 0228

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$545,887</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 2521, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

### 116-Office of Technology

(WV Code Chapter 5A)

Fund 2531 FY 2007 Org 0231

<table>
<thead>
<tr>
<th>Category</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,880,405</td>
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<tr>
<td>EPSCoR</td>
<td>571</td>
<td>150,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,030,405</strong></td>
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</table>
4 From the above fund, the provisions of West Virginia Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

117-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2007 Org 0305

1 Personal Services ....................... 001 $ 349,920
2 Annual Increment ....................... 004 4,750
3 Employee Benefits ..................... 010 121,458
4 Unclassified ............................ 099 260,795
5 Total .................................. $ 736,923

118-Division of Forestry-

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2007 Org 0305

1 Unclassified-Total ..................... 096 $ 141,750

119-Division of Forestry-

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2007 Org 0305

1 Unclassified-Total ..................... 096 $ 2,839,024
120-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2007 Org 0306

1. Personal Services ...................... 001 $ 43,480
2. Annual Increment ...................... 004 584
3. Employee Benefits ...................... 010 15,227
4. Unclassified ...................... 099 157,099
5. Total ................................ $ 216,390

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

121-West Virginia Development Office-

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2007 Org 0307

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

2. Any unexpended balance remaining in the appropriation for Energy Assistance—Total (fund 3144, activity 647) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

122-West Virginia Development Office-

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2007 Org 0307

1. Unclassified-Total (R) ............ 096 $ 694,104
Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3162, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

123-Division of Labor-

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2007 Org 0308

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<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>Annual Increment</td>
<td>004</td>
<td>14,663</td>
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<td>Employee Benefits</td>
<td>010</td>
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124-Division of Labor-

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2007 Org 0308

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<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>660</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
<td>099</td>
<td>74,262</td>
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<tr>
<td>Total</td>
<td></td>
<td>$176,736</td>
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</table>

125-Division of Labor-

Crane Operator Certification Fund
### APPROPRIATIONS

(WV Code Chapter 21)

**Fund 3191 FY 2007 Org 0308**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$111,271</td>
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</tbody>
</table>

126-Division of Labor-

*Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

**Fund 3192 FY 2007 Org 0308**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$102,172</td>
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</tbody>
</table>

127-Division of Labor-

*State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

**Fund 3195 FY 2007 Org 0310**

<table>
<thead>
<tr>
<th>Description</th>
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</thead>
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<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
<td>004</td>
<td>$1,508</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$45,811</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$27,377</td>
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<tr>
<td>5 BRIM Premium</td>
<td>913</td>
<td>$3,304</td>
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<tr>
<td>6 Total</td>
<td></td>
<td>$175,000</td>
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</tbody>
</table>

128-Division of Natural Resources

(WV Code Chapter 20)

**Fund 3200 FY 2007 Org 0310**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Wildlife Resources</td>
<td>023</td>
<td>$6,824,103</td>
</tr>
<tr>
<td>2 Administration</td>
<td>155</td>
<td>$1,845,985</td>
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</tbody>
</table>
3 Capital Improvements and  
4 Land Purchase (R) ............... 248  1,504,254  
5 Law Enforcement .................. 806  6,877,993  
6 Total .......................... $17,052,335  

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

10 Any unexpended balances remaining in the appropriations  
11 for Point of Sales Licensing System (fund 3200, activity 043),  
12 Capital Improvements and Land Purchase (fund 3200, activity  
13 248), and DEP-Compliance Mandate-Fish Hatchery (fund 3200,  
14 activity 668) at the close of the fiscal year 2006 are hereby  
15 reappropriated for expenditure during the fiscal year 2007.  

129-Division of Natural Resources-  
Game, Fish and Aquatic Life Fund  
(WV Code Chapter 20)  
Fund 3202 FY 2007 Org 0310  

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

130-Division of Natural Resources-  
Nongame Fund  
(WV Code Chapter 20)  
Fund 3203 FY 2007 Org 0310  

1 Personal Services .................. 001  $ 398,955  
2 Annual Increment .................. 004  4,300  
3 Employee Benefits .................. 010  141,660  
4 Unclassified ....................... 099  436,339  
5 Total .............................. $ 981,254
131-Division of Natural Resources-
Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2007 Org 0310

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$6,400</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$91,219</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$167,218</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$503,905</td>
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</table>

132-Division of Natural Resources-
Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2007 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$186,595</td>
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</tbody>
</table>

133-Division of Natural Resources-
Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2007 Org 0310

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

134-Miners’ Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2007 Org 0314

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$402,000</td>
</tr>
</tbody>
</table>
From the appropriation above (fund 3355) at least $500,000 shall be used in developing, procuring and/or deploying, technologies to assist in locating and communicating with trapped miners, supporting life, transporting rescue personnel and rescued individuals through underground mines and otherwise assist with mine rescue operations.

DEPARTMENT OF EDUCATION

135-State Board of Education-

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2007 Org 0402

1 Unclassified-Total (R) .................. 096 $ 500,000

2 Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3937, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

136-State Department of Education-

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2007 Org 0402

1 Personal Services ..................... 001 $ 670,319
6 The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

**137-State Department of Education-**

*FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2007 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$12,100</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$310,807</td>
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<tr>
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<td>099</td>
<td>$777,093</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$1,950,000</strong></td>
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</table>

**DEPARTMENT OF EDUCATION AND THE ARTS**

**138-Office of the Secretary-**

*Lottery Education Fund Interest Earnings-*

*Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2007 Org 0431

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPSCoR—Total (R)</td>
<td>651</td>
<td>$352,659</td>
</tr>
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</table>
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3508, activity 096) and EPSCoR—Total (fund 3508, activity 651) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

139-Division of Culture and History–

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2007 Org 0432

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$934,407</td>
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</table>

140-State Board of Rehabilitation-

Division of Rehabilitation Services-

West Virginia Rehabilitation Center-

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2007 Org 0932

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,766,188</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>163</td>
<td>450,000</td>
</tr>
<tr>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>50,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,266,188</td>
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</table>

DEPARTMENT OF ENVIRONMENTAL PROTECTION

141-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2007 Org 0312
<table>
<thead>
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<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$595,650</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,800</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>186,481</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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<td>1,759,569</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,545,500</td>
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</table>

**142-Division of Environmental Protection-**

*The Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2007 Org 0313

<table>
<thead>
<tr>
<th></th>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$301,676</td>
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<td>1,500</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>81,852</td>
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<td>4</td>
<td>Unclassified</td>
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<td>212,263</td>
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<tr>
<td>5</td>
<td>Total</td>
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</table>

**143-Division of Environmental Protection-**

*Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2007 Org 0313

<table>
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<tr>
<th></th>
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<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$990,609</td>
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**144-Division of Environmental Protection-**

*Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2007 Org 0313

<table>
<thead>
<tr>
<th></th>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$1,200,710</td>
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</table>
2 Annual Increment .................. 004 12,500
3 Employee Benefits ................... 010 414,026
4 Unclassified ........................ 099 16,292,357
5 Total ................................. $17,919,593

145-Division of Environmental Protection-

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2007 Org 0313

1 Unclassified-Total .................. 096 $ 340,294

146-Division of Environmental Protection-

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2007 Org 0313

1 Personal Services .................. 001 $ 440,188
2 Annual Increment .................. 004 4,540
3 Employee Benefits ................... 010 154,105
4 Unclassified ........................ 099 521,435
5 Total ................................. $ 1,120,268

147-Division of Environmental Protection-

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2007 Org 0313

1 Personal Services .................. 001 $ 4,510,038
2 Annual Increment .................. 004 53,706
### Appropriations

#### 148-Division of Environmental Protection -
**The Underground Storage Tank Administrative Fund**

(WV Code Chapter 22)

Fund 3325 FY 2007 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,650</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>129,545</td>
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<td>4 Unclassified</td>
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<td>72,846</td>
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<td><strong>Total</strong></td>
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#### 149-Division of Environmental Protection -
**The Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

Fund 3331 FY 2007 Org 0313

<table>
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<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
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<td>8,425</td>
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<td>3 Employee Benefits</td>
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<td>4 Unclassified</td>
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#### 150-Division of Environmental Protection -
**Solid Waste Reclamation and Environmental Response Fund**
151-Division of Environmental Protection-

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3332 FY 2007 Org 0313

<table>
<thead>
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<tbody>
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<td>11,800</td>
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<td>010</td>
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<td>$4,754,430</td>
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</table>

152-Division of Environmental Protection-

Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2007 Org 0313

<table>
<thead>
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<th></th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
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</table>
153-Division of Environmental Protection -

Environmental Laboratory

Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2007 Org 0313

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<th>Code</th>
<th>Amount</th>
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<td>$355,786</td>
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154-Division of Environmental Protection -

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2007 Org 0313

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<th>Description</th>
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155-Division of Environmental Protection -

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2007 Org 0313

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

156-Division of Environmental Protection -

Recycling Assistance Fund
157-Division of Environmental Protection—
Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2007 Org 0313

1  Personal Services ..................... 001   $ 772,296
2  Annual Increment  ..................... 004   8,300
3  Employee Benefits .................... 010   277,645
4  Unclassified (R)  ..................... 099   477,178
5  Total ............................... $ 1,535,419

158-Oil and Gas Conservation Commission—
Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)

Fund 3371 FY 2007 Org 0315

1  Personal Services ..................... 001   $ 152,469
2  Annual Increment ..................... 004   2,200
3 Employee Benefits ....................... 010 36,553
4 Unclassified ............................ 099 33,206
5 Total .................................. $ 224,428

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

159-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2007 Org 0505

1 Personal Services ..................... 001 $ 243,796
2 Annual Increment ....................... 004 5,761
3 Employee Benefits .................... 010 103,375
4 Unclassified .......................... 099 101,900
5 Total ................................ $ 454,832

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

160-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2007 Org 0506

1 Unclassified-Total ..................... 096 $ 1,186,978

161-Division of Health-

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2007 Org 0506
1. ABCA Tobacco Retailer Education
   Program-Transfer ............... 239 $ 200,000
2. Institutional Facilities
   Operations (R) .................. 335 19,549,408
3. Tobacco Education Program (R) .... 906 5,650,592
4. Total ........................ $ 25,400,000

Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335) and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

From the above appropriation for ABCA Tobacco Retailer Education Program-Transfer (activity 239), $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

From the above appropriation to Tobacco Education Program (activity 906), $250,000 shall be transferred to West Virginia State Police (fund 6502, org 0612) for Enhanced Drug Enforcement.

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

Additional funds have been appropriated in fund 0525, fiscal year 2007, organization 0506, and fund 5156, fiscal year
2007, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health-hospital services revenue account (fund 5156, activity 335) and consolidated medical services fund (fund 0525, activity 335), on July 1, 2006, the sum of one hundred sixty thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

162-Division of Health-

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2007 Org 0506

<table>
<thead>
<tr>
<th></th>
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<th>Annual Increment</th>
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<th>Employee Benefits</th>
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<tr>
<td>1</td>
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</tbody>
</table>

163-Division of Health-

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)
### Fund 5156 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,420,000</td>
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<tr>
<td>Institutional Facilities</td>
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<td></td>
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<tr>
<td>Operations (R)</td>
<td>335</td>
<td>$38,674,129</td>
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<tr>
<td>Medical Services Trust Fund-</td>
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<tr>
<td>Transfer (R)</td>
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</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007, except for fund 5156, activity 040 (fiscal year 2005) which shall expire on June 30, 2006.

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

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

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2007, organization 0506) and the tobacco settlement expenditure fund (fund 5124, fiscal year 2007, organization 0506).
From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) and the tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2006, the sum of one hundred sixty thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

164-Division of Health-

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2007 Org 0506

1 Personal Services .................. 001 $ 514,710
2 Annual Increment .................. 004 11,060
3 Employee Benefits ................. 010 208,533
4 Unclassified ...................... 099 116,530
5 Total ............................. $ 850,833

165-Division of Health-

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2007 Org 0506

1 Personal Services .................. 001 $ 204,830
2 Annual Increment .................. 004 3,200
3 Employee Benefits ................. 010 75,923
4 Unclassified ...................... 099 93,313
5 Total ............................. $ 377,266
### 166-Division of Health-

**Hepatitis B Vaccine**

(WV Code Chapter 16)

Fund 5183 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td><strong>Total</strong></td>
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</table>

### 167-Division of Health-

**Lead Abatement Fund**

(WV Code Chapter 16)

Fund 5204 FY 2007 Org 0506

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

### 168-Division of Health-

**West Virginia Birth to Three Fund**

(WV Code Chapter 16)

Fund 5214 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
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<td><strong>Total</strong></td>
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<td><strong>$19,859,356</strong></td>
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</table>
### 169-Division of Health-

**Tobacco Control Special Fund**

(WV Code Chapter 16)

Fund 5218 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
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<td>$ 85,000</td>
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</table>

### 170-West Virginia Health Care Authority—

**Health Care Cost Review Fund**

(WV Code Chapter 16)

Fund 5375 FY 2007 Org 0507

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>$2,218,904</td>
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<td>004</td>
<td>25,000</td>
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<td>Employee Benefits</td>
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<td>688,250</td>
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<tr>
<td>Hospital Assistance</td>
<td>025</td>
<td>600,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$6,621,699</strong></td>
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</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

### 171-Division of Human Services-

**Health Care Provider Tax**

(WV Code Chapter 11)

Fund 5090 FY 2007 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>189</td>
<td>$173,816,000</td>
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</tbody>
</table>
Medical Services

Administrative Costs .................. 789  400,000

Total ................................. $174,216,000

From the above appropriation, an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund (fund 5084).

172-Division of Human Services-

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2007 Org 0511

Unclassified-Total (R) ................. 096 $34,640,532

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 5094, activity 096) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007, except for fund 5094, activity 096, fiscal year 2004 which shall expire on June 30, 2006.

173-Division of Human Services-

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2007 Org 0511

Medical Services ....................... 189 $30,556,594

Medical Services Administrative Costs 789  501,411

Total ................................. $31,058,005
The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of Chapter 9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

174-Division of Human Services-

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2007 Org 0511

1 Unclassified-Total ..................... 096 $1,607,564

175-Family Protection Services Board-

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2007 Org 0511

1 Unclassified-Total ..................... 096 $ 588,022

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

176-Department of Military Affairs and Public Safety-

Office of the Secretary-

Law-Enforcement, Safety and Emergency Worker Funeral
Expense Payment Fund
(WV Code Chapter 15)

Fund 6003 FY 2007 Org 0601

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

State Armory Board-
General Armory Fund
(WV Code Chapter 15)

Fund 6057 FY 2007 Org 0603

1 Unclassified-Total .................. 096 $ 239,500

West Virginia Division of Corrections-
Parolee Supervision Fees
(WV Code Chapter 62)

Fund 6362 FY 2007 Org 0608

1 Personal Services .................. 001 $ 260,195
2 Annual Increment .................. 004 1,651
3 Employee Benefits ................. 010 91,177
4 Unclassified ....................... 099 371,204
5 Total ............................ $ 74,227

West Virginia State Police-
Motor Vehicle Inspection Fund
(WV Code Chapter 17C)

Fund 6501 FY 2007 Org 0612
1 Personal Services .................. 001  $1,009,166
2 Annual Increment .................. 004  23,450
3 Employee Benefits ................. 010  378,652
4 Unclassified ........................ 099  299,640
5 BRIM Premium ........................ 913  293,623
6 Total .................................. $2,004,531

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

180-West Virginia State Police-

*Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2007 Org 0612

1 Unclassified .......................... 099  $ 885,531
2 BRIM Premium .......................... 913  149,953
3 Total .................................. $1,035,484

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

181-West Virginia State Police-

*Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2007 Org 0612

1 Unclassified .......................... 099  $ 444,980
<table>
<thead>
<tr>
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<th>BRIM Premium</th>
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<th></th>
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<td>$ 74,973</td>
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<td>$ 519,953</td>
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</table>

182-West Virginia State Police-

**Surplus Transfer Account**

(WV Code Chapter 15)

**Fund 6519 FY 2007 Org 0612**

<p>| | | | |</p>
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<tr>
<th></th>
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<tbody>
<tr>
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<td>2</td>
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Any unexpended balances remaining in the appropriations for Helicopter Purchase (fund 6519, activity 063) and Unclassified (fund 6519, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

183-West Virginia State Police-

**Central Abuse Registry Fund**

(WV Code Chapter 15)

**Fund 6527 FY 2007 Org 0612**

<p>| | | | |</p>
<table>
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<tbody>
<tr>
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184-West Virginia State Police-

**Bail Bond Enforcer Fund**
Fund 6532 FY 2007 Org 0612

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 3,308

185-Division of Veterans’ Affairs-
Veterans’ Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2007 Org 0613

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

186-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2007 Org 0615

1 Personal Services . . . . . . . . . . . . . . . . . 001 $ 1,237,996
2 Annual Increment . . . . . . . . . . . . . . . . . 004 17,600
3 Employee Benefits . . . . . . . . . . . . . . . . . 010 410,948
4 Debt Service . . . . . . . . . . . . . . . . . . . . 040 9,000,000
5 Unclassified . . . . . . . . . . . . . . . . . . . . 099 545,235
6 Total . . . . . . . . . . . . . . . . . . . . . . $11,211,779

187-Division of Veterans’ Affairs-
Veterans’ Home

(WV Code Chapter 9A)

Fund 6754 FY 2007 Org 0618

1 Unclassified-Total . . . . . . . . . . . . . . . . . 096 $ 466,000
### 188-Fire Commission-

**Fire Marshal Fees**

(WV Code Chapter 29)

**Fund 6152 FY 2007 Org 0619**

<table>
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<td>3 Employee Benefits</td>
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<tr>
<td>4 Unclassified</td>
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<td>5 BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$3,149,824</strong></td>
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Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2006 is hereby available for expenditure as part of the fiscal year 2007 appropriation.

### 189-Division of Criminal Justice Services-

**WV Community Corrections Fund**

(WV Code Chapter 62)

**Fund 6386 FY 2007 Org 0620**

<table>
<thead>
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<th>Item</th>
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<tr>
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### 190-Criminal Justice Services-

**Court Security Fund**

(WV Code Chapter 51)

**Fund 6804 FY 2007 Org 0620**

<table>
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<td><strong>$1,550,000</strong></td>
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### DEPARTMENT OF REVENUE

#### 191-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2007 Org 0303

<table>
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<tbody>
<tr>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>441,388</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2,828,447</strong></td>
</tr>
</tbody>
</table>

#### 192-Tax Division-

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2007 Org 0702

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$17,274</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,845</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>7,797</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>31,116</strong></td>
</tr>
</tbody>
</table>

#### 193-Tax Division-

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2007 Org 0702

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$857,754</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>18,600</td>
</tr>
</tbody>
</table>
3 Employee Benefits .................... 010 323,783
4 Unclassified .......................... 099 229,847
5 Total ................................. $1,429,984

194-Tax Division-

Special District Excise Tax Administration Fund

(WV Code Chapter 11)

Fund 7086 FY 2007 Org 0702

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

195-State Budget Office-

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2007 Org 0703

1 Public Employees Insurance Reserve
2 Fund—Transfer ...................... 903 $ 6,200,000

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

196-Insurance Commissioner-

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2007 Org 0704

1 Personal Services .................... 001 $ 566,230
2 Annual Increment .................... 004 3,500
### 197-Insurance Commissioner-
#### Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2007 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$459,528</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,500</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$142,409</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$157,851</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$763,288</strong></td>
</tr>
</tbody>
</table>

### 198-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2007 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$17,600,000</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>$227,232</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>$6,300,000</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$12,050,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$36,177,232</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 7152, activity 001), Annual Increment (fund 7152, activity 004), Employee Benefits (fund 7152, activity 010), and Unclassified (fund 7152, activity 099) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.
The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.

199-Insurance Commissioner –

Workers’ Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2007 Org 0704

1 Unclassified-Total ............... 096 $708,750,000

200-Insurance Commissioner –

Workers’ Compensation Uninsured Employers’ Fund

(WV Code Chapter 23)

Fund 7163 FY 2007 Org 0704

1 Unclassified-Total ............... 096 $27,000,000

201-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2007 Org 0704

1 Unclassified-Total ............... 096 $5,000,000

202-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)
<table>
<thead>
<tr>
<th>Fund 7165 FY 2007 Org 0704</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total .............. 096</td>
</tr>
</tbody>
</table>

203-Insurance Commissioner –

Private Carrier Guaranty Fund

(WV Code Chapter 23)

Fund 7166 FY 2007 Org 0704

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

204-Insurance Commissioner –

Assigned Risk Fund

(WV Code Chapter 23)

Fund 7167 FY 2007 Org 0704

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

205-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2007 Org 0706

| 1 Personal Services ................. 001 | $164,862 |
| 2 Annual Increment .................... 004 | 4,300 |
| 3 Employee Benefits ................. 010 | 64,485 |
| 4 Unclassified ......................... 099 | $76,772 |
| 5 Total .................................. | $310,419 |

206-Racing Commission-

Relief Fund
(WV Code Chapter 19)

Fund 7300 FY 2007 Org 0707

1 Medical Expenses-Total 245 $ 57,000

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

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

207-Racing Commission-

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2007 Org 0707

1 Personal Services 001 $ 68,244
2 Annual Increment 004 1,000
3 Employee Benefits 010 24,534
4 Unclassified 099 39,661
5 Total $ 133,439

208-Racing Commission-

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2007 Org 0707

1 Personal Services 001 $ 2,048,800
2 Annual Increment 004 20,250
### 209-Racing Commission-

*Administration, Promotion and Education Fund*

(WV Code Chapter 19)

**Fund 7307 FY 2007 Org 0707**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$61,425</td>
</tr>
</tbody>
</table>

### 210-Alcohol Beverage Control Administration-

*Wine License Special Fund*

(WV Code Chapter 60)

**Fund 7351 FY 2007 Org 0708**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$231,468</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,300</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>96,476</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>113,069</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$445,313</td>
</tr>
</tbody>
</table>

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services line item for field auditors.

### 211-Alcohol Beverage Control Administration

(WV Code Chapter 60)

**Fund 7352 FY 2007 Org 0708**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,783,914</td>
</tr>
</tbody>
</table>
### Appropriations [Ch. 6]

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2  Annual Increment</td>
<td>004</td>
<td>79,000</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
<td>010</td>
<td>1,608,590</td>
</tr>
<tr>
<td>4  Unclassified (R)</td>
<td>099</td>
<td>2,306,060</td>
</tr>
<tr>
<td>5  Total</td>
<td></td>
<td>7,777,564</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 7352, activity 099) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

From the above appropriation an amount shall be used for the Tobacco/Alcohol Education Program.

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

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

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

**DEPARTMENT OF TRANSPORTATION**

212-Division of Motor Vehicles-

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
<td>001</td>
<td>$ 519,460</td>
</tr>
<tr>
<td>2  Annual Increment</td>
<td>004</td>
<td>7,300</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
<td>010</td>
<td>220,087</td>
</tr>
<tr>
<td>4  Unclassified</td>
<td>099</td>
<td>899,122</td>
</tr>
<tr>
<td>5  Total</td>
<td></td>
<td>$1,645,969</td>
</tr>
</tbody>
</table>
### 213-Division of Motor Vehicles-

*Driver Rehabilitation*

(WV Code Chapter 17C)

**Fund 8214 FY 2007 Org 0802**

| 1 | Unclassified-Total 096 | 553,777 |

### 214-Division of Motor Vehicles-

*Insurance Certificate Fees*

(WV Code Chapter 20)

**Fund 8215 FY 2007 Org 0802**

| 1 | Personal Services 001 | 635,340 |
| 2 | Annual Increment 004 | 16,900 |
| 3 | Employee Benefits 010 | 265,878 |
| 4 | Unclassified 099 | 112,142 |
| 5 | Total | 1,030,260 |

### 215-Division of Motor Vehicles-

*Motorboat Licenses*

(WV Code Chapter 20)

**Fund 8216 FY 2007 Org 0802**

| 1 | Unclassified-Total 096 | 484,869 |

### 216-Division of Motor Vehicles-

*Returned Check Fees*
APPROPRIATIONS

(WV Code Chapter 17)

Fund 8217 FY 2007 Org 0802

1 Unclassified-Total ...................... 096 $ 19,374

217-Division of Motor Vehicles-

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2007 Org 0802

1 Unclassified-Total ...................... 096 $ 189,000

218-Division of Highways-

A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2007 Org 0803

1 Unclassified-Total ...................... 096 $ 3,320,000

HIGHER EDUCATION

219-Higher Education Policy Commission-

System-

Registration Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account
(WV Code Chapters 18 and 18B)

Fund 4902 FY 2007 Org 0442

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

Any unexpended balances remaining in the appropriations at the close of fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007, except for fund 4902, activity 040 (fiscal year 2003), fund 4902, activity 306 (fiscal year 2002), and fund 4902, activity 306 (fiscal year 2003) which shall expire on June 30, 2006.

The total amount of this appropriation shall be paid from the special capital improvements fund created in section eight, article ten, chapter eighteen-b of the code. Projects are to be paid on a cash basis and made available on July 1.

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

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

Control Account
(WV Code Chapters 18 and 18B)

Fund 4903 FY 2007 Org 0442

1  Debt Service (R) ....................... 040  $ 23,630,168
Any unexpended balances remaining in the appropriations at the close of fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007, except for fund 4903, activity 040 (fiscal year 2003), fund 4903, activity 040 (fiscal year 2004), fund 4903, activity 306 (fiscal year 2002), and fund 4903, activity 306 (fiscal year 2003) which shall expire on June 30, 2006.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code. Projects are to be paid on a cash basis and made available on July 1.

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

221-Higher Education Policy Commission-

1977 State System Registration Fee Refund Revenue Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2007 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

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

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

222-Higher Education Policy Commission-

Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2007 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

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

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

223-Health Sciences-

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2007 Org 0463

Unclassified-Total (R) . . . . . . . . . . . . . . . . . . . . . . . 096 $ 15,479,774
Any unexpended balance remaining in the appropriation at
the close of fiscal year 2006 is hereby reappropriated for
expenditure during the fiscal year 2007.

MISCELLANEOUS BOARDS AND COMMISSIONS

224-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2007 Org 0509

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>46,924</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>800</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>17,652</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>30,188</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>95,564</td>
</tr>
</tbody>
</table>

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

225-WV State Board of Examiners for Licensed Practical
Nurses

(WV Code Chapter 30)

Fund 8517 FY 2007 Org 0906

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>367,344</td>
</tr>
</tbody>
</table>

226-WV Board of Examiners for Registered Professional
Nurses

(WV Code Chapter 30)

Fund 8520 FY 2007 Org 0907

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>895,792</td>
</tr>
</tbody>
</table>
### 227-Public Service Commission

*(WV Code Chapter 24)*

**Fund 8623 FY 2007 Org 0926**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>FY 2007 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$8,063,255</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>130,000</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,722,622</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,813,563</td>
</tr>
<tr>
<td>5</td>
<td>Weight Enforcement Program</td>
<td>345</td>
<td>4,667,295</td>
</tr>
<tr>
<td>6</td>
<td>Debt Payment/Capital Outlay</td>
<td>520</td>
<td>350,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>115,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$18,861,735</td>
</tr>
</tbody>
</table>

The total amount of this appropriation except for the PSC Weight Enforcement appropriation (activity 345) shall be paid from a special revenue fund out of collection for special license fees from public service corporations as provided by law. The amount appropriated to the PSC Weight Enforcement (activity 345) shall be paid from the state road fund as provided by law.

The Public Service Commission is authorized to spend up to $500,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1998.

### 228-Public Service Commission-

**Gas Pipeline Division**—

**Public Service Commission Pipeline Safety Fund**

*(WV Code Chapter 24B)*

**Fund 8624 FY 2007 Org 0926**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>FY 2007 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$155,617</td>
</tr>
</tbody>
</table>
229-Public Service Commission -

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2007 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,614,046</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$40,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$569,345</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$559,067</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,782,458</td>
</tr>
</tbody>
</table>

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

230-Public Service Commission -

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2007 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$511,877</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.
2 Annual Increment .................. 004 6,650
3 Employee Benefits ................. 010 161,070
4 Unclassified ........................ 099 264,961
5 BRIM Premium ..................... 913 3,978
6 Total ................................. $ 948,536

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

231-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2007 Org 0927

1 Personal Services .................. 001 $ 365,015
2 Annual Increment .................. 004 6,800
3 Employee Benefits .................. 010 118,885
4 Unclassified ........................ 099 236,356
5 Total ................................. $ 727,056

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

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

(WV Code Chapter 30)

Fund 8646 FY 2007 Org 0930

1 Unclassified-Total .................. 096 $ 71,939

233-WV Board of Respiratory Care

(WV Code Chapter 30)
Fund 8676 FY 2007 Org 0935

1 Unclassified-Total ................. 096 $ 106,438

234-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2007 Org 0936

1 Unclassified-Total ................. 096 $ 18,900

235-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2007 Org 0938

1 Unclassified-Total ................. 096 $ 91,861

236-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2007 Org 0950

1 Unclassified-Total ................. 096 $1,081,655

2 There is hereby appropriated from this fund, in addition to
3 the above appropriation, the amount of funds necessary for the
4 Board of Treasury Investments to pay the fees and expenses of
5 custodians, fund advisors and fund managers for the Consolidated fund of the State as provided in Chapter 12, Article 6C of
6 the West Virginia Code.
7
8 The total amount of the appropriation shall be paid from the
9 special revenue fund out of fees and collections as provided by
10 law.
Sec. 4. Appropriations from lottery net profits.-Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252 and Fund 3963 pursuant to section eighteen, article twenty-two, chapter twenty-nine of the code, the director of the lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 3167 and Fund 4297, and is authorized to transfer any such amounts to Fund 3167 and Fund 4297 for that purpose. Upon receipt of reimbursement of amounts so transferred, the director of the lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

237-Education, Arts, Sciences and Tourism-

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2007 Org 0211

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

238-West Virginia Development Office-

Division of Tourism
### Appropriations

(WV Code Chapter 5B)

**Fund 3067 FY 2007 Org 0304**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Tourism-Telemarketing Center</td>
<td>463</td>
<td>$90,000</td>
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<td>WV Film Office</td>
<td>498</td>
<td>$353,415</td>
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<tr>
<td>Tourism-Advertising (R)</td>
<td>618</td>
<td>$3,155,715</td>
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<tr>
<td>Tourism-Unclassified</td>
<td>662</td>
<td>$4,268,674</td>
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<td>Total</td>
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<td>$7,867,804</td>
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Any unexpended balances remaining in the appropriations for Capitol Complex-Capital Outlay (fund 3067, activity 417), Tourism-Advertising (fund 3067, activity 618), Tourism-Unclassified (fund 3067, activity 662), Tourism-Unclassified-Lottery Surplus (fund 3067, activity 773), and Tourism-Special Projects (fund 3067, activity 859) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

### 239-Division of Natural Resources

(WV Code Chapter 20)

**Fund 3267 FY 2007 Org 0310**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tr>
<td>Gypsy Moth Suppression Program for State Parks (R)</td>
<td>017</td>
<td>$42,997</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$2,199,770</td>
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<td>Pricketts Fort State Park</td>
<td>324</td>
<td>$92,874</td>
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<td>Non-Game Wildlife (R)</td>
<td>527</td>
<td>$427,249</td>
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<td>State Parks and Recreation Advertising (R)</td>
<td>619</td>
<td>$588,206</td>
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<tr>
<td>West Virginia Stream</td>
<td></td>
<td></td>
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<tr>
<td>Partners Program (R)</td>
<td>637</td>
<td>$77,396</td>
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<td>Total</td>
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<td>$3,428,492</td>
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Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund
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13 3267, activity 017), Unclassified (fund 3267, activity 099),
14 Non-Game Wildlife (fund 3267, activity 527), State Parks and
15 Recreation Advertising (fund 3267, activity 619), West Virginia
16 Stream Partners Program (fund 3267, activity 637), and State
17 Parks-Special Projects (fund 3267, activity 860) at the close of
18 the fiscal year 2006 are hereby reappropriated for expenditure
19 during the fiscal year 2007.

240-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2007 Org 0402

1 Unclassified .......................... 099 $ 4,125,000
2 Safe Schools ......................... 143 0
3 Technology Infrastructure
4 Network (R) ...................... 351 20,531,122
5 READS Program ................. 365 300,000
6 MATH Program ................. 368 400,000
7 FBI Checks ....................... 372 102,651
8 Vocational Education
9 Equipment Replacement ....... 393 819,750
10 Assessment Program .......... 396 6,425,030
11 Educational Enhancements ...... 695 0
12 Sparse Population Allocation ... 973 0
13 Total ............................. $32,703,553

14 Any unexpended balances remaining in the appropriations
15 for Technology Infrastructure Network (fund 3951, activity
16 351), Technology Demonstration Project (fund 3951, activity
17 639), and Computer Study (fund 3951, activity 998) at the close
18 of the fiscal year 2006 are hereby reappropriated for expendi-
19 ture during the fiscal year 2007.

20 The above appropriation for Technology Infrastructure
21 Network shall be expended on the following programs and
technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS, Technology Repair and Modernization, Technology and Telecommunications Initiative and other programs in the field that will benefit the Counties.

241-State Department of Education-

School Building Authority-

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2007 Org 0402

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

242-Department of Education and the Arts-

Office of the Secretary-

Control Account-

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2007 Org 0431

| 1  | Unclassified             | 099 | $120,000   |
| 2  | WV Humanities Council   | 168 | 400,000    |
| 3  | Commission for National and Community Service | 193 | 410,050 |
| 4  | Arts Programs (R)       | 500 | 80,000     |
| 5  | College Readiness (R)   | 579 | 200,450    |
| 6  | Challenger Learning Center | 862 | 60,000    |
| 7  | Statewide STEM 21st Century Academy | 897 | 40,000 |
10 Literacy Project .......................... 899  50,000
11 Special Olympic Games .................. 966  25,000
12 Total ....................................  $1,385,500

13 Any unexpended balances remaining in the appropriations
14 for Unclassified (fund 3508, activity 099), Arts Programs (fund
15 3508, activity 500), College Readiness (fund 3508, activity
16 579), and LATA Access (fund 3508, activity 580) at the close
17 of fiscal year 2006 are hereby reappropriated for expenditure
18 during the fiscal year 2007.

243-Division of Culture and History-

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2007 Org 0432

1 Huntington Symphony .................... 027  $ 100,000
2 Martin Luther King, Jr.
3 Holiday Celebration ..................... 031  10,800
4 Fairs and Festivals ...................... 122  2,350,000
5 Archeological Curation/Capital
6  Improvements (R) ...................... 246  50,344
7 Historic Preservation Grants (R) ....... 311  450,900
8 West Virginia Public Theater .......... 312  200,000
9 Tri-County Fair Association .......... 343  125,000
10 George Tyler Moore Center for the
11 Study of the Civil War ................. 397  60,000
12 Theater Arts of West Virginia ....... 464  420,000
13 Marshall Artists Series .............. 518  60,000
14 Grants for Competitive
15 Arts Program (R) ..................... 624  810,000
16 West Virginia State Fair .......... 657  50,000
17 Contemporary American
18 Theater Festival ...................... 811  115,000
<table>
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<tr>
<th></th>
<th>Event</th>
<th>Code</th>
<th>Amount</th>
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<td>19</td>
<td>Independence Hall (R)</td>
<td>812</td>
<td>50,000</td>
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<td>20</td>
<td>Mountain State Forest Festival</td>
<td>864</td>
<td>70,000</td>
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<tr>
<td>21</td>
<td>WV Symphony</td>
<td>907</td>
<td>100,000</td>
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<tr>
<td>22</td>
<td>Wheeling Symphony</td>
<td>908</td>
<td>100,000</td>
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<tr>
<td>23</td>
<td>Appalachian Children’s Chorus</td>
<td>916</td>
<td>100,000</td>
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<tr>
<td>24</td>
<td>Total</td>
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<td>$5,222,044</td>
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Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Capital Outlay, Repairs and Equipment (fund 3534, activity 589), Grants for Competitive Arts Program (fund 3534, activity 624), Independence Hall (fund 3534, activity 812), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

Included in the above appropriation for Fairs and Festivals (activity 122), funding shall be provided to the African-American Cultural Heritage Festival 5,000, African-American Heritage Family Tree Museum 4,500, African-American Jubilee (Ohio) 5,500, Alderson 4th of July Celebration (Greenbrier) 3,000, Allegheny Echo (Pocahontas) 7,500, Alpine Festival/Leaf Peepers Festival (Tucker) 11,250, American Legion Post 8, Veterans Day Parade 2,000, Annual Labor Day Observance (Randolph) 2,000, Annual Law Enforcement Day (Lewis) 2,000, Apollo Theater - Summer Program (Berkeley) 2,000, Appalachian Autumn Festival (Braxton) 3,500, Appalachian Mountain Bike Race (Calhoun) 1,500, Apple Butter Festival (Morgan) 6,000, Aracoma Story (Logan) 50,000, Arkansaw Homemaker’s Heritage Weekend (Hardy) 3,500, Armed Forces Day-South Charleston 3,000, Arthurdale Heritage (Preston) 4,000, Athens Town Fair (Mercer) 2,000, Augusta Fair (Randolph) 5,000, Barbour County Arts & Humanities Council 1,500, Barbour County Fair 2,500, Barboursville Octoberfest (Cabell) 5,000, Bass Festival...
(Pleasants) 1,850, Battelle District Fair (Monongalia) 5,000, Battle of Dry Creek (Greenbrier) 1,500, Battle of Point Pleasant Memorial Committee 5,000, Beckley Main Street (Raleigh) 5,000, Belington VFD Community Fair (Barbour) 1,750, Belle Boyd House (Berkeley) 2,000, Belle Fall Festival (Kanawha) 2,000, Bergoo Down Home Days (Webster) 2,500, Berkeley County Youth Fair 3,500, Birch River Days Festival (Nicholas) 2,000, Black Bear 40K Mountain Bike Race 1,000, Black Heritage Festival (Harrison) 4,000, Black Walnut Festival (Roane) 3,800, Blue-Gray Reunion (Barbour) 3,500, Boone County Fair 6,500, Boone County Labor Day Celebration 4,000, Bradshaw Fall Festival (McDowell) 2,000, Braxton County Arts and Crafts Fair 1,500, Braxton County Fairs and Festivals Association 9,000, Braxton County Homecoming 500, Brooke County Fair 2,500, Bruceton Historical Society Victorian May Event 2,000, Bruceton Mills Good Neighbor Days (Preston) 2,000, Buckwheat Festival (Preston) 8,500, Buffalo 4th of July Celebration (Putnam) 500, Buffalo Creek Memorial (Logan) 5,000, Burlington Apple Harvest Festival (Mineral) 30,000, Cabell County Fair 10,000, Cabwaylingo Forest Foundation (Wayne) 1,500, Calhoun County Wood Festival 2,000, Cape Coalwood Festival Association (McDowell) 2,500, Capon Bridge Annual VFD Celebration (Hampshire) 1,000, Capon Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie Hall, Inc. (Greenbrier) 70,000, Cass Homecoming (Pocahontas) 2,000, Cedarville Town Festival (Braxton) 500, Celebration in the Park (Wood) 4,000, Celebration of America (Monongalia) 6,000, Ceredo Historical Society (Wayne) 2,000, Ceredo Landmark Commission (Wayne) 1,500, Ceredo-Kenova Railroad Museum (Wayne) 2,000, Chapmanville Apple Butter Festival (Logan) 1,000, Chapmanville Fire Department 4th of July 3,000, Charles Town Christmas Festival 5,000, Charles Town Heritage Festival 5,000, Charles Town Summer Sampler (Jefferson) 1,000, Charleston River Lights Project (Kanawha) 10,000, Charleston Sternwheel Regatta 20,000, Cherry River Festival
(Nicholas) 6,500, Chester Fireworks (Hancock) 1,500, Chief
Logan State Park-Civil War Celebration 8,000, Christmas in
Shepherdstown (Jefferson) 4,000, Christmas in the Park
(Logan) 25,000, Civil War Horse Cavalry Race (Barbour)
1,000, City of Dunbar Critter Dinner 10,000, FestivALL
Charleston 20,000, Clay Co. Agriculture Youth Fair 1,500, Clay
County Golden Delicious Festival 5,000, Coal Field Jamboree
(Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis P.
Huntington Railroad Historical Society 10,000, Country Roads
Festival (Fayette) 2,000, Cowen Railroad Festival (Webster)
3,500, Craigsville Fall Festival 3,500, Cross Lanes Annual
Festival (Kanawha) 8,000, Doddridge County Fair 5,200,
Dunlow Fall Festival 2,000, Durbin Days (Pocahontas) 2,000,
Elizabethtown Festival (Marshall) 4,000, Elbert/Filbert Reunion
Festival (McDowell) 1,500, Ellenboro Glass Festival (Ritchie)
3,000, Fairview 4th of July Celebration (Marion) 1,000, Farm
Safety Day (Preston) 2,000, Fayette American Legion 4th of
July 1,000, Fellowssville Firemen’s Festival (Preston) 1,000,
Festival of the Rivers (Summers) 10,000, First Stage Children’s
Theater Company (Cabell) 1,000, Flatwood Days (Braxton)
1,000, Flemington Day Fair and Festival (Taylor) 3,500,
Follansbee Community Days (Brooke) 6,250, Fort Ashby Fort
(Mineral) 1,500, Fort Gay Mountain Heritage Days (Wayne)
5,000, Fort New Salem (Harrison) 3,700, Fort Randolph
(Mason) 5,000, Frankford Autumnfest (Greenbrier) 3,000,
Friends Auxiliary of W.R. Sharpe Hospital 5,000, Frontier
Fest/Canaan Valley (Taylor County) 5,000, Fund for the Arts-
Wine & All that Jazz Festival 2,500, Gassaway Days Celebra-
tion (Braxton) 5,000, General Adam Stephen Memorial
Foundation 18,525, Gilbert Kiwanis Harvest Festival 1,000,
Gilbert Spring Fling (Mingo) 1,000, Gilmer County Farm Show
3,500, Grafton Mother’s Day Shrine Committee (Taylor) 7,500,
Grafton Railroad Festival (Taylor) 1,000, Grant County Arts
Council 2,000, Grape Stomping Wine Festival (Nicholas)
2,000, Greater Quinwood Days (Greenbrier) 2,000, Green
Spring Days (Hampshire) 1,000, Greenbrier Valley Theater
50,000, Guyandotte Civil War Days (Cabell) 10,000, Hamlin
4th of July Celebration (Lincoln) 3,500, Hampshire Civil War
Celebration Days 1,000, Hampshire County Fair 6,000,
Hampshire County French & Indian War Celebration 1,000,
Hampshire Herbs & Arts Festival 1,000, Hampshire Heritage
Days 2,000, Hardy County Commission - 4th of July 10,000,
Hardy County Tour and Crafts Association (Hardy) 20,000,
Harts Community Celebration (Lincoln) 1,000, Heritage Craft
Center of the Eastern Panhandle 7,000, Heritage Craft Festival
(Monroe) 1,000, Heritage Days Festival (Roane) 1,500, Hicks
Festival (Tucker) 2,000, Hilltop Festival (Huntington) 500,
Hinton Railroad Days (Summers) 3,000, Historic Fayette
Theater (Fayette) 5,500, Historic Middleway Conservancy
(Jefferson) 1,000, Holly River Festival (Webster) 1,500,
Hundred 4th of July (Wetzel) 7,250, Huntington Outdoor
Theater (Cabell) 1,000, Huntington Youth and Music Project
5,000, Iaeger Lions Club Annual Golf Show (McDowell) 1,500,
Iaeger Town Fair (McDowell) 1,500, Indian Mound Cemetery
(Hampshire) 2,000, International Ramp Cook-Off (Randolph)
2,000, Irish Heritage Festival of WV (Raleigh) 6,000, Irish
Spring Festival (Lewis) 1,000, Italian Heritage Festival -
Clarksburg 25,000, Jacksonburg Homecoming (Wetzel) 1,000,
Jane Lew Arts and Crafts Fair (Lewis) 1,000, Jefferson Co.
Black History Preservation Society 5,000, Jefferson Co.
Historical Landmark Commission 8,000, Jefferson County
African American Heritage Festival 5,000, Jefferson County
Fair Association 25,000, Jersey Mountain Ruritan Pioneer Days
(Hampshire) 1,000, John Henry Days Festival (Monroe) 4,000,
Johnstown Community Fair (Harrison) 2,500, Junior Heifer
Preview Show (Lewis) 2,000, Kanawha Coal Riverfest - St.
Albans July 5,000, Kay Ford Reunion (Kanawha) 2,500,
Kenova Fall Festival (Wayne) 5,000, Kermit Fall Festival
(Mingo) 3,000, Keyser Old Fashioned 4th of July Celebration
1,000, King Coal Festival (Mingo) 3,500, Kingwood Downtown
Street Fair and Heritage Days 2,000, Lady of Agriculture
(Preston) 1,000, Lamb and Steer Show 9,000, Last Blast of
Summer (McDowell) 5,000, Laurel Mt. Re-enactment Committee (Barbour) 3,250, Levels VFD Lawn Association (Hampshire) 1,000, Lewis County Fair Association 3,500, Lewisburg Shanghai (Greenbrier) 2,000, Lincoln County Fall Festival 6,000, Lincoln County Winterfest 5,000, Lincoln District Fair (Marion) 2,500, Lindside 4th of July (Monroe) 500, Little Birch Days Celebration (Braxton) 500, Little Levels Heritage Festival 2,000, Logan County Arts and Crafts Fair 4,000, Lost Creek Community Festival 6,000, Maddie Carroll House (Cabell) 7,500, Mannington District Fair (Marion) 6,000, Maple Syrup Festival (Randolph) 1,000, Marmet Annual Labor Day Celebration (Kanawha) 2,000, Marshall County Antique Power Show 2,500, Marshall County Fair 7,500, Marshall County Historical Society 8,500, Marshall County Riverfront Festival 2,500, Mason County Fair 5,000, Mason Dixon Festival (Monongalia) 7,000, Matewan-Magnolia Fair (Mingo) 4,000, McARTS-McDowell County 20,000, McCoy Theater (Hardy) 20,000, McDowell County Fair 2,500, McGrew House History Day 2,000, McNeill’s Rangers (Mineral) 8,000, Meadow Bridge Hometown Festival (Fayette) 1,250, Meadow River Days Festival 3,000, Mineral County Fair 1,750, Molasses Festival (Calhoun) 2,000, Moncove Lake Festival (Monroe) 2,000, Monroe County Farmer’s Day - Union 2,000, Monroe County Harvest Festival 2,000, Mothers’ Day Festival (Randolph) 2,500, Moundsville Bass Festival 4,000, Moundsville July 4th Celebration (Marshall) 5,000, Mount Liberty Fall Festival (Barbour) 2,500, Mountain Festival (Mercer) 4,625, Mountain Heritage Arts and Crafts Festival (Jefferson) 5,000, Mountain Music Festival 2,500, Mountain State Apple Harvest Festival (Berkeley) 7,500, Mountain State Arts and Crafts Fair-Cedar Lakes (Jackson) 5,000, Mountaineer Boys’ State (Lewis) 10,000, Mountaineer Hot Air Balloon Festival 4,000, Mud River Festival (Lincoln) 8,000, Mullens Dogwood Festival (Wyoming) 6,000, Multi-Cultural Festival of West Virginia 20,000, Museum in the Community (Putnam) 45,000, Music Hall of Fame (Marion) 5,000, New Cumberland 4th of July
(Hancock) 2,000, New River Bridge Day Festival (Fayette)
35,000, Newburg Volunteer Fireman’s Field Day (Preston)
1,000, Newell Annual Clay Festival (Hancock) 3,000, Nicholas
County Potato Festival 3,500, Nicholas Old Main Foundation
(Nicholas) 2,000, Norman Dillon Farm Museum (Berkeley)
10,000, North Preston Farmers Club - Civil War Times 1,000,
North River Valley Festival (Hampshire) 1,000, Northern
Preston Mule Pull and Farmers Days 4,000, West Virginia
Fireman’s Rodeo (Fayette) 2,500, Oak Leaf Festival (Fayette)
4,000, Oceana Heritage Festival (Wyoming) 6,000, Oglebay
City Park - Festival of Lights (Ohio) 80,000, Oglebay Festival
(Ohio) 5,000, Ohio County Fair 8,500, Old Central City Fair
(Huntington) 5,000, Old Opera House Theater Company
(Jefferson) 15,000, Old Tyme Christmas (Jefferson) 2,325,
Paden City Labor Day Festival (Wetzel) 6,500, Panther Fall
Festival (McDowell) 4,000, Parkersburg Arts Center 20,000,
Parkersburg Homecoming (Wood) 12,000, Patty Fest 2,000,
Paw Paw District Fair (Marion) 3,500, Pan Reunion Committee
(Fayette) 5,000, Pendleton County 4-H Weekend 2,000,
Pendleton County Committee for Arts 15,000, Pendleton
County Fair 25,000, Pennsboro Country Road Festival 2,000,
Petersburg Fourth of July Celebration 20,000, Petersburg HS
Celebration 10,000, Peterstown 4th of July Horse Show (Grant)
1,000, Piedmont-Annual Back Street Festival 4,000, Pinch
Reunion (Kanawha) 1,500, Pine Bluff Fall Festival 4,000, Pine
Grove 4th of July Festival (Wetzel) 5,000, Pineville Festival
(Wyoming) 6,000, Pleasants County Agriculture Youth Fair
5,000, Poca Heritage Days (Putnam) 3,000, Pocahontas County
Pioneer Days 7,000, Pocahontas Historic Opera House 6,000,
Point Pleasant Artist Series 5,000, Point Pleasant Stern Wheel
Regatta River 5,000, Potomac Highlands Maple Festival
(Grant) 6,000, Princeton Civil War Heritage Days (Mercer)
1,000, Princeton Town Fair (Mercer) 5,000, Putnam County
Fair 5,000, Quartets on Parade (Wardensville) 4,000, Rainelle
Fall Festival 3,000, Raleigh County All Wars Museum 10,000,
Randolph County Community Arts Council 3,000, Ranson
Christmas Festival 5,000, Ranson Festival 5,000, Ravenswood
Octoberfest 5,000, Reckhart Mill Festival (Preston) 1,000,
Reedsville VFD Fair (Preston) 2,000, Renick Liberty Festival
1,000, Rhododendron Girls’ State (Ohio) 10,000, Riders of the
Flood 3,000, Ripley 4th of July (Jackson) 15,000, Ritchie
County Pioneer Days 1,000, Ritter Park Days (Cabell) 3,000,
River Heritage Days - Speed Boat Race (Wetzel) 5,000, River
Heritage Days Festival (Wetzel) 6,000, Riverfest (Marion)
2,000, Roane Co. 4-H and FFA Youth Livestock Program
5,000, Roane County Agriculture Field Day 3,000, Ronceverte
River Festival (Greenbrier) 3,000, Rowlesburg Labor Day
Festival (Preston) 1,000, Rupert Country Fling (Greenbrier)
3,000, Salem Apple Butter Festival (Harrison) 4,000, Scottish
Heritage Society/N.Central WV Central 5,000, Sistersville 4th
of July Fireworks(Wetzel) 5,500, Smoke on the Water
(Kanawha) 2,000, Smoke on the Water (Wetzel) 3,000, Sol-
diers’ Memorial Theater (Raleigh) 10,000, Southern WV
Veterans’ Museum(Summers) 4,500, Spring Mountain Festival
(Grant) 4,000, Springfield Peach Festival (Hampshire) 1,200,
St. Albans City of Lights - December 5,000, Stoco Reunion
(Raleigh) 2,500, Stonewall Jackson Heritage Arts and Crafts
11,000, Storytelling Festival (Lewis) 500, Strawberry Festival
(Upshur) 20,000, Summer Fest of Panther (McDowell) 1,500,
Summers County Historic Landmark Commission 5,000,
Summers County Railroad Days Festival 2,500, Sumner-Ramer
Heritage, Inc (Berkeley) 3,000, Sylvester July 4th Celebration
(Boone) 2,500, Taylor County Fair 2,500, Terra Alta VFD 4th
of July Celebration (Preston) 1,000, Town of Delbarton 4th of
July Celebration (Mingo) 3,000, Those Who Served War
Museum (Mercer) 4,000, Three Rivers Avian Center (Sum-
mers) 15,000, Three Rivers Coal Festival (Marion) 7,750,
Thunder on the Tygart - Mothers’ Day Celebration 15,000,
Treasure Mountain Festival (Pendleton) 25,000, Tri-County
Fair (Grant) 15,000, Tucker County Arts Festival and Celebra-
tion 18,000, Tucker County Fair 4,750, Tug Valley Arts
Council (Mingo) 5,000, Tunnelton Depot Days (Preston) 1,000,
Tunnelton Fire Department Carnival (Preston) 750, Tunnelton
Historical Society (Preston) 2,000, Turkey Festival (Hardy)
3,000, Tyler County Fair 5,200, Tyler County Fourth of July
500, Uniquely West Virginia Festival (Morgan) 2,000, Upper
Ohio Valley Italian Festival (Ohio) 7,000, Upper West Fork
Blue Grass Festival (Calhoun) 500, Upshur County Fair 7,000,
Valley District Fair- Reedsville (Preston) 2,500, Volcano Days
at Mountwood Park (Wood) 5,000, War Homecoming Fall
Festival 1,500, Wardensville Fall Festival 5,000, Wayne County
Fair 5,000, Wayne County Fall Festival 5,000, Webster County
Woodchopping Festival 4,500, Webster Wild Water Weekend
2,000, Weirton July 4th Celebration (Hancock) 3,000,
Wellsburg 4th of July Celebration (Brooke) 5,500, Wellsburg
Apple Festival of Brooke County 4,000, West Virginia Autumn
Festival (Burnsville) 2,500, West Virginia Blackberry Festival
5,000, West Virginia Coal Festival (Boone) 7,000, West
Virginia Days - Hinton (Summers) 2,000, West Virginia Dairy
Cattle Show 10,000, West Virginia Fair and Exposition (Wood)
8,100, West Virginia Highland Games & Celtic Festival 3,000,
West Virginia Honey Festival (Wood) 2,000, West Virginia
Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas
Festival (Tyler) 11,000, West Virginia Polled Hereford Assoc.
1,500, West Virginia Poultry Festival (Hardy) 5,000, West
Virginia Pumpkin Festival(Cabell) 5,000, West Virginia
Roundhouse Rail Days (Berkeley) 25,000, West Virginia State
Folk Festival 4,500, West Virginia Strawberry Festival-Horse
Pull 2,500, West Virginia Water Festival - City of Hinton
16,000, West Virginia Wine & Jazz Festival (Monongalia)
9,000, West Virginia Wine and Arts Festival (Berkeley) 5,000,
Weston Carp Festival & Fishing Tournament 4,000, Weston
VFD 4th of July Firemen Festival (Lewis) 2,000, Wetzel
County Autumnfest 5,500, Wetzel County Town and Country
Days 17,000, Wheeling Celtic Festival (Ohio) 2,000, Wheeling
City of Lights 8,000, Wheeling Sterwheel Regatta 10,000,
Whipple Community Action (Fayette) 2,500, Whitesville - Big
Coal River Festival (Boone) 4,000, Widen Days Festival
(Calhoun) 2,000, Wileyville Homecoming (Wetzel) 4,000, Wine Festival and Mountain Music Event (Harrison) 5,000, Winter Festival of the Waters (Berkeley) 5,000, Wirt County Fair 2,500, Wirt County Pioneer Days 2,000, Wood County Beef Association 2,500, YMCA Camp Horseshoe 105,000, Youth Museum of Southern WV (Raleigh) 12,000, Youth Stockman Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House (Wayne) 4,500.

Any Fairs & Festival awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

244-Library Commission-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2007 Org 0433

| 1 | Books and Films | 179 | $500,000 |
| 2 | Services to Libraries | 180 | 500,000 |
| 3 | Grants to Public Libraries | 182 | 7,348,884 |
| 4 | Digital Resources | 309 | 219,992 |
| 5 | Libraries-Special Projects | 625 | 800,000 |
| 6 | Infomine Network | 884 | 1,152,984 |
| 7 | Total | | $10,521,860 |

245-Educational Broadcasting Authority-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2007 Org 0439

| 1 | Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at the |
close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

246-Bureau of Senior Services-

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2007 Org 0508

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<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>58,773</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>348,881</td>
</tr>
<tr>
<td>Local Programs Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery Costs</td>
<td>200</td>
<td>2,475,250</td>
</tr>
<tr>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>15,000</td>
</tr>
<tr>
<td>Area Agencies Administration</td>
<td>203</td>
<td>78,685</td>
</tr>
<tr>
<td>In-Home Services and Nutrition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for Senior Citizens</td>
<td></td>
<td>2,000,000</td>
</tr>
<tr>
<td>Senior Citizen Centers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Programs (R)</td>
<td>462</td>
<td>2,600,000</td>
</tr>
<tr>
<td>Direct Services</td>
<td>481</td>
<td>0</td>
</tr>
<tr>
<td>Transfer to Division of Human Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for Health Care and Title XIX Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for Senior Citizens</td>
<td>539</td>
<td>13,000,000</td>
</tr>
<tr>
<td>Alzheimer’s Respite Care</td>
<td>565</td>
<td>0</td>
</tr>
<tr>
<td>Roger Tompkins Alzheimers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Respite Care</td>
<td>643</td>
<td>800,000</td>
</tr>
<tr>
<td>Senior Services Medicaid Transfer</td>
<td>871</td>
<td>10,300,000</td>
</tr>
<tr>
<td>Legislative Initiatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for the Elderly</td>
<td>904</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Long Term Care Ombudsman</td>
<td>905</td>
<td>321,325</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>7,243</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$42,135,786</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens in addition to the sum of $3,700,000 from Medical Services (fund 0403, activity 189), along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

247-Higher Education Policy Commission-

Lottery Education-

Higher Education Policy Commission-

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2007 Org 0441

1 Marshall Medical School-
2 RHI Program and Site Support (R) .... 033 $ 444,678
3 WVU Health Sciences
4 RHI Program and Site Support (R) .... 035 1,215,640
5 RHI Program and Site Support -
6 District Consortia (R) .............. 036 2,410,172
7 RHI Program and Site Support -
8 RHEP Program
9 Administration (R) ............... 037 183,058
10 RHI Program and Site Support -
11 Grad Med Ed and
12 Fiscal Oversight (R) ............ 038 100,287
<table>
<thead>
<tr>
<th>Program/Project</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher Education Grant Program (R)</td>
<td>164</td>
<td>18,309,000</td>
</tr>
<tr>
<td>Tuition Contract Program (R)</td>
<td>165</td>
<td>1,020,404</td>
</tr>
<tr>
<td>Minority Doctoral Fellowship (R)</td>
<td>166</td>
<td>150,000</td>
</tr>
<tr>
<td>Underwood—Smith Scholarship</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program-Student Awards (R)</td>
<td>167</td>
<td>141,142</td>
</tr>
<tr>
<td>School of Osteopathic Medicine (R)</td>
<td>172</td>
<td>6,756,463</td>
</tr>
<tr>
<td>Health Sciences Scholarship (R)</td>
<td>176</td>
<td>149,217</td>
</tr>
<tr>
<td>School of Osteopathic Medicine BRIM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subsidy (R)</td>
<td>403</td>
<td>169,396</td>
</tr>
<tr>
<td>Rural Health Initiative—Medical Schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support (R)</td>
<td>581</td>
<td>463,862</td>
</tr>
<tr>
<td>Vice Chancellor for Health Sciences—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural Health Residency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program (R)</td>
<td>601</td>
<td>263,596</td>
</tr>
<tr>
<td>MA Public Health Program and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health Science Technology (R)</td>
<td>623</td>
<td>58,569</td>
</tr>
<tr>
<td>Marshall University Graduate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>College Writing Project</td>
<td>807</td>
<td>25,000</td>
</tr>
<tr>
<td>HEAPS Grant Program (R)</td>
<td>867</td>
<td>5,001,133</td>
</tr>
<tr>
<td>WV Engineering, Science, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technology Scholarship</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program (R)</td>
<td>868</td>
<td>470,473</td>
</tr>
<tr>
<td>Health Sciences Career</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opportunities Program (R)</td>
<td>869</td>
<td>367,000</td>
</tr>
<tr>
<td>HSTA Program (R)</td>
<td>870</td>
<td>1,034,711</td>
</tr>
<tr>
<td>Center for Excellence in Disabilities</td>
<td>967</td>
<td>100,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$38,833,801</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007, with the exception of fund 4925, activity 847 which shall expire on June 30, 2006.
Sec. 5. Appropriations from state excess lottery revenue fund. - In accordance with section eighteen-a, article twenty-two, chapter twenty-nine of the code, the following appropriations shall be deposited and disbursed by the director of the lottery to the following accounts in this section in the amounts indicated.

248-Lottery Commission-

Refundable Credit

Fund 7207 FY 2007 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$6,000,000</td>
</tr>
</tbody>
</table>

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

249-Lottery Commission-

General Purpose Account

Fund 7206 FY 2007 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$65,000,000</td>
</tr>
</tbody>
</table>

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

Fund 4295 FY 2007 Org 0441

1 Unclassified-Total-Transfer (R) . . . . . . 402 $27,000,000

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

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

251-Economic Development Authority-
Economic Development Project Fund

Fund 3167 FY 2007 Org 0307

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

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

252-School Building Authority

Fund 3514 FY 2007 Org 0402

1 Unclassified-Total-Transfer . . . . . . . . 402 $19,000,000
253-West Virginia Infrastructure Council

Fund 3390 FY 2007 Org 0316

1 Unclassified-Total-Transfer (R) ........ 402 $40,000,000

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

254-Higher Education Improvement Fund

Fund 4297 FY 2007 Org 0441

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

255-State Park Improvement Fund

Fund 3277 FY 2007 Org 0310

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

2 Any unexpended balance remaining in the appropriation at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

256-Lottery Commission-

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2007 Org 0705

1 Unclassified-Transfer ................. 482 $12,900,000
2 Revenue Shortfall Reserve
3 Fund-Transfer ............................ 590 0
4 Consolidated Public
5 Retirement-Transfer ................. 918 83,300,000
6 Total ................................. $ 96,200,000
The above appropriation for Unclassified-Transfer (activity 482) shall be transferred to the General Revenue Fund only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the code has been satisfied as determined by the director of the lottery.

The above appropriation for Consolidated Public Retirement-Transfer (fund 7208, activity 918) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation fund (fund 2601) only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the code and the transfer to the General Revenue Fund (fund 7208, org 0705, activity 482) has been satisfied as determined by the director of the lottery.

Should the actual revenues accruing to the total Excess Lottery Fund be insufficient to fully fund all appropriations, the appropriation to the Consolidated Public Retirement-Transfer (activity 918) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation fund (fund 2601).

257—Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2007 Org 0100

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses—Lottery Surplus (fund 1046, activity 066) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.
258-Division of Health—

Central Office

(WV Code Chapter 16)

Fund 5219 FY 2007 Org 0506

Any unexpended balance remaining in the appropriation for
Chief Medical Examiner—Capital Improvements—Lottery
Surplus (fund 5219, activity 051) at the close of the fiscal year
2006 is hereby reappropriated for expenditure during the fiscal
year 2007.

259-West Virginia State Police

(WV Code Chapter 15)

Fund 6394 FY 2007 Org 0612

Any unexpended balance remaining in the appropriation for
Helicopter Purchase (fund 6394, activity 063) at the close of
fiscal year 2006 is hereby reappropriated for expenditure during
the fiscal year 2007.

260—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2007 Org 0702

Any unexpended balance remaining in the appropriation for
Remittance Processor—Lottery Surplus (fund 7082, activity
054) at the close of the fiscal year 2006 is hereby
reappropriated for expenditure during the fiscal year 2007.

Total TITLE II, Section 5-
Excess Lottery Funds $ 287,200,000
Sec. 6. Appropriations of federal funds.-In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, eleven-b of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand seven.

LEGISLATIVE

261-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2007 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,269,031</td>
</tr>
</tbody>
</table>

JUDICIAL

262-Supreme Court-

Consolidated Federal Funds

Fund 8867 FY 2007 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$400,000</td>
</tr>
</tbody>
</table>

EXECUTIVE

263-Governor's Office-

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2007 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$6,000,000</td>
</tr>
</tbody>
</table>
264-Governor’s Office-

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2007 Org 0100

1 Unclassified-Total ..................... 096  $ 5,231,509

265-Auditor’s Office-

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2007 Org 1200

1 Unclassified-Total ..................... 096  $14,002,367

266-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2007 Org 1400

1 Unclassified-Total ..................... 096  $4,262,367

267-Department of Agriculture-

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2007 Org 1400

1 Unclassified-Total ..................... 096  $839,565

268-Department of Agriculture-

State Conservation Committee
(WV Code Chapter 19)

Fund 8783 FY 2007 Org 1400

1 Unclassified-Total ...................... 096 $ 300,000

269-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2007 Org 1600

1 Unclassified-Total ...................... 096 $ 4,821,424

DEPARTMENT OF ADMINISTRATION

270-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2007 Org 0228

1 Unclassified-Total ...................... 096 $ 199,671

271-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2007 Org 0230

1 Unclassified-Total ...................... 096 $ 37,928,099

DEPARTMENT OF COMMERCE

272-Division of Forestry

(WV Code Chapter 19)
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8703</td>
<td>2007</td>
<td>0305</td>
<td>096</td>
<td>$4,145,804</td>
</tr>
<tr>
<td>8704</td>
<td>2007</td>
<td>0306</td>
<td>096</td>
<td>$302,202</td>
</tr>
<tr>
<td>8705</td>
<td>2007</td>
<td>0307</td>
<td>096</td>
<td>$10,639,627</td>
</tr>
<tr>
<td>8706</td>
<td>2007</td>
<td>0308</td>
<td>096</td>
<td>$548,675</td>
</tr>
<tr>
<td>8707</td>
<td>2007</td>
<td>0310</td>
<td>096</td>
<td>$9,955,955</td>
</tr>
</tbody>
</table>

**273-Geological and Economic Survey**

(WV Code Chapter 29)

**274-West Virginia Development Office**

(WV Code Chapter 5B)

**275-Division of Labor**

(WV Code Chapters 21 and 47)

**276-Division of Natural Resources**

(WV Code Chapter 20)

**277-Division of Miners’ Health, Safety and Training**
### 278 - Bureau of Employment Programs

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 8709 FY 2007 Org 0314</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total .......... 096 $1,345,652</td>
</tr>
</tbody>
</table>

#### Fund 8835 FY 2007 Org 0323

| 1 Unclassified ................ 099 $512,657 |
| 2 Reed Act 2002—Unemployment |
| 3 Compensation ................ 622 2,374,000 |
| 4 Reed Act 2002—Employment |
| 5 Services ..................... 630 1,371,000 |
| 6 Total ........................ 278-Bureau of Employment Programs |
| 6 Total ........................ 099 $4,257,657 |

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

### DEPARTMENT OF EDUCATION

279 - State Department of Education

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 8712 FY 2007 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total .......... 096 $270,000,000</td>
</tr>
</tbody>
</table>
280-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2007 Org 0402

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

281-State Board of Education-

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2007 Org 0402

1  Unclassified-Total .................. 096  $25,000,000

282-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2007 Org 0402

1  Unclassified-Total .................. 096  $114,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

283-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2007 Org 0431

1  Unclassified-Total .................. 096  $325,000
284-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2007 Org 0432

1 Unclassified-Total ............... 096 $1,772,510

285-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2007 Org 0433

1 Unclassified-Total ............... 096 $1,939,018

286-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2007 Org 0439

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

287-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2007 Org 0932

1 Unclassified-Total ............... 096 $50,467,000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

288-Division of Environmental Protection

(WV Code Chapter 22)
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

289-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8708 FY 2007 Org 0313

1 Unclassified-Total ................. 096 $108,362,697

Fund 8723 FY 2007 Org 0506

1 Unclassified-Total ................. 096 $ 7,314,114

290-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2007 Org 0506

1 Unclassified-Total ................. 096 $ 86,036,046

291-Division of Health-

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2007 Org 0506

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

292-West Virginia Health Care Authority

(WV Code Chapter 16)
Fund 8851 FY 2007 Org 0507

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

293-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2007 Org 0510

1 Unclassified-Total ................. 096 $ 520,038

294-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2007 Org 0511

1 Unclassified ....................... 099 $ 152,532,835
2 Medical Services .................. 189 1,826,784,280
3 Medical Services
4 Administrative Costs .............. 789 33,155,033
5 Total .............................. $ 2,012,472,148

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

295-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2007 Org 0601

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

296-Adjutant General-State Militia

(WV Code Chapter 15)
Fund 8726 FY 2007 Org 0603

1 Unclassified-Total .......................... 096 $ 95,915,322

297-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2007 Org 0606

1 Unclassified-Total .......................... 096 $ 32,051,140

298-Division of Corrections

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

Fund 8836 FY 2007 Org 0608

1 Unclassified-Total .......................... 096 $ 650,000

299-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2007 Org 0612

1 Unclassified-Total .......................... 096 $ 880,944

300-Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2007 Org 0613

1 Unclassified-Total .......................... 096 $ 2,750,000

301-Division of Veterans’ Affairs-

Veterans’ Home
(WV Code Chapter 9A)

Fund 8728 FY 2007 Org 0618

1 Unclassified-Total ................ 096 $ 1,766,228

302-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2007 Org 0620

1 Unclassified-Total ................ 096 $14,950,657

303-Division of Juvenile Services

(WV Code Chapter 49)

Fund 8855 FY 2007 Org 0621

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

DEPARTMENT OF REVENUE

304-Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2007 Org 0702

1 Unclassified-Total ................ 096 $ 25,000

305-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2007 Org 0704

1 Unclassified-Total ................ 096 $ 650,000
**DEPARTMENT OF TRANSPORTATION**

*306-Division of Motor Vehicles*

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8787</td>
<td>2007</td>
<td>0802</td>
</tr>
</tbody>
</table>

1. Unclassified-Total . . . . . . . . . . . . . . . . 096 $ 9,825,749

*307-Division of Public Transit*

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8745</td>
<td>2007</td>
<td>0805</td>
</tr>
</tbody>
</table>

1. Unclassified-Total . . . . . . . . . . . . . . . . 096 $ 16,365,341

*308-Public Port Authority*

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8830</td>
<td>2007</td>
<td>0806</td>
</tr>
</tbody>
</table>

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

**BUREAU OF SENIOR SERVICES**

*309-Bureau of Senior Services*

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8724</td>
<td>2007</td>
<td>0508</td>
</tr>
</tbody>
</table>

1. Unclassified-Total . . . . . . . . . . . . . . . . 096 $ 14,562,936

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*310-Public Service Commission-*)
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2007 Org 0926

1 Unclassified-Total ..................... 096 $1,538,245

311-Public Service Commission-

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2007 Org 0926

1 Unclassified-Total ..................... 096 $275,704

312-WV Statewide Addressing and Mapping Board

(WV Code Chapter 24E)

Fund 8868 FY 2007 Org 0940

1 Unclassified-Total ..................... 096 $250,000

313-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2007 Org 0941

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

314-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2007 Org 0942

1 Unclassified-Total ..................... 096 $50,000
Sec. 7. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2007.

315-Governor's Office—
Office of Economic Opportunity
Community Services
Fund 8799 FY 2007 Org 0100
1 Unclassified-Total .................. 096 $ 9,507,444

316-West Virginia Development Office—
Community Development
Fund 8746 FY 2007 Org 0307
1 Unclassified-Total .................. 096 $ 28,340,316

317-Governor's Workforce Investment Office
Fund 8888 FY 2007 Org 0331
1 Unclassified-Total .................. 096 $ 39,733,496

318-Division of Health—
Maternal and Child Health
Fund 8750 FY 2007 Org 0506
1 Unclassified-Total .................. 096 $ 10,944,362
319-Division of Health-
Preventive Health
Fund 8753 FY 2007 Org 0506

1 Unclassified-Total ................ 096 $ 2,244,387

320-Division of Health-
Substance Abuse Prevention and Treatment
Fund 8793 FY 2007 Org 0506

1 Unclassified-Total ................ 096 $11,575,501

321-Division of Health-
Community Mental Health Services
Fund 8794 FY 2007 Org 0506

1 Unclassified-Total ................ 096 $ 3,332,225

322-Division of Health-
Abstinence Education Program
Fund 8825 FY 2007 Org 0506

1 Unclassified-Total ................ 096 $ 978,261

323-Division of Human Services-
Energy Assistance
Fund 8755 FY 2007 Org 0511

1 Unclassified-Total ................ 096 $25,000,000
Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2007, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,257,511, special revenue funds in the
amount of $621,896, and state road funds in the amount of
$144,109 for payment of claims against the state.

Sec. 9. Appropriations from surplus accrued.-The
following items are hereby appropriated from the state excess
lottery revenue fund, and are to be available for expenditure
during the fiscal year 2007 out of surplus funds only, as
determined by the director of the lottery, accrued from the fiscal
year ending the thirtieth day of June, 2006, subject to the terms
and conditions set forth in this section.

It is the intent and mandate of the Legislature that the
following appropriations be payable only from surplus accrued
from the fiscal year ending the thirtieth day of June two
thousand six.

In the event that surplus revenues available from the fiscal
year ending the thirtieth day of June, two thousand six, are not
sufficient to meet all the appropriations made pursuant to this
section, then the appropriations shall be made to the extent that
surplus funds are available and shall be allocated first to
provide the necessary funds to meet the first appropriation of
this section; next, to provide the funds necessary for the second
appropriation of this section and subsequently to provide the
funds necessary for each appropriation in succession before any
funds are provided for the next subsequent appropriation.

328-Joint Expenses-

(WV Code Chapter 4)

Fund 1736 FY 2007 Org 2300

1 Tax Reduction and Federal Funding

2 Increased Compliance

3 (TRAFFIC) ...................... 642 $ 20,000,000
329-Office of Technology-

(WV Code Chapter 5A)

Fund 2532 FY 2007 Org 0231

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Network Monitoring</td>
<td>919</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>1,857,300</td>
</tr>
</tbody>
</table>

330-West Virginia Development Office-

(WV Code Chapter 5B)

Fund 3170 FY 2007 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Connectivity Research and Development</td>
<td>923</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>$ 50,000</td>
</tr>
</tbody>
</table>

The above appropriation to Connectivity Research and Development shall be used by the West Virginia development office for the coordinated development of technical infrastructure in areas where expanded resources and technical infrastructure may be expected or required pursuant to the provisions of 5a-6-4 of the code.

Sec. 10. Special revenue appropriations.- There are hereby appropriated for expenditure during the fiscal year two thousand seven appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter eleven-b of the code, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:
(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 11. State improvement fund appropriations.- Requests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year two thousand seven, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year two thousand seven to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.-A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 13. Appropriations for refunding erroneous payment.-Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.
When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

**Sec. 14. Sinking fund deficiencies.**-There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

**Sec. 15. Appropriations for local governments.**-There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16. Total appropriations.-Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I-GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund.-The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

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

TITLE III-ADMINISTRATION.

Section 1. Appropriations conditional.-The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter eleven-b of the code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.
Sec. 2. Constitutionality.-If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 7

(S. B. 793 — By Senators Helmick, Sharpe, Plymale, Edgell, Love, Bailey, Bowman, Unger, Minear, Boley, Facemyer and Guills)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 24, 2006.]

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 department of administration - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205, to the department of military affairs and public safety - office of the secretary, fund 0430, fiscal year 2006, organization 0601, and to the department of revenue - tax division, fund 0470, fiscal year 2006, organization 0702, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances
forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s Executive Budget document and statement of the State Fund - General Revenue 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 six; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, 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

18-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>402</td>
<td>$117,804,500</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total Transfer (fund 0195, activity 402) shall be transferred to the West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).
And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0430, fiscal year 2006, organization 0601, be supplemented and amended by adding thereto a new item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

61-Department of Military Affairs and Public Safety-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2006 Org 0601

General Activity Revenue Funds

1a Capital Outlay (R) ................ 511 $10,000,000

The above appropriation shall be used for the construction of the Kenneth “Honey” Rubenstein Center, formerly known as the Davis Juvenile Detention Center. This funding shall be expended only after all other funding previously appropriated for the construction of said facility has been expended.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0470, fiscal year 2006, organization 0702, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
45464748
DEPARTMENT OF REVENUE
76-Tax Division
(WV Code Chapter 11)
Fund 0470 FY 2006 Org 0702

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $92,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 $36,075</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 $317,500</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend, add and increase appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.

CHAPTER 8

(S. B. 794 — By Senators Helmick, Sharpe, Plymale, Edgell, Love, Bailey, Bowman, Unger, Minear, Boley, Facemyer and Guills)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 24, 2006.]

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 six, in the amount of five million four hundred thousand dollars from the Joint Expenses,
fund 0175, fiscal year 2005, organization 2300, activity 642, in the amount of one million dollars from the State Department of Education, fund 0313, fiscal year 2006, organization 0402, activity 097, in the amount of twenty-four million six hundred thousand dollars from the Tax Reduction and Federal Funding Increased Compliance Fund, fund 1732, fiscal year 2006, organization 2300, in the amount of six million six hundred twenty-nine thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2006, organization 0218, and in the amount of one million two hundred fifty thousand dollars from the Public Service Commission, fund 8623, fiscal year 2006, organization 0926, and 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 Agriculture, fund 0131, fiscal year 2006, organization 1400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2006, organization 1400, to the Consolidated Public Retirement Board, fund 0195, fiscal year 2006, organization 0205, to the State Department of Education, fund 0313, fiscal year 2006, organization 0402, to the State Board of Rehabilitation Services - Division of Rehabilitation Services, fund 0310, fiscal year 2006, organization 0932, to the Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to Division of Corrections - correctional units, fund 0450, fiscal year 2006, organization 0608, and to the Aeronautics Commission, fund 0582, fiscal year 2006, organization 0807, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Legislature finds that the account balance in the Joint Expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, the State Department of Education, fund 0313, fiscal year 2006, organization 0402, activity 097, the Tax Reduction and Federal Funding Increased Compliance Fund, fund 1732, fiscal year 2006, organization 2300, the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2006,
organization 0218, the Public Service Commission, fund 8623, fiscal year 2006, organization 0926, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s Executive Budget document, statement of the State Fund, General Revenue, and 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 six; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six, to the Joint Expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, be decreased by expiring the amount of five million four hundred thousand dollars; to the State Department of Education, fund 0313, fiscal year 2006, organization 0402, activity 097, be decreased by expiring the amount of one million dollars; to the Tax Reduction and Federal Funding Increased Compliance Fund, fund 1732, fiscal year 2006, organization 2300, be decreased by expiring the amount of twenty-four million six hundred thousand dollars; to the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2006, organization 0218, be decreased by expiring the amount of six million six hundred twenty-nine thousand dollars; and to the Public Service Commission, fund 8623, fiscal year 2006, organization 0926, be decreased by expiring the amount of one million two hundred
fifty thousand dollars to the unappropriated surplus balance of
the State Fund, General Revenue, to be available for appropri-
dation during the fiscal year two thousand six.

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 0131, fiscal
year 2006, organization 1400, be supplemented and amended
by increasing existing items of appropriation and adding new
items of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus (R)</td>
<td>$985,500</td>
</tr>
<tr>
<td>Predator Control - Surplus (R)</td>
<td>$65,000</td>
</tr>
<tr>
<td>Jackson’s Mill - Surplus (R)</td>
<td>$500,000</td>
</tr>
<tr>
<td>4-H Camp Improvements - Surplus (R)</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for
Predator Control - Surplus (fund 0131, activity ), Jackson’s Mill
- Surplus (fund 0131, activity 842), and 4-H Camp Improve-
ments - Surplus (fund 0131, activity ) at the close of the fiscal
year two thousand six is hereby reappropriated for expenditure
during the fiscal year two thousand seven.
And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0132, fiscal year 2006, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2006 Org 1400

General
Activity
Revenue
Funds

5 Soil Conservation Projects -
6 Surplus (R) . . . . . . . . . . 269 $ 2,100,000

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, 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

18—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205
246 APPROPRIATIONS [Ch. 8

71 1 Unclassified - Total -
72 Transfer - Surplus ............ 682 $32,895,500

76 From the above appropriation for Unclassified - Total -
77 Transfer - Surplus (fund 0195, activity 682) shall be transferred
78 to the Consolidated Public Retirement Board - West Virginia
79 Teachers’ Retirement System Employers Accumulation Fund
80 (fund 2601).

81 And that the total appropriation for the fiscal year ending
82 the thirtieth day of June, two thousand six, to fund 0313, fiscal
83 year 2006, organization 0402, be supplemented and amended
84 by adding new items of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

41-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2006 Org 0402

94 27a Transportation Costs -
95 Surplus (R) ..................... $ 3,500,000
96 27b Educational Enhancements -
97 Surplus (R) ..................... 4,000,000
Any unexpended balance remaining in the appropriation for Transportation Costs - Surplus (fund 0313, activity ) and Educational Enhancements - Surplus (fund 0313, activity ) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure in the fiscal year two thousand seven.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0310, fiscal year 2006, organization 0932, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

51-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2006 Org 0932

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services - Surplus</td>
<td>243 $ 246,000</td>
</tr>
<tr>
<td>10 Capital Outlay, Repairs</td>
<td>782,000</td>
</tr>
<tr>
<td>677 Equipment - Surplus (R)</td>
<td></td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0403, fiscal
year 2006, 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

60-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2006 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 Indigent Burials-Surplus (R)</td>
<td>076 $ 100,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 0450, fiscal
year 2006, organization 0608, 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

67-Division of Corrections-

Correctional Units
Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0450, activity 097) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0582, fiscal year 2006, 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

83-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2006 Org 0807

1  Unclassified - Surplus (R) . . . . . . . 097 $ 400,000
The purpose of this bill is to expire funds into the unappropriated surplus balance in the state fund, general revenue, and to supplement, amend, add and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.

CHAPTER 9

(S. B. 795 —By Senators Helmick, Sharpe, Plymale, Chafin, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Sprouse and Guills)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 24, 2006.]

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 Department of Military Affairs and Public Safety - Office of Emergency Services, fund 0443, fiscal year 2006, organization 0606, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s Executive Budget document and statement of the State Fund, General Revenue 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 six; 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, amended and increased as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

65-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2006 Org 0606

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>10a Homeland Security Over</td>
<td>693</td>
</tr>
<tr>
<td>10b Obligation (R)</td>
<td>693</td>
</tr>
<tr>
<td>10c Homeland Security Operating Expenses</td>
<td>779</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Homeland Security Over Obligation (fund 0443, activity 693) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.
The purpose of this supplementary appropriation bill is to supplement and increase this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand six, by providing for new line items of appropriation to be established therein for the designated spending unit for expenditure during the fiscal year two thousand six.

CHAPTER 10

(H. B. 4855 — By Delegates Michael, Doyle, Proudfoot, Cann, Boggs, Frederick, H.K. White, Williams, Anderson and Ashley)

[Passed March 11, 2006; in effect from passage.] [Approved by the Governor on March 23, 2006.]

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 the Department of Education and the Arts - Office of the Secretary - lottery education fund interest earnings - control account, fund 3508, fiscal year 2006, organization 0431; to the department of environmental protection - division of environmental protection - oil and gas reclamation fund, fund 3322, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - oil and gas operating permit and processing fund, fund 3323, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - the underground storage tank administrative fund, fund 3325, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - air pollution control fund, fund 3336, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - mountaintop
removal fund, fund 3490, fiscal year 2006, organization 0313; to the department of health and human resources - division of human services - health care provider tax, fund 5090, fiscal year 2006, organization 0511; to the department of health and human resources - division of human services - medical services trust fund, fund 5185, fiscal year 2006, organization 0511; to the department of military affairs and public safety - west virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2006, organization 0608; to the department of military affairs and public safety - criminal justice services - court security fund, fund 6804, fiscal year 2006, organization 0620; to the department of transportation - division of motor vehicles - insurance certificate fees, fund 8215, fiscal year 2006, organization 0802; to the public service commission - consumer advocate, fund 8627, fiscal year 2006, organization 0926; and to the massage therapy licensure board, fund 8671, fiscal year 2006, organization 0938, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of education and the arts - office of the secretary - lottery education fund interest earnings - control account, fund 3508, fiscal year 2006, organization 0431; in the department of environmental protection - division of environmental protection - oil and gas reclamation fund, fund 3322, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - oil and gas operating permit and processing fund, fund 3323, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - the underground storage tank administrative fund, fund 3325, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - air pollution control fund, fund 3336, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - mountaintop removal fund, fund 3490, fiscal year
2006, organization 0313; in the department of health and human resources - division of human services - health care provider tax, fund 5090, fiscal year 2006, organization 0511; in the department of health and human resources - division of human services - medical services trust fund, fund 5185, fiscal year 2006, organization 0511; in the department of military affairs and public safety - west virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2006, organization 0608; in the department of military affairs and public safety - criminal justice services - court security fund, fund 6804, fiscal year 2006, organization 0620; in the department of transportation - division of motor vehicles - insurance certificate fees, fund 8215, fiscal year 2006, organization 0802; in the public service commission - consumer advocate, fund 8627, fiscal year 2006, organization 0926; and in the massage therapy licensure board, fund 8671, fiscal year 2006, organization 0938, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to fund 3508, fiscal year 2006, organization 0431, be supplemented and amended by increasing the total appropriation as follows:

1 **TITLE II – APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF EDUCATION AND THE ARTS**

4 *135-Office of the Secretary-

5 *Lottery Education Fund Interest Earnings-

6 *Control Account*
And, That the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 3322, fiscal
year 2006, organization 0313, be supplemented and amended
by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

142-Division of Environmental Protection

Oil and Gas Reclamation Fund

Fund 3322 FY 2006 Org 0313

And, That the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 3323, fiscal
year 2006, organization 0313, be supplemented and amended
by increasing the total appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

143-Division of Environmental Protection-

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2006 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$55,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$15,500</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$129,500</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 3325, fiscal year 2006, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

145-Division of Environmental Protection-

The Underground Storage Tank

Administrative Fund
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 3336, fiscal year 2006, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*149-Division of Environmental Protection - Air Pollution Control Fund*

**Fund 3336 FY 2006 Org 0313**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>1 Personal Services</td>
<td>$ 10,500</td>
</tr>
<tr>
<td>010</td>
<td>3 Employee Benefits</td>
<td>4,000</td>
</tr>
<tr>
<td>099</td>
<td>4 Unclassified</td>
<td>35,500</td>
</tr>
<tr>
<td></td>
<td>93,147</td>
<td></td>
</tr>
<tr>
<td></td>
<td>74,517</td>
<td></td>
</tr>
<tr>
<td></td>
<td>204,924</td>
<td></td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 3490, fiscal
year 2006, organization 0313, be supplemented and amended
by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

152-Division of Environmental Protection-
Mountaintop Removal Fund
(WV Code Chapter 22)
Fund 3490 FY 2006 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$29,817</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>10,754</td>
</tr>
<tr>
<td>099 Unclassified</td>
<td>134,741</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 5090, fiscal
year 2006, organization 0511, be supplemented and amended
by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES
Title II – Appropriations

Section 3. Appropriations from other funds.

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

166-Division of Human Services-

*Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2006 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096 $ 29,695,259</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 5185, fiscal year 2006, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099 $ 10,000,000</td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 6362, fiscal year 2006, organization 0608, 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

173-West Virginia Division of Corrections-

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2006 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$139,200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>38,280</td>
</tr>
<tr>
<td>Unclassified</td>
<td>158,520</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 6804, fiscal year 2006, organization 0620, 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
151 185-Criminal Justice Services-

152 Court Security Fund

153 (WV Code Chapter 51)

154 Fund 6804 FY 2006 Org 0620

155 Act- Other

156 ivity Funds

157 1 Unclassified-Total .............. 096 $ 500,000

158 And, That the total appropriation for the fiscal year ending
159 the thirtieth day of June, two thousand six, to fund 8215, fiscal
160 year 2006, organization 0802, be supplemented and amended
161 by increasing the total appropriation as follows:

162 TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

165 208-Division of Motor Vehicles-

166 Insurance Certificate Fees

167 (WV Code Chapter 20)

168 Fund 8215 FY 2006 Org 0802

169 Act- Other

170 ivity Funds

171 4 Unclassified .......................... 099 $ 35,000
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8627, fiscal year 2006, organization 0926, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

228-Public Service Commission-

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2006 Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099 $ 50,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8671, fiscal year 2006, organization 0938, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

233-Massage Therapy Licensure Board

(WV Code Chapter 30)
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.

CHAPTER 11

(H. B. 4856 — By Delegates Michael, Stalnaker, Kominar, Frederick, Browning, Boggs, Susman, G. White, Wakim and Carmichael)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 23, 2006.]

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 the department of commerce - miners’ health, safety and training fund, fund 3355, fiscal year 2006, organization 0314, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of commerce - miners’ health, safety and training fund, fund 3355, fiscal year 2006, organiza-
tion 0314, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six, 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 six, to fund 3355, fiscal year 2006, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

131-Miners’ Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2006 Org 0314

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$105,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>39,907</td>
</tr>
<tr>
<td>Unclassified</td>
<td>65,280</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 six.
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand six, to the department of administration - children's health insurance agency, fund 8838, fiscal year 2006, organization 0230; to the department of commerce - division of natural resources, fund 8707, fiscal year 2006, organization 0310; to the department of environmental protection - division of environmental protection, fund 8708, fiscal year 2006, organization 0313; to the department of health and human resources - west virginia health care authority, fund 8851, fiscal year 2006, organization 0507; to the department of military affairs and public safety - office of the secretary, fund 8876, fiscal year 2006, organization 0601; to the department of transportation - public port authority, fund 8830, fiscal year 2006, organization 0806; and to the department of military affairs and public safety - division of criminal justice services - juvenile accountability incentive, fund 8829, fiscal year 2006, organization 0620, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand
six, 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 six, to fund 8838, fiscal year 2006, organization 0230, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF ADMINISTRATION

4 270-Children’s Health Insurance Agency

5 (WV Code Chapter 5)

6 Fund 8838 FY 2006 Org 0230

7 | Activity | Federal Funds |
8 | 096 | $ 4,102,903 |

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8707, fiscal year 2006, organization 0310, be supplemented and amended by increasing the total appropriation as follows:

14 TITLE II – APPROPRIATIONS.

15 Sec. 6. Appropriations of federal funds.

16 DEPARTMENT OF COMMERCE

17 275-Division of Natural Resources
Ch. 12]  APPROPRIATIONS  

(WV Code Chapter 20)

Fund 8707 FY 2006 Org 0310

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

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8708, fiscal year 2006, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

287-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2006 Org 0313

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

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8851, fiscal year 2006, organization 0507, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

291-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2006 Org 0507

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$175,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8876, fiscal year 2006, organization 0601, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

294-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2006 Org 0601

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8830, fiscal year 2006, organization 0601, be supplemented and amended by increasing the total appropriation as follows:
year 2006, organization 0806, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

307-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2006 Org 0806

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total . . . . . . . . . . . . . 096 $ 200,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 8829, fiscal year 2006, organization 0620, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

329-Division of Criminal Justice Services-

Juvenile Accountability Incentive

Fund 8829 FY 2006 Org 0620

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total . . . . . . . . . . . . . 096 $ 427,737</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.

CHAPTER 13

(H. B. 4858 — By Delegates Michael, Doyle, Frederick, Susman, Browning, H. White, Anderson, Ashley, G. White and Border)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 23, 2006.]

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 six, to the secretary of state - state election fund, fund 8854, fiscal year 2006, organization 1600, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established the availability of federal funds for a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six, 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 fiscal year ending the thirtieth day of June, two thousand six, to fund 8854, fiscal year 2006, organization 1600, be supplemented and amended by increasing the total appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

268-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2006 Org 1600

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

The purpose of this supplementary appropriation bill is to supplement and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand six.

CHAPTER 14

(Com. Sub. for H. B. 4119 — By Delegates Cann, Kominar, Michael, H. White, Browning, Craig, Stalnaker, Poling, G. White and Azinger)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-15-1, §20-15-2, §20-
A TV RESPONSIBILITY ACT

Be it enacted by the Legislature of West Virginia:


ARTICLE 15. ATV RESPONSIBILITY ACT.

§20-15-1. Legislative findings.
§20-15-4. Duties of authorized outfitters or licensees.
§20-15-5. Duties of participants.

§20-15-1. Legislative findings.

The West Virginia Legislature finds that trail-oriented recreation for off-highway vehicle enthusiasts offered by the Hatfield-McCoy Trail significantly contributes to the economy of West Virginia and is enjoyed by a large and growing number of residents and nonresidents alike. Since it is recognized that there are inherent risks in the operation of such off-highway vehicles which should be understood by each operator and which cannot be eliminated by authorized outfitters or licensees, it is the purpose of this article to define the areas of responsibility and affirmative acts which authorized outfitters
must perform or risk being liable for loss, damage or injury suffered by participants, and to define the risk which the participants expressly assume and for which there can be no recovery.


The terms in this article have the following meaning, unless the context clearly requires a different meaning:

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

(2) “Motorcycle” means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than two wheels in contact with the ground.

(3) “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person, partnership, limited liability company (“LLC”), corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, who operate from any temporary or permanent camp, private or public lodge, or private home, who provide guided tours or the rental of all-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

(4) “Participant” means any person using the services or equipment of an authorized outfitter or licensee, including passengers of an all-terrain vehicle or motorcycle.

The provisions of this article shall only apply to authorized outfitters or licensees licensed by the Hatfield-McCoy Regional Recreation Authority and any participant as defined in section two.

§20-15-4. Duties of authorized outfitters or licensees.

(a) Every authorized outfitter or licensee shall:

1. (1) Mark for identification purposes all equipment and vehicles used in the business;

2. (2) Maintain all equipment and vehicles used in the business in such condition that the equipment and vehicles are safe to operate or use as intended and recommended by the manufacturer;

3. (3) Provide facilities, equipment and services, conforming to safety and other requirements established by the rules promulgated by the Hatfield-McCoy Regional Recreation Authority;

4. (4) Provide facilities, equipment and services as advertised or as agreed to by the authorized outfitter or licensee and the participant;

5. (5) Provide protective helmets which are size appropriate and which meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users as defined by subdivision (5), subsection (a), section one, article one, chapter seventeen-f of this code, to all persons using all-terrain vehicles or motorcycles;

6. (6) Provide all-terrain vehicles or motorcycles which are age and size appropriate as recommended by the manufacturer;
(7) Make reasonable and prudent efforts to ensure that participants have received the safety training required by the provisions of the legislative rule for the use of the Hatfield-McCoy Regional Recreation Area;

(8) Make certain that every guide offered to participants by the authorized outfitter or licensee has a current standard first aid training certificate and CPR certificate issued by the American Red Cross or its equivalent and ATV safety training through the ATV Safety Institute;

(9) Make certain that employees carry first aid kits when acting as guides; and

(10) Make known to any participant any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee.

(b) An authorized outfitter or licensee may not rent or lease an all-terrain vehicle or motorcycle to a person under the age of eighteen years or allow any owner-operated all-terrain vehicle or motorcycle on any guided tour when operated by any person under the age of eighteen years without first obtaining a written statement, signed by the minor’s parent or guardian certifying that:

(1) Any machine to be operated by the minor or his parent or guardian is of a model that is recommended by the manufacturer as appropriate to the minor’s age and size;

(2) All rules governing the use of the vehicle and the Hatfield-McCoy Recreation Area have been explained to the minor in sufficient detail to enable the minor to abide by the rules; and

(3) Any minor under the age of sixteen will remain under the supervision of and the sight of the parent or guardian at all times.
(c) An authorized outfitter or licensee shall provide a participant with written notification of his or her duties as prescribed in section five of this article, and the participant shall sign the notification and shall be kept on file by the outfitter or licensee for not less than five years.

§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the operator or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle or motorcycle owned by the authorized outfitter or licensee, and caused by any of the following:

(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions including: Rocks, trees or other forms of forest growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles, or any component thereof used in natural resource maintenance, development, or extraction;
(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof.

(4) Shall obey all rules or instructions announced by the authorized outfitter or licensee, with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV or motorcycle within the limits of the participant’s own ability;

(3) Maintaining reasonable control of speed and course at all times;

(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which may cause or contribute to the injury of any person.

(c) If while riding an ATV or motorcycle, any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or participants involved and not that of the authorized outfitter or licensee unless the authorized outfitter or licensee or his or her agent caused the collision in a tortious manner.
(d) After an accident, a participant may not leave the area where the accident took place without:

1. Leaving personal identification, including his or her name and address;
2. Notifying the proper authorities; and
3. Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.


(a) Any authorized outfitter or licensee is liable for injury, loss or damage caused by failure to follow the duties set forth in section four of this article where the violation of duty is causally related to the injury, loss or damage suffered.

(b) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of the authorized outfitter or licensee.
(c) An authorized outfitter or licensee is not liable for any injury, loss or damage caused by a participant’s violation of any duty described in section five of this article.

(d) An authorized outfitter or licensee is not liable for any injury, loss or damage caused solely by the participant’s failure to negotiate the terrain or environment over which or through which the participant is operating his or her all-terrain vehicle or motorcycle as described in section five of this article.


Any participant is liable for injury, loss or damage resulting from violations of the duties established in section five of this article where the violation of duty is causally related to the injury, loss or damage suffered.


Every authorized outfitter or licensee shall carry public liability insurance in limits of not less than three hundred thousand dollars per occurrence.

CHAPTER 15

(Com. Sub. for S. B. 509 — By Senators Kessler, Tomblin, Mr. President, Harrison, Caruth, Oliverio, Chafin, Dempsey, Foster, Helmick, Jenkins, Minard, Love, White, Plymale, Deem, Facemyer, Weeks, Minear, Guills, Yoder, Bowman, Bailey, Boley, Unger and Sharpe)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and §17A-6A-15 of the Code of West
Virginia, 1931, as amended, all relating generally to automobile franchise law; relationship of automobile dealers, distributors and manufacturers; providing clarification that material breach is required for good cause for cancellation of dealer contract; providing factors to be considered for dealer and public interest in cancellation of dealer contract; providing for compensation to a dealer from a manufacturer when a brand or line is phased out; expanding and clarifying prohibited practices; clarifying prohibited coercive acts when requiring a dealer enter into an agreement; adding requirement that manufacturers and distributors use fair and reasonable performance standards that are statistically sound and verifiable; exception for volume purchases; prohibiting manufacturers and distributors from requiring facility upgrades as a condition of offering certain vehicle models; requiring manufacturer or distributor responsibility for all damage to vehicles prior to dealer taking possession; and providing for payment of reasonable expenses for professional services by the manufacturer or distributor prior to the exercise of a first right of refusal.

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

That §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and 17A-6A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALE AND MANUFACTURERS.**

§17A-6A-8. Reasonable compensation to dealer.
§17A-6A-8a. Compensation to dealers for service rendered.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) “Dealer agreement” means the franchise, agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

(2) “Designated family member” means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer’s property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

(3) “Distributor” means any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factory representative, resident or nonresident, or who controls any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.
“Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

“Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

“Factory representative” means an agent or employee of a manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

“Good faith” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

“Manufacturer” means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative.

“Motor vehicle” means that term as defined in section one, article one of this chapter, including motorcycle and recreational vehicle as defined in subsections (c) and (nn), respectively, of said section, but not including a tractor or farm equipment.

(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;
(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause exists when a manufacturer or distributor can demonstrate termination is necessary due to a material breach of a reasonable term or terms of the agreement by a dealer when weighed against the interests of the dealer and the public. The interests of the dealer and the public shall include consideration of:

(a) The relationship of the dealer’s sales to the sales in the relevant market;

(b) The investment and financial obligations of the dealer under the terms of the franchise agreement;

(c) The effect on the public cancellation of the franchise agreement would cause;

(d) The adequacy of the dealer’s sales and service facilities, equipment, parts and personnel in relation to other dealers in the relevant market;

(e) Whether the dealer is honoring existing warranties;

(f) Whether the dealer is complying, or can comply within a reasonable time, with reasonable capitalization requirements; and

(g) The dealer’s overall performance under the reasonable terms of the franchise agreement. This shall include the overall fairness of the agreement terms, the enforceability of the agreement and the relative bargaining power of the parties.
(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause exists for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and

(d) The failure continued for more than three hundred sixty days after the date notification was given pursuant to subdivision (a) of this subsection.

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, which has not been materially altered, substantially damaged or driven for more than seven hundred fifty miles, except that for any new motorcycle inventory purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles;
(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer’s or distributor’s current parts catalog;

(c) Equipment, furnishings and signs purchased from the manufacturer or distributor; and

(d) Special computer software, hardware, license fees and other programs mandated by the manufacturer to provide training or communication with the manufacturer.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of three years from the effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly, owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable rental value of the dealership premises for three years. However, the dealer shall have the obligation to mitigate his or her damages, including, but not limited to, listing the facility with a commercial real estate agent and other reasonable steps to sell or lease the property. During this three-year period the manufacturer shall have the right to occupy and use the facilities until such time as the dealer is able to otherwise sell or lease the property to another party. The payment required by this subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section five of this article.

(3) Upon the termination, cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale of a product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:
(a) Compensation consistent with the length of time the
dealer carried the line and the investment and timing thereof
required by the manufacturer or distributor of the dealer; and

(b) Support of the manufacturer’s or distributor’s warranty
obligations by making parts available and compensating dealers
for warranty parts and labor for five years: Provided, That the
motor vehicle dealer has adequate facilities, trained personnel
and equipment to perform warranty repairs.

§17A-6A-8a. Compensation to dealers for service rendered.

1 (1) Every motor vehicle manufacturer, distributor or
wholesaler, factory branch or distributor branch, or officer,
agent or representative thereof, shall:

(a) Specify in writing to each of its motor vehicle dealers,
the dealer’s obligation for delivery, preparation, warranty and
factory recall services on its products;

(b) Compensate the motor vehicle dealer for warranty and
factory recall service required of the dealer by the manufac-
turer, distributor or wholesaler, factory branch or distributor
branch or officer, agent or representative thereof; and

(c) Provide the dealer the schedule of compensation to be
paid the dealer for parts, work and service in connection with
warranty and recall services and the time allowance for the
performance of the work and service.

(2) In no event may:

(a) The schedule of compensation fail to compensate the
dealers for the work and services they are required to perform
in connection with the dealer’s delivery and preparation
obligations, or fail to adequately and fairly compensate the
dealers for labor, parts and other expenses incurred by the
(b) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(c) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(3) It is a violation of this section for any manufacturer, distributor, wholesaler or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs or other retaliation, if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(4) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work, including labor, parts and other expenses, shall be paid by the manufacturer within thirty days after approval and shall be approved or disapproved by the manufacturer within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonably substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. No otherwise valid reimbursement claims may be denied once
properly submitted within manufacturers’ submission guidelines due to a clerical error or omission or based on a different level of technician technical certification or the dealer’s failure to subscribe to any manufacturer’s computerized training programs.

(5) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer’s delivery, preparation, warranty and recall obligations constitutes the dealer’s sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer’s failure to adhere to these obligations, a loss caused by the dealer’s negligence or intentional misconduct or a loss caused by the dealer’s modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs and damages, as a result of the dealer having been named a party in a product liability action.


(1) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;
(c) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the new motor vehicle dealer;

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that
47 current economic conditions or reasonable business consider-
48 ations justify exclusive facilities is on the manufacturer or
distributor and must be proven by a preponderance of the
evidence;

51 (g) Change the location of the new motor vehicle dealership
52 or make any substantial alterations to the dealership premises,
53 where to do so would be unreasonable; and

54 (h) Prospectively assent to a release, assignment, novation,
waiver or estoppel which would relieve any person from
liability imposed by this article or require any controversy
between a new motor vehicle dealer and a manufacturer or
distributor to be referred to a person other than the duly
constituted courts of the state or the United States, if the referral
would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor may not do any of the
following:

63 (a) Fail to deliver new motor vehicles or new motor vehicle
parts or accessories within a reasonable time and in reasonable
quantities relative to the new motor vehicle dealer’s market area
and facilities, unless the failure is caused by acts or occurrences
beyond the control of the manufacturer or distributor, or unless
the failure results from an order by the new motor vehicle
dealer in excess of quantities reasonably and fairly allocated by
the manufacturer or distributor. No manufacturer or distributor
may penalize a new motor vehicle dealer for an alleged failure
to meet sales quotas where the alleged failure is due to actions
of the manufacturer or distributor;

67 (b) Refuse to disclose to a new motor vehicle dealer the
method and manner of distribution of new motor vehicles by
the manufacturer or distributor, including any numerical
calculation or formula used, nationally or within the dealers
market, to make the allocations;
(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer’s marketing district, zone or region, whichever geographical area is the smallest;

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer’s receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer’s inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar; or

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;
(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(h) Establish a new motor vehicle dealership which would unfairly compete with a new motor vehicle dealer of the same line-make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(i) A manufacturer may not, except as provided by this section, directly or indirectly:

(i) Own an interest in a dealer or dealership;

(ii) Operate a dealership; or

(iii) Act in the capacity of a new motor vehicle dealer: Provided, That a manufacturer may own an interest, other than stock in a publicly held company, solely for investment purposes;
(j) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed twelve months from the date the manufacturer or distributor acquires the dealership if:

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(ii) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(k) The twelve-month period may be extended for an additional twelve months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within fifteen air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original twelve-month period. Any dealer receiving the notice may protest the proposed extension within thirty days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer’s or distributor’s participation in the dealership is in a bona fide relationship with a franchised dealer who:

(i) Has made a significant investment in the dealership, subject to loss;
(ii) Has an ownership interest in the dealership; and

(iii) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(m) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(n) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days is consent;

(o) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(p) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service incentives, rebates or other forms of sales incentive compensation more than twelve months after the claim for payment or reimbursement has been made by the automobile dealer: Provided, That the provisions of this subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all copying, postage and administrative costs incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

(q) Unreasonably restrict a dealer’s ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:
(i) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer’s assets where the dealer owner receives consideration, terms, and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than fifty percent of the dealer’s ownership.

(ii) The proposed change of the dealership’s ownership or the transfer of the new vehicle dealer’s assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer’s owners to one of the following:

(A) A designated family member of one or more of the dealer owners;

(B) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

(C) A partnership or corporation controlled by a designated family member of one of the dealers;

(D) A trust established or to be established:

(1) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer’s or distributor’s standards; or

(2) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.

(iii) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute that the manufacturer evaluate, process or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to
challenge as a rejection or denial of the proposed transfer by any party.

(iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer’s or distributor’s exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within twenty days of the dealer’s receipt of the manufacturer’s or distributor’s written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(r) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(s) Make any material change in any franchise agreement without giving the new motor vehicle dealer written notice by certified mail of the change at least sixty days prior to the effective date of the change;

(t) Fail to reimburse a new motor vehicle dealer, at the dealers regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

(u) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in
business practices in accordance with the usage of trade in retail
or wholesale vehicle financing;

(v) Discriminate directly or indirectly between dealers on
vehicles of like grade or quantity where the effect of the
discrimination would substantially lessen competition; and

(w) Use or employ any performance standard that is not fair
and reasonable and based upon accurate and verifiable data
made available to the dealer.

(3) A manufacturer or distributor, either directly or through
any subsidiary, may not terminate, cancel, fail to renew or
discontinue any lease of the new motor vehicle dealer’s
established place of business except for a material breach of the
lease.

(4) Except as may otherwise be provided in this article, no
manufacturer or franchisor shall sell, directly or indirectly, any
new motor vehicle to a consumer in this state, except through
a new motor vehicle dealer holding a franchise for the line-
make covering such new motor vehicle. This subsection shall
not apply to manufacturer or franchisor sales of new motor
vehicles to charitable organizations, qualified vendors or
employees of the manufacturer or franchisor.

(5) Except when prevented by an act of God, labor strike,
transportation disruption outside the control of the manufacturer
or time of war, a manufacturer or distributor may not refuse or
fail to deliver, in reasonable quantities and within a reasonable
time, to a dealer having a franchise agreement for the retail sale
of any motor vehicle sold or distributed by the manufacturer,
any new motor vehicle or parts or accessories to new motor
vehicles as are covered by the franchise if the vehicles, parts
and accessories are publicly advertised as being available for
delivery or are actually being delivered. All models offered for
sale by the manufacturer, without any enrollment, surcharge, unreasonable facility or building or any other unreasonable type of upgrade requirement or acquisition fee, shall be available to the franchised dealer at no additional cost for that particular model of vehicle.


Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs and attorney’s fees, arising solely out of complaints, claims or actions which relate to the manufacture, assembly, design of a new motor vehicle or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.
Be it enacted by the Legislature of West Virginia:

That §31A-3-1 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 §31A-3-5, all to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

§31A-3-5. Continuation of the West Virginia Board of Banking and Financial Institutions.

(a) There is hereby created the West Virginia Board of Banking and Financial Institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the Governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions. After the first day of July, two thousand six, when a vacancy occurs among the executive officers of state banking institutions the commissioner shall list all state banking institutions according to each bank’s asset size and then divide the list...
into three groups so that there is an equal number of banking institutions in each group. The vacancy shall then be filled from the appropriate group to ensure that each group has a representative on the board. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or owner of five percent or more of the outstanding shares of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity, any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the Constitution of this state. The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.
(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours’ notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party and of which he or she is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause deemed by him or her to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

§31A-3-5. Continuation of the West Virginia Board of Banking and Financial Institutions.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Banking and Financial Institutions 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 §31A-4-2 of the Code of West Virginia, 1931, as amended, relating to banks; authorizing use of certain banking terms in connection with the name of a business; and setting forth the limitations on such authorization.

Be it enacted by the Legislature of West Virginia:

That §31A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.

(a) No person doing business in this state, except a banking institution, a person authorized by the commissioner under the terms of this section or an insurer licensed pursuant to article three, chapter thirty-three of this code under a name including the terms set forth herein as of the thirty-first day of December, two thousand three, may use or advertise in connection with such business, or as a designation or title thereof, the term “bank,” “banker,” “banking,” “banking company,” “industrial bank,” “savings bank” or “trust company” and the Insurance Commissioner shall notify the com-
missioner of each insurer so licensed. Notwithstanding the
foregoing restriction, the term “banker” may be used in (1)
the legal name of a real estate franchisor; and (2) the
tradename of a real estate brokerage firm who is a current or
future franchisee of a real estate franchise system, if in either
case the use of the term “banker” stems from a family sur-
name belonging to a principal or former principal of the firm,
whether or not such principal or former principal is currently
living. No person doing business in this state except a bank-
ing institution or a person authorized by the commissioner
under this article may engage in the banking or trust business
in this state. A nonbanking subsidiary of a bank holding com-
pany or a nonbanking subsidiary of a banking institution
having a bank branch or bank main office in this state that
provides trust services pursuant to section fourteen of this
article may use the term “trust company” in its title and ad-
vertising. A trust entity owned jointly by federally insured
depository institutions located within this state and autho-
ized by the commissioner to operate in this state may use the
term “trust company” in its title and advertising.

(b) It is unlawful for any person other than banking insti-
tutions, as herein excepted, to advertise or hold himself, her-
self, itself or themselves, as the case may be, out to the public
in any manner indicating, directly, indirectly or by implica-
tion, that any of them are engaged in the banking or trust
business or is authorized and approved to engage therein in
this state. A nonbanking subsidiary of a bank holding com-
pany or nonbanking subsidiary of a banking institution hav-
ing a bank branch or bank main office in this state that pro-
vides trust services pursuant to section fourteen of this article
may hold itself out to the public as engaged in the trust busi-
ness. A trust entity owned jointly by federally insured deposi-
tory institutions located within this state and authorized by
the commissioner to operate in this state may hold itself out
to the public as engaged in the trust business.
(c) The commissioner may authorize a person to use the term "bank," or "bane" in connection with nonprofit organizations or medical businesses where the term would have a common meaning separate and apart from a financial institution and would not result in confusion to the public (e.g., food bank; medical databank); and in connection with bank holding companies or their nonbanking affiliates where the term denotes the entities' common affiliation and would not result in confusion to the public.

(d) Any violation of the provisions of this section is a misdemeanor offense, punishable as provided in section fifteen, article eight of this chapter.

(e) The Commissioner of Banking, or any one or more banking institutions, acting individually or jointly may petition the circuit court of the county in which any violation of the provisions of this section occur or are threatened to occur for injunction or other appropriate judicial remedies for enforcement of the provisions of this section and the prevention of further or continued violations of this section.

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CHAPTER 18

(S. B. 242 — By Senators Minard, Jenkins and McCabe)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §31A-4-3 of the Code of West Virginia, 1931, as amended, relating to the authority of a state banking institution to issue more than one class of stock.
Be it enacted by the Legislature of West Virginia:

That §31A-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-3. Minimum capital stock; classes of stock; par value; capitalization of surplus.

(a) No banking institution may hereafter be incorporated unless it shall have bona fide subscribed capital stock and capital surplus equal to at least four million dollars. The West Virginia Board of Banking and Financial Institutions shall require capital in excess of four million dollars if, in its judgment, economic conditions or the operating environment of the proposed banking institution make such a requirement necessary.

(b) Notwithstanding any provision of subsection (a) of this section, the Commissioner or the West Virginia Board of Banking and Financial Institutions may approve the incorporation of a bank newly organized solely for the purpose of facilitating the acquisition of another bank if the proposed newly organized bank has a bona fide subscribed capital stock and capital surplus of at least sixty thousand dollars.

(c) Banking institutions shall issue shares of one or more classes of stock and the shares shall have a nominal or par value of not less than one dollar nor more than one hundred dollars each and, as to each banking institution, each share shall be equal in all respects with any other share within each class of stock.

(d) Any banking institution may change the par value of its shares when and to the extent that any such action may be authorized in writing by the commissioner.
AN ACT to amend and reenact §31A-4-13 of the Code of West Virginia, 1931, as amended, relating to powers of state banking institutions.

Be it enacted by the Legislature of West Virginia:

That §31A-4-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

(a) Any state-chartered banking institution has and may exercise all of the powers necessary for, or incidental to, the business of banking and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds; negotiate drafts, bills of exchange and other evidences of indebtedness; borrow money; receive deposits on such terms and conditions as its officers may prescribe; buy, sell or exchange bank notes, bullion or coin; loan money on personal or other security; rent safe-deposit boxes and receive on deposit for safekeeping jewelry, plate, stocks, bonds and personal property of whatsoever description; and provide customer services incidental to the business of banking, including, but not limited to, the issu-
ance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of and otherwise manage wholly owned subsidiary corporations or entities that are jointly owned with other insured depository institutions for purposes incident to the banking powers and services authorized by this chapter provided any wholly owned or jointly owned entities are subject to federal and state examination and supervision as if the activities are conducted by the bank.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which may not be carried on its books at a value greater than the actual cost: Provided, That the property must be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That the investment hereafter made may not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the Commissioner of Banking, subject to the following limitations:

(1) Such as may be mortgaged to it in good faith as security for debts in its favor;
(2) Such as may be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it may purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or may purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held may not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3), subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the Commissioner of Banking.

(f) The sale of insurance by state-chartered banking institutions is subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting
and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no bank may in any case assume or guarantee the payment on insurance policies issued through its agency by its principal: Provided, however, That the bank may not guarantee the truth of any statement made by an insured in filing his, her or its application for insurance. For purposes of this section, a “controlled subsidiary” is one in which the state-chartered banking institution owns at least eighty percent of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter and shall be construed consistently with interpretations of 12 U. S. C. §92, the regulations promulgated thereunder and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary as defined in subsection (f) of this section. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend more of its capital and surplus calculated at the end of the
previous calendar year on the activities permitted by subsections (f) and (g) of this section on an aggregate basis together with any of its approved financially related products and services than would be allowed for a national bank providing the same services. For purposes of this section, “approved financially related products and services” means those products and services offered by a state-chartered bank pursuant to an approved application submitted under article eight-c of this chapter.

(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with these activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia Commissioner of Insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution may hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by the banking institution, or in quarters leased by it, unless the consent in writing of the Commissioner of Banking is first secured.
AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to limitations on loans and extensions of credit; providing for a limitation on investments; limiting loans to executive officers and directors of banks and employees of the banking department; outlining exceptions; and creating a valuation of securities.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

1 (a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution
(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of Banking, such terms shall also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment;

(B) The term "person" shall include an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;
(C) The term “unimpaired capital and unimpaired surplus” means the amount of total equity capital outstanding as indicated in the bank’s most recent quarterly report of condition and income as filed with the Commissioner of Banking pursuant to section nineteen of this article, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in such quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank’s securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation; and

(D) The term “common enterprise” includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection shall be subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

(B) The purchase of bankers’ acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of ten months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of
twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the State of West Virginia or by other such obligations fully guaranteed as to principal and interest by the State of West Virginia shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus;
(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the Commissioner of Banking, shall not be subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank’s files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the note covered shall be subject under this section to a maximum limitation equal to twenty-five percent of such
unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, shall be subject under this section to a limitation of twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within thirty business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(J) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars or when approved in writing by the Commissioner of Banking, shall not be subject to any limitation based on capital and surplus.

(5) (A) The Commissioner of Banking may prescribe rules to administer and carry out the purposes of this subsec-
tion including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The Commissioner of Banking may also prescribe rules to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this article, but which will be in violation of this section upon the effective date of this article; and

(C) The Commissioner of Banking also shall have authority to determine when a loan putatively made to a person shall for purposes of this subsection be attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) In no event shall the total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account exceed that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term "investment securities" means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is
salable under ordinary circumstances with reasonable
promptness at a fair value. “Derivative security” means a
type of investment security involving a financial contract
whose value depends on the values of one or more underlying
assets or indexes of asset values. The term “derivative” refers
inter alia to financial contracts such as collateralized mort-
gage obligations ("CMOs"), forwards, futures, forward rate
agreements, swaps, options and caps/floors/collars whose
primary purpose is to transfer price risks associated with
fluctuations in asset values;

(B) The term “person” shall include any individual, part-
nership, sole proprietorship, society, association, firm, insti-
tution, company, public or private corporation, not-for-profit
corporation, state, governmental agency, bureau, department,
division or instrumentality, political subdivision, county
commission, municipality, trust, syndicate, estate or any
other legal entity whatsoever, formed, created or existing
under the laws of this state or any other jurisdiction; and

(C) The term “unimpaired capital and unimpaired sur-
plus” shall have the same meaning as set forth in subsection
(a) of this section.

(4) Notwithstanding any other provision of this subsec-
tion, a state-chartered banking institution may invest its funds
in any investment authorized for national banking associa-
tions or for any other federally insured depository institution.
Such investments by state-chartered banking institutions shall
be on the same terms and conditions applicable to national
banking associations or any other federally insured deposit-
ary institution: Provided, That: (i) The purchase of invest-
ment securities under this subdivision shall be made only
when in the bank’s prudent judgment, which judgment may
be based in part on estimates which it believes to be reliable,
there is adequate evidence that the obligor will be able to
(5) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities shall not be held a speculative purpose.

(6) The Commissioner of Banking may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) In the event of a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than twenty percent from that amount reported in the bank’s most recent report of income and condition, or where there is a decrease of more than thirty percent in any twelve-month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the Commissioner of Banking those loans, extensions and investments that exceed the limitations of this section using the bank’s current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank’s position in each such loan, extension of credit and investment. The commissioner may, within his or her discre-
tion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current reevaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the Commissioner of Banking retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the reevaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

(e) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he or she is connected any sum of money without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. Such approval shall be by resolution adopted by a majority vote of such board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to such corporation or partnership shall constitute a loan to such director or officer.

(3) For purposes of this subsection, an “executive officer” means:
(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(f) The Commissioner of Banking and any employee of the Department of Banking may not borrow, directly or indirectly, any sum of money from a state-chartered banking institution which is subject to examination by the commissioner or the department.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: Provided, That securities held for trade or permissible marketable equity securities and any
other types of debt securities which pursuant to generally
accepted accounting principles are to be carried on the bank’s
books at fair market value shall have the unrealized market
appreciation and depreciation included in the income and
capital as permitted by such generally accepted accounting
principles.

(h) The market value of securities purchased and loans
extended by a state-chartered banking institution shall be
reported in all public reports and quarterly reports to the
commissioner pursuant to section nineteen of this article in
accordance with generally accepted accounting principles and
any applicable state or federal law, rule or regulation.

CHAPTER 21

(S. B. 271 — By Senators Minard, Jenkins, Barnes and Plymale)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §31A-4-35 of the Code of West
Virginia, 1931, as amended, relating to the time period for
which state banks must retain records.

Be it enacted by the Legislature of West Virginia:

That §31A-4-35 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissi-
bility of copies in evidence; disposition of origi-
nals; record production generally.
(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least five years from the date of the last entry on such books or the date of making of such deposit tickets and card records or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of five years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination and supporting documentation for fiduciary account transactions shall be retained for five years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and
other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed ten dollars, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed seventy-five cents per page. Any and all such costs shall be borne by the party requesting the production of the record or records.

CHAPTER 22

(Com. Sub. for S. B. 243 — By Senators Minard, Jenkins and McCabe)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §31A-8-5 of the Code of West Virginia, 1931, as amended, relating to allowing banks to own shares of their own stock in certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §31A-8-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-5. Dealing in own stock; stock purchases; limitations; exceptions.

(a) No banking institution shall make any loan or discount any obligation on the security of the shares of its own capital stock, unless taken as a pledge to prevent loss upon a debt previously contracted lawfully and in good faith; and all shares of its stock, held in such manner, shall, within six months after the time of the pledge, be sold or disposed of at public or private sale.

(b) A banking institution may purchase its equity securities in an amount up to ten percent of its net worth in any twelve-month period or restructure its ownership interests for a legitimate corporate purpose without the prior approval of the commissioner, so long as the bank remains well-capitalized under federal regulatory guidelines before and after the purchase or restructuring, the bank is well-managed, the bank is not the subject of any unresolved supervisory issues and the transaction does not constitute a change in control of the banking institution that must be reported pursuant to section four of this article. The banking institution must apply for approval for the purchase of equity securities, on a form prescribed by the commissioner, if the gross consideration for the purchase, when aggregated with the net consideration paid by the banking institution for all such purchases during the preceding twelve months, is equal to ten percent or more of the bank’s net worth. For purposes of this section, “net consideration” is the gross consideration paid by the banking
in institution for all of its equity securities purchased during the
period minus the gross consideration received for all of its
equity securities sold during the period. The commissioner
shall approve or deny the application after considering
whether the proposed purchase would constitute an unsafe or
unsound practice.

(c) Any banking institution and any officer thereof who
violates any provision of this section shall be guilty of a mis-
demeanor and subject to penalties provided in section fifteen
of this article.

CHAPTER 23

(H. B. 4792 — By Delegates Amores, H. White, Azinger and Moore)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as
amended, by adding thereto a new section, designated §44-6-10, relating to authorizing the purchasing of certain services
from a bank or trust company or an affiliate of a bank or trust
company.

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 §44-6-10, to
read as follows:

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.
§44-6-10. Purchase of service or product through or directly from bank or trust company or affiliate.

(a) A bank or trust company acting in any fiduciary capacity, including, but not limited to, the capacities described in this article, may purchase any service or product, including, but not limited to, insurance or securities: underwritten or otherwise distributed by the bank, the trust company or by an affiliate; through or directly from the bank, the trust company or an affiliate; or from a syndicate or selling group that includes the bank, the trust company or an affiliate: Provided, that the purchase is otherwise prudent under article six-c of this chapter; the compensation for the service or product is reasonable; and the transaction is not prohibited by the instrument governing the fiduciary relationship. The compensation charged for the service or product may be in addition to the compensation that the bank or trust company is otherwise entitled to receive from the fiduciary account.

(b) A bank or trust company shall disclose at least annually any purchase authorized by this section that was made by the bank or trust company during that reporting period. The disclosure shall be given, in writing or electronically, to all persons entitled to receive statements of account activity. The disclosure shall include a description of any capacities in which the bank or trust company or an affiliate acts for the issuer of the securities or the provider of the products or services and a declaration of the fact that the bank or trust company or an affiliate may have an interest in the products or services.

(c) This section applies to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-56a, relating to establishing a bird dog training permit; providing requirements for bird dog training; providing rule-making authority; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-2-56a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-56a. Bird dog training permit.

1 The director may issue a permit to train bird dogs on wild birds or game birds, provided:

3 (1) The fee for the permit is ten dollars.

4 (2) The training shall be on private land containing a minimum of five acres in a single tract. The permittee must own the land, lease the land or have written permission of landowner for the training.
(3) The birds permitted to be used for the training of dogs are quail and pigeons. The quail must be purchased from a licensed commercial game farm. Pigeons may be purchased from a licensed commercial game farm or trapped within the state at any time as long as the person conducting the trapping is legally licensed to do so and also holds the appropriate permit. Each trap must be identified by a waterproof tag attached to the trap that bears the name, address and telephone number of the trapper.

(4) The permittee must retain the receipt for two years of all birds purchased from a commercial game farm licensee.

(5) The location where the birds are held and all records pertaining to the purchase and dates of training may be inspected by a conservation officer.

(6) No more than thirty birds may be held by the permittee at any given time. All birds must have a uniquely numbered leg band attached. The leg band must remain with the birds until consumption or until the birds are legally disposed.

(7) Birds held under this permit shall be housed and cared for in accordance with the requirements of applicable rules.

(8) The use of the birds held under this permit shall include the release, recapture and/or the shooting of the birds in conjunction with the training of bird dogs.

(9) The person holding birds in captivity under the authority of this permit and the person training his or her bird dog must possess a bird dog training permit.

(10) All other laws and rules governing hunting, trapping, shooting and training apply.
38 (11) The director may propose rules for legislative ap-
39 proval in accordance with article three, chapter twenty-nine-a
40 of this code, to further restrict bird dog training.

41 (12) Any person violating any provision of this law is
42 subject to the penalties prescribed in section nine, article
43 seven, chapter twenty of this code.

CHAPTER 25

(H. B. 4510 — By Mr. Speaker, Mr. Kiss, and Delegates Beane,
Amores, Browning, Campbell, Ennis, Staton,
Ashley, Azinger, Ellem and G. White)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §5-14-2, §5-14-3, §5-14-5 and §5-
14-6 of the Code of West Virginia, 1931, as amended, all relating
to the West Virginia Commission for the Deaf and Hard of
Hearing generally; removing the requirement that the commis-
sion maintain a register of persons who are deaf or hard of
hearing; removing the requirement that the commission conduct and maintain a census of both populations in West Vir-
ginia; clarifying the voting power of certain members of the
commission; and making certain other technical changes.

Be it enacted by the Legislature of West Virginia:

That §5-14-2, §5-14-3, §5-14-5 and §5-14-6 of the Code of
West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD OF HEARING.

§5-14-2. Definitions.
§5-14-3. Continuation of Commission; membership.
§5-14-5. Powers and duties of the Commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.
§5-14-6. Seminars and training sessions.

§5-14-2. Definitions.

As used in this article:

(a) “Deaf” means severe to profound impairment of the sense of hearing whereby the understanding of speech is unattainable through the ear alone with or without amplification, and visual communication is used as the primary mode of communication.

(b) “Hard of hearing” means significant impairment to the sense of hearing, but not to the extent that the person must rely primarily on visual communication.

(c) “Hearing-impaired” means persons who are either deaf or hard of hearing.

§5-14-3. Continuation of Commission; membership.

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health and Human Resources consisting of seventeen persons, eight of whom shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission’s expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.
(b) The members are: The Secretary of the Department of Health and Human Resources, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Commissioner of the Division of Human Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the hearing-impaired, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.

§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

(a) The commission shall maintain a clearinghouse of information, the purpose of which is to aid hearing-impaired persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission
shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

(b) The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

(c) The Secretary of the Department of Health and Human Resources shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct interpreter evaluations and collect and expend funds with regard thereto.

(d) The commission shall develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people and of available services.

(e) The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multihandicapped hearing-impaired.

§5-14-6. Seminars and training sessions.

The commission may establish one or more training sessions or workshops for the teaching of interpretive skills, in-service training and counseling for the deaf and hard of hear-
Seminars and training sessions may be conducted and are encouraged to work with the existing facilities and organizations established to accomplish the same goals.

CHAPTER 26

(H.B. 4019 — By Mr. Speaker, Mr. Kiss, and Delegates Amores, Michael, Varner, Pino, Leach, Mahan, Browning, Hall, Carmichael and Border)

[Passed March 2, 2006; in effect from passage.]
[Approved by the Governor on March 13, 2006.]

AN ACT to repeal §4-1-18 of the Code of West Virginia, 1931, as amended, relating to the preparation and distribution of a digest or summary of the budget bill.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§1. Repeal of section relating to preparation and distribution of digest or summary of budget bill.

Section eighteen, article one, chapter four of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all relating to qualified charitable gift annuities; providing definitions; declaring issuance of certain annuities not business of insurance; requiring certain notices by issuers; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all to read as follows:

ARTICLE 13B. CHARITABLE GIFT ANNUITIES.

§33-13B-1. Definitions.

§33-13B-2. Charitable gift annuity is not insurance.


§33-13B-4. Notice to insurance commission.

§33-13B-5. Failure to provide required notice; penalties.

§33-13B-6. Unfair or deceptive trade practices act not applicable.

§33-13B-1. Definitions.

(a) “Charitable gift annuity” means a transfer of cash or other property by a donor to a charitable organization in re-
Charitable gift annuities

turn for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(b) “Charitable organization” means an entity described by:

(1) Section 501(c)(3), of the Internal Revenue Code of 1986 (26 U.S.C. 501(c) (3)); or

(2) Section 170(c), of the Internal Revenue Code of 1986 (26 U.S.C. 170 (c)).

(c) “Qualified charitable gift annuity” means a charitable gift annuity described by 501(m) (5), of the Internal Revenue Code of 1986 (26 U.S.C. 501(m) (5)), and 514(c) (5), of the Internal Revenue Code of 1986 (26 U.S.C. 514(c) (5)), that is issued by a charitable organization that on the date of the annuity agreement:

(1) Has a minimum of three hundred thousand dollars in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and

(2) Has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

§33-13B-2. Charitable gift annuity is not insurance.

Notwithstanding any other provision of this code to the contrary, the issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state, and the issuance of any charitable gift annuity prior to
to the first day of July, two thousand six, does not constitute engaging in the business of insurance in this state.


(a) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this state, is not subject to regulation by the commissioner and is not protected by the West Virginia Life and Health Insurance Guaranty Association established in article twenty-six-a of this chapter or by any other guaranty association established by this code.

(b) The notice required by this section shall be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.


(a) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner of such fact in writing by the later of the thirtieth day of September, two thousand six or the date on which it enters into the organization’s first qualified charitable gift annuity agreement.

(b) The notice required by subsection (a) of this section shall identify the organization, be signed by an officer or director of the organization, and certify that the organization is a charitable organization and that the annuities issued by the organization are qualified charitable gift annuities.

§33-13B-5. Failure to provide required notice; penalties.

Any person who violates any provision of section three or four of this article may, after notice and hearing pursuant
to section thirteen, article two of this chapter, be fined by the commissioner a sum not to exceed one thousand dollars per qualified charitable gift annuity agreement issued: Provided, That the failure of a charitable organization to comply with the notice requirements imposed under section three or four of this article does not prevent a charitable gift annuity that otherwise meets the requirements of this article from constituting a qualified charitable gift annuity.

§33-13B-6. Unfair or deceptive trade practices act not applicable.

The issuance of a qualified charitable gift annuity does not constitute a violation of article eleven of this chapter.

CHAPTER 28

(H. B. 4312 — By Delegates Staton, Trump, Mahan and Brown)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §48-19-105 of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of child support enforcement attorneys.

Be it enacted by the Legislature of West Virginia:

That §48-19-105 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. CHILD SUPPORT ENFORCEMENT ATTORNEY.

1 The salary of a bureau for child support enforcement
2 attorney shall be not less than forty-five thousand dollars per
3 year, and shall be fixed by the commissioner, who shall take
4 into consideration ability, performance of duty and experi-
5 ence. The compensation and expenses of the employees of
6 the office and all operating expenses incurred by the office
7 shall be fixed by the commissioner and paid by the bureau for
8 child support enforcement.

CHAPTER 29

(S. B. 13 — By Senators Yoder, Guills, Caruth, Foster and Unger)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §7-10-2 of the Code of West Vir-
ginia, 1931, as amended; to amend and reenact §9-6-9 of said
code; to amend said code by adding thereto a new section, des-
ignated §9-6-9a; to amend and reenact §48-27-702 of said
code; to amend and reenact §49-6A-2 of said code; and to
amend said code by adding thereto a new section, designated
§49-6A-2b, all relating to requiring cross-reporting among
child protective service workers, adult protective service work-
ners, law-enforcement officers and humane officers of suspected
child abuse or neglect, suspected abuse or neglect of incapac­i-
tated or elderly adults, suspected animal cruelty or inhuman
 treatment or suspected domestic violence; and providing penal-
ties.

Be it enacted by the Legislature of West Virginia:
That §7-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9-6-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §9-6-9a; that §48-27-702 of said code be amended and reenacted; that §49-6A-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-6A-2b, all to read as follows:

Chapter
7. County Commissions and Officers.
48. Domestic Relations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

(a) It is the duty of humane officers to prevent the perpetration or continuance of any act of cruelty upon any animal and to investigate and, upon probable cause, to cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and as provided by law, such officers have the right to access and inspection of records and property as may be reasonably necessary to any investigation.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds therefor. In the event of suspected child abuse or neglect, the humane
officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of section five, article six-a, chapter forty-nine of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department’s local adult protective services agency in accordance with the provisions of section eleven, article six, chapter nine of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of article twenty-seven, chapter forty-eight of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars or confined in jail not more than thirty days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

§9-6-9a. Mandatory reporting suspected of animal cruelty by adult protective service workers.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

(a) If any medical, dental or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, state or
4 regional ombudsman or any employee of any nursing home
5 or other residential facility has reasonable cause to believe
6 that an incapacitated adult or facility resident is or has been
7 neglected, abused or placed in an emergency situation, or if
8 such person observes an incapacitated adult or facility resi-
9 dent being subjected to conditions that are likely to result in
10 abuse, neglect or an emergency situation, the person shall
11 immediately report the circumstances pursuant to the provi-
12 sions of section eleven of this article: Provided, That nothing
13 in this article is intended to prevent individuals from report-
14 ing on their own behalf.
15
16 (b) In addition to those persons and officials specifically
17 required to report situations involving suspected abuse or
18 neglect of an incapacitated adult or facility resident or the
19 existence of an emergency situation, any other person may
20 make such a report.
21
22 (c) The secretary shall develop a form for the filing of
23 written complaints, as provided by section eleven of this
24 article, and provide these forms to all nursing homes or other
25 residential facilities, hospitals, ombudsmen and adult protec-
26 tive service agencies in this state. The forms shall be de-
27 signed to protect the identity of the complainant, if desired,
28 and to facilitate the prompt filing of complaints.

§9-6-9a. Mandatory reporting suspected of animal cruelty by
adult protective service workers.

1 In the event an adult protective service worker, in re-
2 sponse to a report mandated by section nine of this article,
3 forms a reasonable suspicion that an animal is the victim of
4 cruel or inhumane treatment, he or she shall report the suspi-
5 cion and the basis therefor to the county humane officer pro-
6 vided under section one, article ten, chapter seven of this
7 code within twenty-four hours of the response to the report.
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-702. Law-enforcement officers to provide information, transportation and to report suspicions of animal cruelty.

(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim, upon the request of such victim, to a shelter or an appropriate court.

(c) Whenever a law-enforcement officer, pursuant to a response to an alleged incident of domestic violence, forms a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion and the grounds therefor to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.
§49-6A-2. Persons mandated to report suspected abuse and neglect.

§49-6A-2b. Mandatory reporting of suspected animal cruelty by child protective service workers.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the Department of Health and Human Resources: Provided, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: Provided, however, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if
such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-6A-2b. Mandatory reporting of suspected animal cruelty by child protective service workers.

In the event a child protective service worker, in response to a report mandated by section two of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.

CHAPTER 30

(Com. Sub. for H. B. 4694 — By Delegates Amores, Moore, Longstreth, Webster and Ellem)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49–6-2, §49–6-3, §49–6-5 and §49–6-5b of said code, all relating to abuse and neglect of children; definition of battered parent; consideration of factors associated with a battered parent in abuse and neglect cases; petition to court; battered parent entitled to an attorney; court determination of battered parent; providing treatment and assistance for battered parent; consideration of acts or attempted acts of murder, voluntary manslaughter-
ter or unlawful or malicious wounding with serious injury by one parent against other parent in abuse and neglect cases; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed against the other parent; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed or against other children in the household or other children under the parent’s care or custody; department’s obligation to attempt to preserve the family when aggravating circumstances exist; and definitions.

Be it enacted by the Legislature of West Virginia:

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-2, §49–6-3, §49-6-5 and §49-6-5b of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

(a) “Abused child” means a child whose health or welfare is harmed or threatened by:

(1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation; or
(3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(4) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) “Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) “Battered parent” means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(d) “Child abuse and neglect” or “child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.

(e) “Child abuse and neglect services” means social services which are directed toward:
(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;

(5) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(6) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(f) “Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
(3) Nutritional deprivation;

(4) Abandonment by the parent, guardian or custodian;

(5) Inadequate treatment of serious illness or disease;

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(g) “Legal guardianship” means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of chapters forty-eight and forty-nine of this code.

(h) “Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. “Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(i) (1) “Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s
parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(2) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(j) “Parenting skills” means a parent’s competencies in providing physical care, protection, supervision and psychological support appropriate to a child’s age and state of development.

(k) “Sexual abuse” means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian
shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(l) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(m) “Sexual exploitation” means an act whereby:

(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.
(n) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(o) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(p) “Parental rights” means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(q) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(r) “Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(s) “Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(t) “Time-limited reunification services” means individual, group, and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the
188 date which is sixty days after the child is removed from 189 home.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused—right to  
counsel; improvement period; hearing; priority of proceeding; transcript.

§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.

§49-6-5. Disposition of neglected or abused children.

§49-6-5b. When efforts to terminate parental rights required.

§49-6-2. Petition to court when child believed neglected or abused—Right to counsel; improvement period; hearing; priority of proceeding; transcript.

(a) In any proceeding under the provisions of this article, the child, his or her or parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel of the child shall be appointed in the initial order. If the order gives physical custody of the child to the state, the initial order shall appoint counsel for the parents or, if the parents are separated or divorced, the parents or parent or other person or persons standing in loco parentis who had physical custody of the child for the majority of the time in the period immediately preceding the petition: Provided, That such representation shall only continue after the first appearance if the parent or other persons standing in loco parentis cannot pay for the services of counsel. Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or
attorneys to represent the other party or parties and so inform
the parties. Under no circumstances may the same attorney
represent both the child and the other party or parties, nor
shall the same attorney represent both parents or custodians.
However, one attorney may represent both parents or custodi-
ans where both parents or guardians consent to this represen-
tation after the attorney fully discloses to the client the possi-
ble conflict and where the attorney assures the court that she
or he is able to represent each client without impairing her or
his professional judgment; however, if more than one child
from a family is involved in the proceeding, one attorney
may represent all the children. A parent who has been judi-
cially determined to be battered shall be entitled to his or her
own attorney. The court may allow to each attorney so ap-
pointed a fee in the same amount which appointed counsel
can receive in felony cases. Any attorney appointed pursuant
to this section shall by the first day of July, one thousand nine
hundred ninety-three, and three hours per year each year
thereafter, receive a minimum of three hours of continuing
legal education training on representation of children, child
abuse and neglect: Provided, however, That where no attor-
ney who has completed this training is available for such
appointment, the court shall appoint a competent attorney
with demonstrated knowledge of child welfare law to repre-
sent the child. Any attorney appointed pursuant to this sec-
tion shall perform all duties required as an attorney licensed
to practice law in the State of West Virginia.

(b) In any proceeding brought pursuant to the provisions
of this article, the court may grant any respondent an im-
provement period in accord with the provisions of this article.
During such period, the court may require temporary custody
with a responsible person which has been found to be a fit
and proper person for the temporary custody of the child or
children or the state department or other agency during the
improvement period. An order granting such improvement
period shall require the department to prepare and submit to
the court a family case plan in accordance with the provisions
of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this
article, the party or parties having custodial or other parental
rights or responsibilities to the child shall be afforded a
meaningful opportunity to be heard, including the opportu-
nity to testify and to present and cross-examine witnesses.
The petition shall not be taken as confessed. A transcript or
recording shall be made of all proceedings unless waived by
all parties to the proceeding. The rules of evidence shall ap-
ply. Where relevant, the court shall consider the efforts of the
state department to remedy the alleged circumstances. At the
conclusion of the hearing, the court shall make a determina-
tion based upon the evidence and shall make findings of fact
and conclusions of law as to whether such child is abused or
neglected and, if applicable, whether the parent, guardian, or
custodian is a battered parent, all of which shall be incorpo-
rated into the order of the court. The findings must be based
upon conditions existing at the time of the filing of the peti-
tion and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the
provisions of this article shall, to the extent practicable, be
given priority over any other civil action before the court,
except proceedings under article two-a, chapter forty-eight of
this code and actions in which trial is in progress. Any peti-
tion filed under the provisions of this article shall be dock-
eted immediately upon filing. Any hearing to be held at the
end of an improvement period and any other hearing to be
held during any proceedings under the provisions of this
article shall be held as nearly as practicable on successive
days and, with respect to said hearing to be held at the end of
an improvement period, shall be held as close in time as pos-
sible after the end of said improvement period and shall be
held within sixty days of the termination of such improve-
ment period.

(e) Following the court’s determination, it shall be in-
quired of the parents or custodians whether or not appeal is
desired and the response transcribed. A negative response
shall not be construed as a waiver. The evidence shall be
transcribed and made available to the parties or their counsel
as soon as practicable, if the same is required for purposes of
further proceedings. If an indigent person intends to pursue
further proceedings, the court reporter shall furnish a tran-
script of the hearing without cost to the indigent person if an
affidavit is filed stating that he or she cannot pay therefor.

§49-6-3. Petition to court when child believed neglected or
abused — Temporary custody.

(a) Upon the filing of a petition, the court may order that
the child alleged to be an abused or neglected child be deliv-
ered for not more than ten days into the custody of the state
department or a responsible person found by the court to be a
fit and proper person for the temporary care of the child
pending a preliminary hearing, if it finds that: (1) There ex-
ists imminent danger to the physical well-being of the child;
and (2) there are no reasonably available alternatives to re-
moval of the child, including, but not limited to, the provision
of medical, psychiatric, psychological or homemaking ser-
vices in the child’s present custody: Provided, That where the
alleged abusing person, if known, is a member of a house-
hold, the court shall not allow placement pursuant to this
section of the child or children in said home unless the al-
leged abusing person is or has been precluded from visiting
or residing in said home by judicial order. In a case where
there is more than one child in the home, or in the temporary
care, custody or control of the alleged offending parent, the
petition shall so state, and notwithstanding the fact that the
allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days’ actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided,
That the court order shall state: (1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor; (2) whether or not the department made reasonable efforts to preserve the family and to prevent the child’s removal from his or her home; (3) whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) what efforts should be made by the department, if any, to facilitate the child’s return home: Provided, however, That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such posi-
tion by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court’s consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:
(1) The parent has subjected the child, another child of
the parent, or any other child residing in the same household
or under the temporary or permanent custody of the parent to
aggravated circumstances which include, but are not limited
to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child’s other parent, an-
other child of the parent, or any other child residing in the
same household or under the temporary or permanent custody
of the parent;

(B) Committed voluntary manslaughter of the child’s
other parent, another child of the parent, or any other child
residing in the same household or under the temporary or
permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or
voluntary manslaughter or been an accessory before or after
the fact to either such crime; or

(D) Committed unlawful or malicious wounding that
results in serious bodily injury to the child, the child’s other
parent, to another child of the parent, or any other child resid-
ing in the same household or under the temporary or perma-

tent custody of the parent; or

(3) The parental rights of the parent to another child have
been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of
this article wherein the court finds a child to be abused or
neglected, the department shall file with the court a copy of
the child’s case plan, including the permanency plan for the
child. The term case plan means a written document that includes, where applicable, the requirements of the family
case plan as provided for in section three, article six-d of this
chapter and that also includes at least the following: A de-
scription of the type of home or institution in which the child
is to be placed, including a discussion of the appropriateness
of the placement and how the agency which is responsible for
the child plans to assure that the child receives proper care
and that services are provided to the parents, child and foster
parents in order to improve the conditions in the parent(s)
home; facilitate return of the child to his or her own home or
the permanent placement of the child; and address the needs
of the child while in foster care, including a discussion of the
appropriateness of the services that have been provided to the
child. The term “permanency plan” refers to that part of the
case plan which is designed to achieve a permanent home for
the child in the least restrictive setting available. The plan
must document efforts to ensure that the child is returned
home within approximate time lines for reunification as set
out in the plan. Reasonable efforts to place a child for adop-
tion or with a legal guardian may be made at the same time
reasonable efforts are made to prevent removal or to make it
possible for a child to safely return home. If reunification is
not the permanency plan for the child, the plan must state
why reunification is not appropriate and detail the alternative
placement for the child to include approximate time lines for
when such placement is expected to become a permanent
placement. This case plan shall serve as the family case plan
for parents of abused or neglected children. Copies of the
child’s case plan shall be sent to the child’s attorney and
parent, guardian or custodian or their counsel at least five
days prior to the dispositional hearing. The court shall forth-
with proceed to disposition giving both the petitioner and
respondents an opportunity to be heard. The court shall give
precedence to dispositions in the following sequence:
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40 (1)Dismiss the petition;

41 (2)Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

44 (3)Return the child to his or her own home under supervision of the department;

46 (4)Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

51 (5)Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (A) That continuation in the home is contrary to the best interests of the child and why; (B) whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home; (C) what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (D) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (i) Be continued in foster care for a specified period; (ii) be considered for adoption; (iii) be considered for
legal guardianship; (iv) be considered for permanent placement with a fit and willing relative; or (v) be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. 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; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a non-abusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors: (A) The child’s need for continuity of care and caretakers; (B) the amount of time required for the child to be integrated into a stable and permanent home environment; and (C) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be termi-
nated, the court shall consider the efforts made by the depart-
ment to provide remedial and reunification services to the
parent. The court order shall state: (i) That continuation in the
home is not in the best interest of the child and why; (ii) why
reunification is not in the best interests of the child; (iii)
whether or not the department made reasonable efforts, with
the child’s health and safety being the paramount concern, to
preserve the family, or some portion thereof, and to prevent
the placement or to eliminate the need for removing the child
from the child’s home and to make it possible for the child to
safely return home, or that the emergency situation made
such efforts unreasonable or impossible; and (iv) whether or
not the department made reasonable efforts to preserve and
reunify the family, or some portion thereof, including a de-
dscription of what efforts were made or that such efforts were
unreasonable due to specific circumstances.

(7) For purposes of the court’s consideration of the dis-
position custody of a child pursuant to the provisions of this
subsection, the department is not required to make reasonable
efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of
the parent, or any other child residing in the same household
or under the temporary or permanent custody of the parent to
aggravated circumstances which include, but are not limited
to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child’s other parent, another
child of the parent or any other child residing in the same
household or under the temporary or permanent custody of
the parent;

(ii) Committed voluntary manslaughter of the child’s
other parent, another child of the parent, or any other child
residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child’s other parent, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(C) The parental rights of the parent to another child have been terminated involuntarily.

(b) As used in this section, “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child’s return to their care, custody and control;
(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuance or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination
was based. The court may order the child to be placed with
the parents, or any person found to be a fit and proper person,
for the temporary care of the child during the period. At the
end of the period, the court shall hold a hearing to determine
whether the conditions have been adequately improved and at
the conclusion of the hearing shall make a further
dispositional order in accordance with this section.

§49-6-5b. When efforts to terminate parental rights required.

(a) Except as provided in subsection (b) of this section,
the department shall file or join in a petition or otherwise
seek a ruling in any pending proceeding to terminate parental
rights:

(1) If a child has been in foster care for fifteen of the
most recent twenty-two months as determined by the earlier
of the date of the first judicial finding that the child is sub-
ject to abuse or neglect or the date which is sixty days after
the child is removed from the home;

(2) If a court has determined the child is abandoned; or

(3) If a court has determined the parent has committed
murder or voluntary manslaughter of another of his or her
children or the other parent of his or her children; has at-
ttempted or conspired to commit such murder or voluntary
manslaughter or has been an accessory before or after the fact
of either crime; has committed unlawful or malicious wound-
ing resulting in serious bodily injury to the child or to another
of his or her children or to the other parent of his or her chil-
dren; or the parental rights of the parent to a sibling have
been terminated involuntarily.

(b) The department may determine not to file a petition to
terminate parental rights when:
(1) At the option of the department, the child has been placed with a relative;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child’s age and preference regarding termination or the child’s placement in custody of the department based on any proceedings initiated under article five of this chapter, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child’s family as the department deems necessary for the safe return of the child to the home.

CHAPTER 31

(Com. Sub. for H. B. 4790 — By Delegate Hatfield)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

terms; updating statutory language; providing for a time study by the Department of Health and Human Resources; modifying requirements related to child care placement in certain homes or facilities; and repealing the section of the code concerning the establishment of pilot day care programs.

Be it enacted by the Legislature of West Virginia:


ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.

§49-2B-1. Policy and purpose.
§49-2B-3. Licensure, certification, approval and registration requirements.
§49-2B-5. Penalties; injunctions.
§49-2B-6. Conditions of licensure, approval and registration.
§49-2B-7. Waivers and variances to rules.
§49-2B-8. Application for license or approval.
§49-2B-10. Investigative authority.
§49-2B-11. Revocation; provisional licensure and approval.
§49-2B-12. Closing of facilities by the secretary; placement of children.
§49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-1. Policy and purpose.

(a) It is the policy of the state to assist a child and the child’s family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of a
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temporary or permanent absence of parents or the separation
of a child from the family unit for care or treatment purposes,
it is the policy of the state to assure that a child receives care
and nurturing as close as possible to society’s expectations of
a family’s care and nurturing of its child. The state has a duty
to assure that proper and appropriate care is given and main-
tained.

(b) It is also the policy of this state to ensure that those
persons and entities offering quality child care are not over-
encumbered by licensure and registration requirements and
that the extent of regulation of child care facilities and child
placing agencies be moderately proportionate to the size of
the facility.

(c) Through licensure, approval, and registration of child
care, the state exercises its benevolent police power to protect
the user of a service from risks against which he or she would
have little or no competence for self protection. Licensure,
approval, and registration processes shall, therefore, continu-
ally balance the child’s rights and need for protection with
the interests, rights and responsibility of the service provid-
ners.

(d) In order to carry out the above policy, the Legislature
enacts this article to protect and prevent harm to children
separated from their families and to enhance their continued
growth and well-being while in care.

(e) The purposes of this article are:

(1) To protect the health, safety and well-being of chil-
dren in substitute care by preventing improper and harmful
care;

(2) To establish statewide rules for regulating programs
as defined in this article;
(3) To encourage and assist in the improvement of child care programs;

(4) To ensure that persons and entities offering child care are not unduly burdened by licensure and registration requirements; and

(5) To ensure that all child care programs be safe, reliable and geared to the ages and needs of the children they serve, meet basic health and safety standards, and employ people who have the training and experience needed to work with children.

(f) In order to carry out these purposes, the powers of the child welfare licensing board created by chapter nineteen, Acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of human services, along with the other powers granted by this article.


As used in this article, unless the context otherwise requires:

(a) “Approval” means a finding by the secretary that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(b) “Certificate of approval” means a statement of the secretary that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(c) “Certificate of license” means a statement issued by the secretary authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.
(d) “Certificate of registration” means a statement issued by the secretary to a family child care home, informal family child care home or relative family child care home, upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

(e) “Child” for the purpose of residential services under this article means any person under eighteen years of age or is a transitioning adult.

(f) “Child” for the purpose of child care services means an individual who meets one of the following conditions:

(1) Is under thirteen years of age.

(2) Is thirteen to eighteen years of age and under court supervision.

(3) Is thirteen to eighteen years of age and presenting a significant delay of at least twenty-five percent in one or more areas of development, or a six (6) month delay in two or more areas as determined by an early intervention program, special education program or other multi-disciplinary team.

(g) “Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Juvenile Services, created under section two, article five-e of this chapter. It includes the provision of child care services or residential services.

(h) “Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
association or organization, public or private for the care of thirteen or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

(i) “Child care services” means direct care and protection of children during a portion of a twenty-four (24) hour day outside of the child’s own home which provides experiences to children that foster their healthy development and education.

(j) “Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child-placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living unlicensed residences.

(k) “Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes, or any facility that provides care for unmarried mothers and their children: Provided, That the term does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, created under section two, article five-e of this chapter, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

(l) “Department” means the Department of Health and Human Resources.
(m) “Facility” means a place or residence, including personnel, structures, grounds and equipment, used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose: Provided, That the term does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(n) “Family child care home” means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children, at one time including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

(o) “Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age. A facility may be in a provider’s residence or a separate building.

(p) “Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage or adoption to any adult member of the household.

(q) “Informal family child care” means a home that is used to provide nonresidential child care services for compensation for three (3) or fewer children, including children who are living in the household, who are under six years of
age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

(r) “License” means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

(s) “Out of school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

(t) “Registration” means the process by which a family child care home, informal family child care home or a relative family child care home self-certifies compliance with the rules promulgated pursuant to this article.

(u) “Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis. It may include care and or treatment for transitioning adults: Provided, That the term does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(v) “Relative family child care” means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling of the child(ren) receiving care. Care is given in the provider’s home.

(w) “Rule” means a statement issued by the secretary of the standard to be applied in the various areas of child care.
“Transitioning adult” means an individual with a transfer plan to move to an adult setting who meets one of the following conditions:

1. Is eighteen years of age but under twenty-one years of age, was in departmental custody upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday.

2. Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in departmental custody upon reaching eighteen years of age and enters into a contract with the department to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

(y) “Secretary” means the Secretary of the Department of Health and Human Resources.

(z) “Variance” means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

(aa) “Waiver” means a declaration that a certain rule is inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care facility, a child-placing agency or a day care center shall obtain a license from the department.
(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary: Provided, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;
(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(f) The secretary is hereby authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child care home or relative family child care home may voluntarily register and obtain a certificate of registration from the department.


(a) The secretary shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article. The rules shall provide at a minimum the requirement that every residential child care facility shall be subject to an annual time study regarding the quantification of staff supervision time at each facility. Every residential child care facility shall participate in the time study at the request of the department.
(b) The secretary shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient: Provided, That on or before the first day of September, two thousand six, the department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that amends and replaces licensing requirements for group residential programs for children, 78 CSR 3, and child placing agencies for children, 78 CSR 2: Provided, however, That on or before the first day of July, two thousand six, the department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that creates requirements for informal family child care homes and relative family child care homes that voluntarily register with the department. All individuals, facilities, entities, programs, agencies or family child care homes subject to said emergency rules shall have one hundred eighty days to come into compliance after promulgation of such rules.

§49-2B-5. Penalties; injunctions.

(a) Any individual or corporation which operates a child welfare agency, residential facility or child care center without a license when a license is required is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in jail not exceeding one year, or a fine of not more than five hundred dollars, or both fined and imprisoned.

(b) Any family child care facility which operates without a license when a license is required is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

(c) Where a violation of this article or a rule promulgated by the secretary may result in serious harm to children under care, the secretary may seek injunctive relief against any
§49-2B-6. Conditions of licensure, approval and registration.

(a) A license or approval is effective for a period up to two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The license or approval shall be reinstated upon application to the secretary and a determination of compliance.

(b) An initial six-month license or approval shall be issued to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, organization, risk management, human resources, service environment and record keeping regulations.

(c) A provisional license or approval may be issued when a licensee is not in compliance with this rule but does not pose a significant risk to the rights, well-being, health and safety of a consumer. It shall expire not more than six months from date of issuance, and not be consecutively reissued unless the provisional recommendation is that of the State Fire Marshal.

(d) A renewal license or approval may be issued of any duration up to two years at the discretion of the secretary. In the event a renewal license is not issued, the facility must make discharge plans for residents and cease operation within 30 days of the expiration of the license.
(e) A certificate of registration is effective for a period up to two years from the date of issuance, unless revoked based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the secretary, including a statement of assurance of continued compliance with the rules promulgated pursuant to this article.

(f) The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license, registration or approval shall be publicly displayed: Provided, That foster and adoptive family homes, informal family child care homes and relative family child care homes shall be required to display registration certificates of registration or approval upon request rather than by posting.

(g) Provisional certificates of registration may be issued to family child care homes.

(h) The secretary, as a condition of issuing a license, registration or approval, may:

(1) Limit the age, sex or type of problems of children allowed admission to a particular facility;

(2) Prohibit intake of any children; or

(3) Reduce the number of children which the agency, facility or home operated by the agency is licensed, approved, certified or registered to receive.

§49-2B-7. Waivers and variances to rules.

Waivers or variances of rules may be granted by the secretary if the health, safety or well-being of a child would
not be endangered thereby. The secretary shall promulgate by
erule criteria and procedures for the granting of waivers or
variances so that uniform practices may be maintained
throughout the state.

§49-2B-8. Application for license or approval.

(a) Any person or corporation or any governmental
agency intending to act as a child welfare agency shall apply
for a license, approval or registration certificate to operate
child care facilities regulated by this article. Applications for
licensure, approval or registration shall be made separately
for each child care facility to be licensed, approved, certified
or registered.

(b) The secretary shall prescribe forms and reasonable
application procedures including, but not limited to, finger-
printing of applicants and other persons responsible for the
care of children for submission to the state police and, if
necessary, to the Federal Bureau of Investigation for criminal
history record checks.

(c) Before issuing a license, or approval, the secretary
shall investigate the facility, program and persons responsible
for the care of children. The investigation shall include, but
not be limited to, review of resource need, reputation, charac-
ter and purposes of applicants, a check of personnel criminal
records, if any, and personnel medical records, the financial
records of applicants and consideration of the proposed plan
for child care from intake to discharge.

(d) Before a home registration is granted, the secretary
shall make inquiry as to the facility, program and persons
responsible for the care of children. The inquiry shall include
self-certification by the prospective home of compliance with
standards including, but not limited to:
(1) Physical and mental health of persons present in the home while children are in care;

(2) Criminal and child abuse or neglect history of persons present in the home while children are in care;

(3) Discipline;

(4) Fire and environmental safety;

(5) Equipment and program for the children in care;

(6) Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as the secretary may direct.

(f) The secretary shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.


(a) The secretary shall provide supervision to ascertain compliance with the rules promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The secretary shall be responsible for training and education, within fiscal limitations, specifically for the improvement of care in family child care homes and facilities. The secretary shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible.

(b) The Director of the Department of Health and the State Fire Marshal shall cooperate with the secretary in the administration of the provisions of this article by providing such reports and assistance as may be requested by the secretary.
§49-2B-10. Investigative authority.

(a) The secretary shall enforce the provisions of this article.

(b) An on-site evaluation of every facility regulated pursuant to this article, except registered family child care homes, informal family child care and relative family child care homes shall be conducted no less than once per year by announced or unannounced visits.

(c) A random sample of not less than five percent of the total number of registered family child care homes, informal family child care homes and relative family child care homes shall be monitored annually through on-site evaluations.

(d) The secretary shall have access to the premises, personnel, children in care and records of each facility subject to inspection, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses, approvals, and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval, or registration.

(e) When a complaint is received by the secretary alleging violations of licensure, approval, or registration requirements, the secretary shall investigate the allegations. The secretary may notify the facility’s director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

(f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present. The
the premises of any unregistered residence only after two attempts by the secretary to bring this facility into compliance.

§49-2B-11. Revocation; provisional licensure and approval.

(a) The secretary may revoke or make provisional the licensure registration of any home facility or child welfare agency regulated pursuant to this article if a facility materially violates any provision of this article, or any terms or conditions of the license, registration or approval issued, or fails to maintain established requirements of child care: Provided, That the provisions of this section shall not apply to family child care homes.

(b) The secretary may revoke the certificate of registration of any family child care home if a facility materially violates any provision of this article, or any terms or conditions of the registration certificate issued, or fails to maintain established requirements of child care.

§49-2B-12. Closing of facilities by the secretary; placement of children.

When the secretary finds that the operation of a facility constitutes an immediate danger of serious harm to children served by the facility, the secretary shall issue an order of closure terminating operation of the facility. When necessary, the secretary shall place or direct the placement of the children in a residential facility which has been closed into appropriate facilities. A facility closed by the secretary may not operate pending administrative or judicial review without court order.


Any person, corporation, governmental official or child welfare agency, aggrieved by a decision of the secretary
made pursuant to the provisions of this article may contest
the decision upon making a request for a hearing by the sec-
retary within thirty days of receipt of notice of the decision.
Administrative and judicial review shall be made in accor-
dance with the provisions of article five, chapter twenty-nine-
a of this code. Any decision issued by the secretary may be
made effective from the date of issuance. Immediate relief
therefrom may be obtained upon a showing of good cause
made by verified petition to the circuit court of Kanawha
County or the circuit court of any county where the affected
facility or child welfare agency may be located. The depend-
ency of administrative or judicial review shall not prevent the
secretary from obtaining injunctive relief pursuant to section
five of this article.

§49-2B-14. Annual reports; directory; licensing reports and
recommendations.

(a) The secretary shall submit on or before the first day
of January of each year a report to the Governor, and upon
request to members of the Legislature, concerning the regula-
tion of child welfare agencies, child placing agencies, child
care centers, family child care facilities, family child care
homes, informal family child care homes, relative family
child care homes and child care facilities during the year. The
report shall include, but not be limited to, data on the number
of children and staff at each facility (except family child care,
informal family child care homes and relative family child
care, applications received, types of licenses, approvals and
registrations granted, denied, made provisional or revoked
and any injunctions obtained or facility closures ordered.

(b) The secretary also shall compile annually a directory
of licensed, certified and approved child care providers in-
cluding a brief description of their program and facilities, the
program’s capacity and a general profile of children served.
A listing of family child care homes shall also be compiled annually.

(c) Licensing reports and recommendations for licensure which are a part of the yearly review of each licensed facility shall be sent to the facility director. Copies shall be available to the public upon written request to the secretary.


The secretary shall provide ongoing education of the public in regard to the requirements of this article through the use of mass media and other methods as are deemed appropriate and within fiscal limitations.


By the fifteenth day of August, one thousand nine hundred ninety-five, the secretary shall implement the Integrated Pest Management Program promulgated under rules by the Department of Agriculture under authority of section four, article sixteen-a, chapter nineteen of this code.
and allowing county commissions and city councils to assess fees of up to five dollars on persons convicted of felonies, misdemeanors or municipal ordinances to fund teen courts.

Be it enacted by the Legislature of West Virginia:

That §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

(a) Notwithstanding any provision of this article to the contrary, in any county that chooses to institute a teen court program in accordance with the provisions of this section, any juvenile who is alleged to have committed a status offense or an act of delinquency which would be a misdemeanor if committed by an adult and who is otherwise subject to the provisions of this article may be given the option of proceeding in the teen court program as an alternative to the filing of a formal petition under section seven of this article or proceeding to a disposition as provided by section eleven-a or thirteen of this article, as the case may be. The decision to extend the option to enter the teen court program as an alternative procedure shall be made by the circuit court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the teen court program unless he or she and his or her parent or guardian consent. Any juvenile who does not successfully cooperate in and complete the teen court program and any disposition imposed therein shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be.

(b) The following provisions apply to all teen court programs:
(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system. The juvenile shall also perform at least two sessions of teen court jury service and, if considered appropriate by the circuit court judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section eleven-a of this article to juveniles who are otherwise eligible therefor.

(c) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge, but in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program. A copy of these rules shall be provided to every teen court participant.

(d) Each county that operates, or wishes to operate, a teen court program as provided in this section is hereby authorized
to adopt a mandatory fee of up to five dollars to be assessed as provided in this subsection. Municipal courts may assess a fee pursuant to the provisions of this section upon authorization by the city council of said municipality. Assessments collected by the clerk of the court pursuant to this subsection shall be deposited into an account specifically for the operation and administration of a teen court program. The clerk of the court of conviction shall collect the fees established in this subsection and shall remit the fees to the teen court program.

Any mandatory fee established by a county commission or city council in accordance with the provisions of this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere for each violation committed in the county or municipality of any felony, misdemeanor or any local ordinance, including traffic violations and moving violations but excluding municipal parking ordinances.

CHAPTER 33

(H. B. 4494 — By Delegates H. White, Proudfoot, Cann, Susman, Evans and Hall)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources; Division of Corrections and Division of Environmental Protection to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to over expenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)
<table>
<thead>
<tr>
<th>No.</th>
<th>Claimant Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Elk Funeral Home</td>
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<tr>
<td>29</td>
<td>Schoonover-Stemple Funeral Chapel</td>
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<td>30</td>
<td>Shanklin Funeral Home Inc.</td>
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<td>31</td>
<td>Young Funeral Home Inc.</td>
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<td>32</td>
<td>(b) Claims against the Division of Corrections:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td></td>
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<tr>
<td>33</td>
<td>Beckley Appalachian Regional Hospital</td>
<td>$1,093.00</td>
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<tr>
<td>34</td>
<td>Charleston Area Medical Center Inc.</td>
<td>$324,395.70</td>
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<td>35</td>
<td>Correctional Medical Services Inc.</td>
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<td>36</td>
<td>Davis Memorial Hospital</td>
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<td>37</td>
<td>Grafton City Hospital</td>
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<td>38</td>
<td>Integrated Healthcare Providers</td>
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<td>39</td>
<td>Monongalia General Hospital</td>
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<td>40</td>
<td>Montgomery General Hospital</td>
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<td>41</td>
<td>Tygart Valley Total Care Clinic</td>
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<tr>
<td>42</td>
<td>West Virginia University Hospitals Inc.</td>
<td>$159,638.66</td>
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<tr>
<td>43</td>
<td>(c) Claim against the Division of Environmental Protection:</td>
<td></td>
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<tr>
<td></td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
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<tr>
<td>44</td>
<td>Citizens Telecommunications Co. of WV dba</td>
<td>$28.09</td>
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CHAPTER 34

(S. B. 516 — By Senators Love, Sharpe, Edgell and Minear)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against Concord University; Division of Corrections; Division of Environmental Protection; Division of Highways; Division of Labor; Division of Natural Resources; Division of Rehabilitation Services; Office of Emergency Services; Public Service Commission; Regional Jail and Correctional Facility Authority; West Virginia Division of Banking and West Virginia University to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby de-
clare it to be the moral obligation of the state to pay each
such claim in the amount specified below and directs the
Auditor to issue warrants for the payment thereof out of any
fund appropriated and available for the purpose.

(a) Claim against Concord University:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Aramark Facility Services Inc. ........ $ 557,037.52

(b) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Barbour County Commission .......... $ 21,750.00
(2) James Samples ....................... $ 750.00

(c) Claim against the Division of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Leonard D. Wells ..................... $ 1,900.00

(d) Claims against the Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Paul A. Akers ......................... $ 500.00
(2) Orville W. Bell, Jr. ................... $ 219.67
(3) Irene M. Betler ....................... $ 250.00
(4) Donald J. Birmingham ................. $ 100.00
(5) Susan Board ......................... $ 770.82
(6) Michael J. and Lisa Bonanno .......... $ 100.00
(7) Anthony Bongiovanni ................. $ 196.65
(8) Michael Buckbee ..................... $ 248.04
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<td>(9) Melissa Burnett</td>
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<td>(10) Joseph M. and Terri L. Bush</td>
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<td>(11) Laura Callahan</td>
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<td>36</td>
<td>(12) Pamela L. Campbell</td>
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<td>(13) Teela Carson</td>
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<td>(14) David R. Carter</td>
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<td>(15) Thomas G. Coberly</td>
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<td>(16) Stacy and Brian Collins</td>
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<td>(17) Joshua James Cook</td>
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<td>(18) Lonnie R. and Rosa Lynn Crites</td>
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<td>(19) Tom Daddysman</td>
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<td>(20) Robert L. Dalrymple</td>
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<td>(21) Sandra S. Dietz</td>
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<td>(22) Joann Dodd</td>
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<td>(24) Jessica Donaldson</td>
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<td>(25) Ronald J. Duke</td>
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<td>(27) Betty and Nelson Edwards</td>
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<td>(28) Gary and Rebecca Eisenman</td>
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<td>(29) Bryan A. Elkins</td>
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<td>(30) Maria Farley</td>
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<td>(31) Jaime and Brent Foster</td>
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<td>(32) Carrie L. Franklin</td>
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<td>(35) Betsy F. and Eric T. Greathouse</td>
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<td>(42) Debra K. Huff</td>
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<td>67</td>
<td>(43) Heather Huffman</td>
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<td>W.R. Mollohan Inc.</td>
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<td>102</td>
<td>Patricia A. Welling</td>
<td>$250.00</td>
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</table>
(79) Andrew W. Whipkey ............... $  465.30
(80) Kitty Wolfe ........................ $  83.07
(81) Joyce and Nick F. Zervos, Jr. .... $  500.00

(e) Claims against the Division of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) SGS North America .................. $ 18,040.00
(2) West Virginia Truck and Trailer Inc. ... $  2,424.17

(f) Claims against the Division of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Fabricut Contract .................. $ 17,156.00
(2) Madison Coal &
     Supply Company Inc. ................ $ 41,864.90
(3) Tom’s Collision Repair ............... $  856.30

(g) Claim against the Division of Rehabilitation Services:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Sami M. Ghareeb DDS ................ $  894.00

(h) Claim against the Office of Emergency Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) RCS Communications ................ $ 3,814.13

(i) Claims against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Fred A. McComas .................... $  47.30
(2) Arnold W. Ryan II ........................ $ 35.88

(j) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Ralph Blankenship ................ $ 873.95
(2) Charles Haynes ................... $ 65.00
(3) Daniel R. Turner .................. $ 85.00

(k) Claim against the West Virginia Division of Banking:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Equifax Information Services LLC .... $ 989.01

(l) Claim against West Virginia University:

(TO BE PAID FROM SPECIAL REVENUE FUND)

Nicole Elizabeth Novak ............. $ 62.54

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Court of Claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Court of Claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
CHAPTER 35

(S. B. 693—By Senator Tomblin, Mr. President)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §14-2-18, §14-2-19 and §14-2-20 of the Code of West Virginia, 1931, as amended, all relating to the Court of Claims; and requiring direction of the Joint Committee on Government and Finance in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §14-2-18, §14-2-19 and §14-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.


§14-2-20. Claims under special appropriations.


1 The Governor or the head of a state agency may refer to the court for an advisory determination the question of the legal or equitable status, or both, of a claim against the state or a state agency. This procedure shall apply only to such claims as are within the jurisdiction of the court. The procedure shall be substantially as follows:

1. There shall be filed with the clerk the record of the claim, including a full statement of the facts, the contentions
of the claimant and such other materials as the rules of the
court may require. The record shall submit specific questions
for the court’s consideration.

2. The clerk shall examine the record submitted. If he or
she finds that it is adequate under the rules, he or she shall
give a copy of all materials submitted to the Joint Committee
on Government and Finance. If the Joint Committee on Gov-
ernment and Finance shall so direct, the clerk shall place the
claim on a special docket. If the clerk finds the record inade-
quate, he or she shall refer it back to the officer submitting it
with the request that the necessary additions or changes be
made.

3. When a claim is reached on the special docket, the
court shall prepare a brief opinion for the information and
guidance of the officer. The claim shall be considered infor-
mally and without hearing. A claimant shall not be entitled to
appear in connection with the consideration of the claim.

4. The opinion shall be filed with the clerk. A copy shall
be transmitted to the officer who referred the claim.

An advisory determination shall not bar the subsequent
consideration of the same claim if properly submitted by, or
on behalf of, the claimant. Such subsequent consideration, if
undertaken, shall be de novo.


A claim arising under an appropriation made by the Leg-
islature during the fiscal year to which the appropriation
applies, and falling within the jurisdiction of the court, may
be submitted by:

1. A claimant whose claim has been rejected by the state
agency concerned or by the State Auditor.
2. The head of the state agency concerned in order to obtain a determination of the matters in issue.

3. The State Auditor in order to obtain a full hearing and consideration of the merits.

When such submittal is made, the clerk shall give a copy of the submittal to the Joint Committee on Government and Finance. If the Joint Committee on Government and Finance shall so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the regular procedure, so far as applicable, shall govern the consideration of the claim by the court. If the court finds that the claimant should be paid, it shall certify the approved claim and award to the head of the appropriate state agency, the State Auditor and to the Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment of the award and to charge the amount thereof to the proper appropriation. The Auditor shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be subject to further review by the Auditor upon any matter determined and certified by the court.

§14-2-20. Claims under special appropriations.

Whenever the Legislature makes an appropriation for the payment of claims against the state, then accrued or arising during the ensuing fiscal year, the determination of claims and the payment thereof may be made in accordance with this section. However, this section shall apply only if the Legislature in making its appropriation specifically so provides and only after specific direction to hear the claim is given by the Joint Committee on Government and Finance.

The claim shall be considered and determined by the regular or shortened procedure, as the case may be, and the
amount of the award shall be fixed by the court. The clerk shall certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall issue his or her warrant without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.

CHAPTER 36

(S. B. 497 — By Senator Kessler)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 5, 2006]

AN ACT to repeal §59-2-2 of the Code of West Virginia, 1931, as amended, relating to requiring nonresidents to post security for court costs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. COSTS GENERALLY.

§1. Repeal of section relating to requiring nonresidents to post security for court costs.

Section two, article two, chapter fifty-nine of the Code of West Virginia, 1931, as amended, is hereby repealed.
CHAPTER 37

(Com. Sub. for S. B. 728 — By Senator Chafin)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §7-1-3cc of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2, §24-6-5 and §24-6-6b of said code, all relating to the regulation of voice communication services; redefining “in-state subscriber” to include voice over internet protocol subscribers; authorizing Public Service Commission to issue and enforce orders dealing with matters concerning imposition of fees on voice over internet protocol service subscribers; amending definition of “commercial mobile radio service provider” to include prepaid and post-paid services; requiring directors of emergency dispatch centers to undergo background checks; precluding convicted felons from serving as emergency directors of emergency dispatch centers; effective date; authorizing Public Service Commission to regulate enhanced 911 service fees from in-state two-way subscribers; authorizing Public Service Commission to define in-state two-way subscriber; enhanced emergency telephone system requirements; requiring an investigation on character and criminal background to be conducted by and at the expense of the State Police on certain persons to be employed in an emergency dispatch center; prohibiting persons with felony convictions from holding certain positions; and assignment of a portion of the wireless enhanced 911 fee moneys received by Public Service Commission to the Division of Homeland Security and Emergency Management.
Be it enacted by the Legislature of West Virginia:

That §7-1-3cc of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2, §24-6-5 and §24-6-6b of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for the systems and for roadway conversion systems; authority to contract with the telephone companies for billing of fee.

(a) In addition to possessing the authority to establish an emergency telephone system pursuant to section four, article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia Enhanced 911 Council concerning the operation of all county emergency communications centers or emergency telephone systems centers in the state, including, but not limited to, recommendations for:
14 (1) Minimum standards for emergency telephone systems
15 and emergency communications centers;

16 (2) Minimum standards for equipment used in any center
17 receiving telephone calls of an emergency nature and dis-
18 patching emergency service providers in response to that call
19 and which receives 911 moneys or has basic 911 service
20 funded through its county commission; and

21 (3) Minimum standards for education and training of all
22 personnel in emergency communications centers.

23 (b) A county commission may impose a fee upon con-
24 sumers of local exchange service within that county for an
25 enhanced emergency telephone system and associated elec-
26 tronic equipment and for the conversion of all rural routes to
27 city-type addressing as provided in section three of this arti-
28 cle. The fee revenues may only be used solely and directly
29 for the capital, installation, administration, operation and
30 maintenance costs of the enhanced emergency telephone
31 system and of the conversion to city-type addressing and
32 including the reasonable costs associated with establishing,
33 equipping, furnishing, operating or maintaining a county
34 answering point. Effective on the first day of July, two thou-
35 sand six, all county enhanced emergency telephone system
36 fees that are in effect as of the first day of July, two thousand
37 six, and as such may later be modified by action of a county
38 commission, shall be imposed upon in-state subscribers to
39 voice over internet protocol (VoIP) service, as VoIP service
40 is defined by the Federal Communications Commission of
41 the United States. A nonbusiness VoIP service subscriber
42 shall be considered in-state if the primary residence of the
43 subscriber is located within West Virginia. A business sub-
44 scriber shall be considered in-state if the site at which the
45 service is primarily used is located within West Virginia. The
46 Public Service Commission may, as it deems appropriate and
in accordance with the requirements of due process, issue and
enforce orders, as well as adopt and enforce rules, dealing
with matters concerning the imposition of county enhanced
emergency telephone system fees upon VoIP service sub-
scribers.

(c) A county commission may contract with the tele-
phone company or companies providing local exchange ser-
vice within the county for the telephone company or compa-
nies to act as the billing agent or agents of the county com-
misson for the billing of the fee imposed pursuant to subsec-
tion (b) of this section. The cost for the billing agent services
may be included as a recurring maintenance cost of the en-
hanced emergency telephone system.

Where a county commission has contracted with a tele-
phone company to act as its billing agent for enhanced emer-
gency telephone system fees, all competing local exchange
telephone companies with customers in that county shall bill
the enhanced emergency telephone system fees to its respec-
tive customers located in that county and shall remit the fee.
It may deduct its respective costs for billing in the same man-
ner as the acting billing agent for the enhanced emergency
telephone system fee.

(d) A county commission of any county with an emer-
gency communications center or emergency telephone sys-
tem may establish standards for alarm systems, including
security, fire and medical alarms.

(e) The books and records of all county answering points
that benefit from the imposition of the local exchange service
fees shall be subject to annual examination by the state audi-
tor’s office.

CHAPTER 24. PUBLIC SERVICE COMMISSION.
ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.
§24-6-5. Enhanced emergency telephone system requirements.
§24-6-6b. Wireless enhanced 911 fee.

§24-6-2. Definitions.

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

(1) “Commercial mobile radio service provider” or “CMRS provider” means cellular licensees, broadband personal communications services (PCS) licensees and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

(2) “County answering point” means a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

(3) “Emergency services organization” means the organization established under article five, chapter fifteen of this code.

(4) “Emergency service provider” means any emergency services organization or public safety unit.

(5) “Emergency telephone system” means a telephone system which through normal telephone service facilities
automatically connects a person dialing the primary emer-
gency telephone number to an established public agency
answering point, but does not include an enhanced emer-
gency telephone system.

(6) “Enhanced emergency telephone system” means a
telephone system which automatically connects the person
dialing the primary emergency number to the county answer-
ing point and in which the telephone network system auto-
matically provides to personnel receiving the call, immedi-
ately on answering the call, information on the location and
the telephone number from which the call is being made and,
upon direction from the personnel receiving the call, routes
or dispatches the call by telephone, radio or any other appro-
priate means of communication to emergency service provid-
ers that serve the location from which the call is made.

(7) “Public agency” means the state and any municipal-
ity, county, public district or public authority which provides
or has authority to provide fire-fighting, police, ambulance,
medical, rescue or other emergency services.

(8) “Public safety unit” means a functional division of a
public agency which provides fire-fighting, police, medical,
rescue or other emergency services.

(9) “Telephone company” means any public utility and
any CMRS provider which is engaged in the provision of
telephone service whether primarily by means of wire or
wireless facilities.

(10) “Comprehensive plan” means a plan pertaining to
the installing, modifying or replacing of telephone switching
equipment; a telephone utility’s response in a timely manner
to requests for emergency telephone service by a public
agency; a telephone utility’s responsibility to report to the
public service commission; charges and tariffs for the ser-
59 vices and facilities provided by a telephone utility; and access
to an emergency telephone system by emergency service
organizations.

(11) “Technical and operational standards” means those
standards of telephone equipment and processes necessary
for the implementation of the comprehensive plan as defined
in subdivision (10) of this subsection.

§24-6-5. Enhanced emergency telephone system requirements.

(a) An enhanced emergency telephone system, at a mini-

(1) All the territory in the county, including every munic-
ipal corporation in the county, which is served by telephone
company central office equipment that will permit such a
system to be established shall be included in the system:
Provided, That if a portion of the county or a portion of a
municipal corporation within the county is already being
served by an enhanced emergency telephone system, that
portion of the county or municipality may be excluded from
the county enhanced emergency telephone system;

(2) Every emergency service provider that provides
emergency service within the territory of a county participate
in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the
system maintain a telephone number in addition to the one
provided for in the system; and

(5) If the county answering point personnel reasonably
determine that a call is not an emergency, the personnel pro-
vide the caller with the number of the appropriate emergency
service provider.
(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission or the West Virginia State Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of employment, any person employed to act as the director of an emergency dispatch center who dispatches emergency calls or supervises the dispatching of emergency call takers shall be subject to an investigation of their character and background. This investigation shall include, at a minimum, a criminal background check conducted by the State Police at its expense. A felony conviction shall preclude such person from holding any of these positions. This requirement applies prospectively. The requirement takes effect on the first day of July, two thousand six.

(e) As a condition of continued employment, persons employed to dispatch emergency calls shall successfully complete a forty-hour nationally recognized training course for dispatchers within one year of the date of their employment; except that persons employed to dispatch emergency calls prior to the effective date of this subsection, as a condition of continuing employment, shall successfully complete such a course not later than the first day of July, one thousand nine hundred ninety-five.

(f) Each county or municipality shall appoint for each answering point an enhanced emergency telephone system advisory board consisting of at least six members to monitor the operation of the system. The board shall be appointed by the county or municipality and shall include at least one member from affected fire service providers, law-enforcement providers, emergency medical providers
and emergency services providers participating in the system
and at least one member from the county or municipality.
The board may make recommendations to the county or mu-
nicipality concerning the operation of the system.

In addition, the director of the county or municipal en-
chanced telephone system shall serve as an ex officio member
of the advisory board. The initial advisory board shall serve
staggered terms of one, two and three years. The initial terms
of these appointees shall commence on the first day of July,
one thousand nine hundred ninety-four. All future appoint-
ments shall be for terms of three years, except that an ap-
pointment to fill a vacancy shall be for the unexpired term.
All members shall serve without compensation. The board
shall adopt such policies, rules and regulations as are neces-
sary for its own guidance. The board shall meet monthly on
the day of each month which the board may designate. The
board may make recommendations to the county or munici-
pality concerning the operation of the system.

(g) Any advisory board established prior to the first day
of January, one thousand nine hundred ninety-four, shall have
three years to meet the criteria of subsection (e) of this sec-
tion.

(h) Nothing herein contained shall be construed to pro-
hibit or discourage in any way the establishment of
multijurisdictional or regional systems, or multijurisdictional
or regional agreements for the establishment of enhanced
emergency telephone systems, and any system established
pursuant to this article may include the territory of more than
one public agency, or may include only a portion of the terri-
tory of a public agency.

§24-6-6b. Wireless enhanced 911 fee.

(a) Beginning on the first day of July, two thousand six,
all CMRS providers as defined in section two of this article
shall, on a monthly basis or otherwise for good cause and as
directed by order of the Public Service Commission, collect
from each of their in-state two-way service subscribers a
wireless enhanced 911 fee. As used in this section “in-state
two-way service subscriber” shall have the same meaning as
that set forth in the rules of the Public Service Commission.
No later than the first day of June, two thousand six, the Pub-
lic Service Commission shall, after the receipt of comments
and the consideration of evidence presented at a hearing,
issue an updated 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 spec-
ify how the CMRS providers shall deal with fee collection
shortfalls caused by uncollectible accounts. The Public Ser-
vice Commission shall solicit the views of the wireless tele-
communications 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 in-
clude 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: *And provided further,* That for the fiscal year beginning on the first day of July, two thousand six, and for every fiscal year thereafter, five percent of the wireless enhanced 911 fee money received by the Public Service Commission shall be deposited in a special fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for the following year.

(c) Beginning in the year one thousand nine hundred ninety-seven, and every two years thereafter, the Public Ser-
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73 vice Commission shall conduct an audit of the wireless en-
74 hanced 911 fee and shall recalculate the fee so that it is the
75 weighted average rounded to the nearest penny, as of the first
76 day of March of the respecification year, of all of the en-
77 hanced 911 fees imposed by the counties which have adopted
78 an enhanced 911 ordinance: Provided, That the wireless en-
79 hanced 911 fee may never be increased by more than twenty-
80 five percent of its value at the beginning of the
81 respecification year: Provided, however, That the fee may
82 never be less than the amount set in subsection (b) of this
83 section: Provided further, That beginning on the first day of
84 July, two thousand five, the wireless enhanced 911 fee shall
85 include ten cents to be distributed to the West Virginia State
86 Police to be used for equipment upgrades for improving and
87 integrating their communication efforts with those of the
88 enhanced 911 systems: And provided further, That beginning
89 on the first day of July, two thousand five, one million dollars
90 of the wireless enhanced 911 fee shall be distributed by the
91 Public Service Commission to subsidize the construction of
92 wireless towers as specified in subsection (b) of this section.

(d) The CMRS providers shall, after retaining a three-
94 percent billing fee, send the wireless enhanced 911 fee mon-
95 eys collected, on a monthly basis, to the Public Service Com-
96 mission. The Public Service Commission shall, on a quarterly
97 and approximately evenly staggered basis, disburse the fee
98 revenue in the following manner:

(1) Each county that does not have a 911 ordinance in
99 effect as of the original effective date of this section in the
100 year one thousand nine hundred ninety-seven or has enacted
101 a 911 ordinance within the five years prior to the original
102 effective date of this section in the year one thousand nine
103 hundred ninety-seven shall receive eight and one half tenths
104 of one percent of the fee revenues received by the Public
105 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) of this subsection, 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 fund to be used exclusively for the purchase of equipment that will provide information regarding the x and y coordinates of persons who call an emergency telephone system through a commercial mobile radio service: Provided, That upon purchase of the necessary equipment, the special fund shall be dissolved and any surplus shall be used for general operation of the emergency telephone system as may otherwise be provided by law.

CHAPTER 38

(S. B. 778 —By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to repeal §19-21A-4a, §19-21A-13a, §19-21A-13b and §19-21A-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-5 §19-21A-6, §19-21A-7, §19-21A-8, §19-21A-9, §19-21A-10, §19-21A-11, §19-21A-12, §19-21A-13 and §19-21A-14, all relating to the State Conservation Committee and conservation districts generally; allowing ex officio members of state committee to designate representative; allowing certain persons to enter private property and waters of the state to remove flood debris; providing for continuation of conservation committee and districts; providing for election of supervisors; providing method for filling supervisor vacancies; requiring conservation districts follow county lines; providing for per
diem for supervisors; clarifying status of dam monitors; providing for discontinuance of districts; providing for reformation of districts; providing for distribution of assets and liabilities upon discontinuance of districts; removing antiquated provisions; and making technical and conforming amendments throughout.

Be it enacted by the Legislature of West Virginia:


ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-2. Legislative determinations and declaration of policy.
§19-21A-4. State Conservation Committee; continuation.
§19-21A-6. Election of supervisors for each district; filling vacancies.
§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.
§19-21A-10. Cooperation between state agencies and districts.
§19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.
§19-21A-13. Contracts with district for construction of flood control projects; power to borrow money; levy.

§19-21A-2. Legislative determinations and declaration of policy.

It is hereby declared, as a matter of legislative determination:
(a) That the farm and grazing lands of the State of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water and flooding is increased with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible and increases the potential damages from flooding.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminish-
ing of the underground water reserve which causes water
shortages, intensifies periods of drought and causes crop
failures; an increase in the speed and volume of rainfall run-
off, causing more severe and more numerous floods which
bring suffering, disease and death; impoverishment of fami-
lies attempting to farm eroding and eroded lands; damage to
roads, highways, railways, farm buildings and other property
from floods; and losses in navigation, hydroelectric power,
municipal water supply, irrigation developments, farming,
grazing and reduction of suitable land available for homes
and businesses.

(c) That to conserve soil resources and control and pre-
vent soil erosion and prevent floodwater and sediment dam-
age and further the conservation, development, utilization
and disposal of water, it is necessary that land-use practices
contributing to soil wastage and soil erosion be discouraged
and discontinued and appropriate soil-conserving land-use
practices and works of improvement for flood prevention or
the conservation, development, utilization and disposal of
water be adopted and carried out; that among the procedures
necessary for widespread adoption are engineering operations
such as the construction of terraces, terrace outlets, dams,
desilting basins, floodwater retarding structures, channel
improvements, floodways, dikes, ponds, ditches and the like;
the utilization of strip cropping, lister furrowing, contour
cultivating and contour furrowing; land drainage; land irriga-
tion; seeding and planting of waste, sloping, abandoned or
eroded lands with water-conserving and erosion-preventing
plants, trees and grasses; forestation and reforestation; rota-
tion of crops; soil stabilization with trees, grasses, legumes
and other thick-growing, soil-holding crops; retardation of
runoff by increasing absorption of rainfall; and retirement
from cultivation of steep, highly erosive areas and areas now
badly gullied or otherwise eroded.
CONSERVATION DISTRICTS

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state.

(e) This article contemplates that the incidental cost of organizing conservation districts will be borne by the state, while the expense of operating the districts so organized will be provided by donations, gifts, contributions, grants and appropriations, in money, services, materials or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources, with the understanding that the owners or occupiers will contribute funds, labor, materials and equipment to aid in carrying out erosion control measures on their lands.


Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

1. (1) “Agency of this state” means the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

2. (2) “Committee” or “State Conservation Committee” means the agency created in section four of this article.

3. (3) “District” or “conservation district” means a subdivision of this state, organized in accordance with the provisions
of this article, for the purposes, with the powers and subject
to the restrictions hereinafter set forth.

(4) "Governing body" means the supervisors of any con-
servation district, town or city, council, city commission,
county court or body acting in lieu of a county court, in this
state, and the term "governmental division" means any con-
servation district, town, city or county in this state.

(5) "Land occupier" or "occupier of land" means any
person, firm or corporation who shall hold title to, or shall be
in possession of, any lands lying within a district organized
under the provisions of this article, whether as owner, lessee,
tenant or tenant.

(6) "Landowners" or "owners of land" means any person
or persons, firm or corporation who holds title to any lands
lying within a district organized under the provisions of this
article.

(7) "Notice" means notice published as a Class II legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code and the publication area
for such publication shall be the county in which is located
the appropriate area. At any hearing held pursuant to such
notice at the time and place designated in such notice, ad-
jourment may be made, from time to time, without the ne-
cessity of renewing such notice for such adjournment dates.

(8) "Petition" means a petition filed under the provisions
of subsection (a), section five of this article for the creation
of a district.

(9) "Soil conservation", "erosion control" or "erosion
prevention projects" means those projects that have been
established by federal agencies in cooperation with state
agencies for the purpose of demonstrating soil erosion con-
trol and water conservation practices.
(10) “State” means the State of West Virginia.

(11) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(12) “United States” or “agencies of the United States” means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(13) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

§19-21A-4. State Conservation Committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the State Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;
The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

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

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

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

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

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

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and

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

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

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

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

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

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

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

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes
and the provisions of this article. Money received from the
sale of land acquired in the small watershed program shall be
deposited in the special account of the State Conservation
Committee and expended as provided in this article.

(8) To promulgate emergency and legislative rules to
effectuate the provisions of this article as amended and reen-
acted by the Legislature during the regular session of the
Legislature in the year two thousand five.

(9) Upon a Governor’s proclamation declaring a state of
emergency or federal disaster declaration, the state commit-
tee, its employees or agents may enter any water of the state
for the purpose of removing debris and other obstruction
which impede water flow and present additional flood haz-
ards. The agency shall make reasonable efforts to secure the
permission of the landowner before entering any private
property in connection with these removal activities. The
exercise of this limited authority does not constitute taking of
private property or trespass. This authority shall continue for
the duration of the Governor’s proclamation or the federal
disaster declaration.

(10) The State Conservation Committee is continued
until the first day of July, two thousand twelve, pursuant to
the provisions of article four, chapter ten of the Code of West
Virginia, unless sooner terminated, continued or reestab-
lished pursuant to the provisions of that article.


The conservation districts formed throughout the state
under the prior enactments of this section are continued and
shall remain in effect until reformed or reorganized as pro-
vided in section fourteen of this article.
§19-21A-6. Election of supervisors for each district; filling vacancies.

(a) Beginning with the two thousand eight general election, each county in a district shall elect, two nonpartisan supervisors: Provided, That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor shall own land in the district and have the education, training or experience necessary to carry out the duties required by this article and rules promulgated thereunder. A candidate shall file with the committee a sworn written statement specifying that he or she meets the requirements of office. A candidate may not be placed on the ballot or be seated as a supervisor unless he or she meets the requirements.

(c) The committee shall provide a list of qualified candidates to the Secretary of State no less than ninety days prior to any election for supervisor in the manner specified by the Secretary.

(d) No nominating petition may be accepted by the committee unless it is subscribed by twenty-five or more owners of lands lying within the boundaries of the district and within the boundaries of the county in which the candidate resides. Landowners in the district may sign more than one nominating petition to nominate more than one candidate for supervisor.

(e) All registered voters in the district are eligible to vote in the election for candidates from the county within the
boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(f) Supervisors shall be elected in the general election to be conducted in the year two thousand eight as nonpartisan candidates. Thereafter, supervisors shall be elected in the primary election. The term of office for the candidate for supervisor receiving the highest number of votes in the general election of two thousand eight shall be for four years; the candidate for supervisor receiving the second highest number of votes in the general election of two thousand eight shall be for two years. In counties where more than two supervisors are elected in the general election of two thousand eight the two supervisors receiving the highest number of votes shall serve for four years and the remaining supervisor or supervisors shall serve for two years. Subsequent terms of office for supervisors elected thereafter shall be for four years. The provisions of chapter three of this code shall apply to election of supervisors.

(g) Persons currently holding the position of supervisor shall, regardless of the expiration of the currently designated term of office, continue to serve until the election and qualification of his or her successor.

(h) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and two months, the appointed person shall hold office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person shall hold the office until a
successor is elected in the next primary or general election and qualified.

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

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

(b) The supervisors shall designate a chairperson and may, from time to time, change the designation. On and after the election of supervisors in two thousand eight, the term of office of each elected supervisor is four years. A supervisor holds office until his or her successor has been elected or appointed. In case a new county is added to a district, the committee may appoint two supervisors to represent the county until the next regular election of supervisors for the district takes place.

(c) A supervisor is entitled to reasonable and necessary expenses and a per diem of not more than one hundred fifty dollars nor less than thirty dollars when engaged in the performance of his or her duties. The expense and per diem rate shall be established by the state committee based on availability of funds.

(d) The supervisors may, with the approval of the State Conservation Committee, employ a secretary, dam monitors, technical experts and any other officers, agents and employees, permanent and temporary, either with or without compensation, as they may require and shall determine their qual-
Consortium Districts

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ifications, duties and compensation, if any. Dam monitors, as
specified in any emergency action plan or monitoring plan
approved by the Department of Environmental Protection
pursuant to its dam safety rules, pertaining to a flood control
structure operated or maintained by a soil conservation dis-
Trict and any other employees, agents or officers employed
pursuant to this section are “employees” of the district within
the meaning of subsection (a), section three, article twelve-a,
Chapter twenty-nine of this code.

(e) The supervisors may delegate to their chairperson, to
one or more supervisors or to one or more agents, or employ-
ees, those administrative powers and duties they consider
proper. The supervisors shall furnish to the State Conserva-
tion Committee, upon request, copies of the ordinances,
rules, orders, contracts, forms and other documents they
adopt or employ and any other information concerning their
activities required in the performance of State Conservation
Committee’s duties under this article.

(f) The supervisors shall:

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

(2) Provide for the keeping of a full and accurate record
of all proceedings and of all resolutions, rules and orders
issued or adopted; and

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

(g) Any supervisor may be removed by the State Conserv-
ation Committee upon notice and hearing for neglect of duty
or malfeasance in office, but for no other reason.

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


A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this article:

(1) To conduct surveys, investigations and research relating to the character of soil erosion and floodwater and sediment damage and to the conservation, development, utilization and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations or research and to disseminate information concerning such preventive and control measures and works of improvement: Provided, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods and measures by which soil and soil resources may be conserved and soil erosion in the form of soil
washing may be prevented and controlled and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land and the measures listed in subsection (c), section two of this article on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;
(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop with the approval of the state committee comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water within the district. The plans shall specify, in as much detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations
thereof, within its boundaries; to act as agent for the United
States or any of its agencies, or for this state or any of its
agencies, in connection with the acquisition, construction,
operation, or administration of any soil-conservation, flood-
prevention, drainage, irrigation, water-management, erosion-
control or erosion-prevention project, or combinations
thereof, within its boundaries; to accept donations, gifts,
contributions and grants in money, services, materials or
otherwise, from the United States or any of its agencies, or
from this state or any of its agencies, or from any other
source and to use or expend such money, services, materials
or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to
have a seal, which shall be judicially noticed; to have perpet-
ual succession unless terminated as hereinafter provided; to
make and execute contracts and other instruments, necessary
or convenient to the exercise of its powers; to make and,
from time to time, amend and repeal rules and regulations not
inconsistent with this article to carry into effect its purposes
and powers;

(11) As a condition to this extending of any benefits
under this article to, or the performance of work upon, any
lands, the supervisors may require contributions in money,
services, materials or otherwise to any operations conferring
such benefits and may require land occupiers to enter into
and perform such agreements or covenants as to the perma-
nent use of such lands as will tend to prevent or control ero-
sion and prevent floodwater and sediment damage thereon;

(12) No provisions with respect to the acquisition, opera-
tion or disposition of property by other public bodies shall be
applicable to a district organized hereunder in its acquisition,
operation and disposition of property unless the Legislature
shall specifically so state;
(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating or maintaining works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention or the conservation, development, utilization and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.


The supervisors of any two or more districts organized under the provisions of this article may cooperate with one another in the exercise of any or all powers conferred in this article.

§19-21A-10. Cooperation between state agencies and districts.

Agencies of this state which have jurisdiction over or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder may cooperate with the supervisors of the districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this article. When such cooperation is undertaken, the supervisors of the dis-
§19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.

The governing body of any governmental division which may reasonably be expected to receive a benefit from the construction, improvement, operation or maintenance of any works of improvement may expend money for such construction, improvement, operation or maintenance if this expectation exists as to any part of the governmental division and even though such works of improvement are not located within the corporate limits of the governmental division or are not within this state: Provided, That if the expenditure is not made directly by the governmental division for such purpose, it shall be made only through a conservation district or watershed improvement district organized under the laws of this state, but it shall not be necessary that any part of the governmental division be within the limits of the district through which the expenditure is made. The governing bodies or governmental divisions may set up in their respective budgets funds to be spent for such purposes and municipalities and counties may levy and collect taxes for such purposes in the manner provided by law: Provided, however, That in case sufficient funds cannot be raised by ordinary levies, additional funds may be raised by municipalities and counties as provided by section sixteen, article eight, chapter eleven of this code.


(a) By vote of the governing body, any governmental division authorized to expend money on works of improvement by section eleven of this article may alone, or in combination with any other governmental division or divisions
authorized to expend money on works of improvement, give assurances, by contract or otherwise, satisfactory to agencies of the United States, congressional committees or other proper federal authority and to conservation districts or watershed improvement districts organized under the laws of this state that the governmental division or divisions will construct, improve, operate or maintain works of improvement or will appropriate a sum or sums of money and expend it for such purposes as provided in section eleven of this article.

(b) The assurances, whether by contract or otherwise, shall be reduced to writing and before final approval of the governing bodies involved shall be submitted to the Attorney General for approval. After approval by the Attorney General and by the governing body or bodies concerned, certified copies of the assurances shall be filed in the office of the county clerk of the county or counties in which the governmental division is located and in the office of the State Tax Commissioner.

(c) Any assurance hereunder may be valid and binding for a period of time not to exceed fifty years.

§19-21A-13. Contracts with district for construction of flood control projects; power to borrow money; levy.

The county commission of each county and the governing body of each municipality in the state are hereby authorized and empowered to enter into a contract or agreement with the conservation district or districts for the purpose of constructing flood control projects within their respective counties or municipalities or adjacent thereto and to use the projects as recreational areas or public parks. For the purpose of defraying the cost of any such project or projects, the county commission or the governing body of any municipality is hereby authorized to borrow from the federal govern-
ment or from any federal agency having money to loan, a
sum sufficient to cover the cost of such project or projects.
For the purpose of retiring any indebtedness incurred under
the provisions of this section, notwithstanding any other pro-
visions of law, the county commission or the governing body
of any municipality is hereby authorized to lay and impose a
county or citywide levy as the case might be.


(a) At any time after five years following the organiza-
tion of a district under the provisions of this article, any
twenty-five owners of land lying within the boundaries of a
district may file a petition with the State Conservation Com-
mittee praying that the district be discontinued and the county
or counties of the district be added to another district or dis-
tricts.

(b) The committee shall conduct one or more public
meetings or public hearings upon the petition in the affected
county or counties including the district or districts which
may accept one or more counties from the district being dis-
continued. After the public meetings or hearings have been
held by the committee, it shall notify the Secretary of State
that a referendum question is to be added to the ballot of the
next primary or general election to be held in the county or
counties of the affected districts.

(c) The questions shall be submitted by ballots or elec-
tronic voting system upon which the words “For discontinu-
ing the ________________________ (name of the con-
servation district to be here inserted) and adding
______ (county or counties) to___________ (district or
districts) (If one or more counties in a district are to be com-
bined with one or more other districts, each combination
must be specified.)” and “Against discontinuing the
___________________________ (name of the conservation
district to be here inserted)” shall appear, with a square be-
fore each proposition and a direction to mark the square be-
fore one or the other of the propositions as the voter may
favor or oppose discontinuance of the district. All registered
voters lying within the boundaries of the district to be discon-
tinued and the district or districts to which all or part of the
district being discontinued may be added are eligible to vote
on the referendum.

(d) If a majority of the votes cast in the referendum are in
favor of discontinuing the district, the supervisors shall pro-
cceed to terminate the affairs of the district. The supervisors of
the district being discontinued shall file an application to
discontinue the district with the Secretary of State. The appli-
cation shall recite the process undertaken in discontinuing the
district and the distribution of the property, assets, liabilities,
contracts, duties and responsibilities and transfer of territory
to one or more districts.

(e) The Secretary of State shall issue to the supervisors a
certificate of discontinuance and shall record the certificate in
an appropriate book of record in his or her office.

(f) The supervisors of the district or districts gaining all
or part of the discontinued district shall file an application
with the Secretary of State adding the additional territory to
such district or districts.

(g) The property, assets, liabilities, contracts, duties and
responsibilities of the district shall be assigned in accordance
with the division of the district.

(h) All contracts entered into by the district being discon-
tinued or its supervisors are parties shall remain in force and
effect for the period provided in the contract. The reformed
district receiving the assets, liabilities, duties and responsibil-
ities related to the contract shall be substituted for the district
or supervisors as party to such contracts. The reformed district shall be entitled to all benefits and subject to all liabilities under such contract and have the same right and liability to perform, to require performance, to sue and be sued theron and to modify or terminate such contracts by mutual consent or otherwise, as the supervisor or district would have had.

(i) The State Conservation Committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this article more often than once in three years.

CHAPTER 39

(Com. Sub. for S. B. 245 — By Senators Bowman, Jenkins, McCabe, Minard, Plymale, Lanham, Foster, Unger and Oliverio)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §8-8-1, §8-8-2, §8-8-3, §8-8-4, §8-8-5, §8-8-6, §8-8-7, §8-8-8, §8-8-9, §8-8-10, §8-8-11, §8-8-12, §8-8-13, §8-8-14, §8-8-15, §8-8-16, §8-8-17 and §8-8-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §7A-1-1, §7A-1-2, §7A-1-3, §7A-1-4, §7A-2-1, §7A-2-2, §7A-2-3, §7A-2-4, §7A-3-1, §7A-3-2, §7A-3-3, §7A-3-4, §7A-3-5, §7A-3-6, §7A-3-7, §7A-4-1, §7A-4-2, §7A-4-3, §7A-5-1, §7A-5-2, §7A-5-3, §7A-5-4, §7A-5-5, §7A-5-6, §7A-5-7, §7A-5-8, §7A-6-1, §7A-6-2, §7A-6-3, §7A-6-4, §7A-6-5, §7A-6-6, §7A-6-7, §7A-7-1, §7A-7-2, §7A-7-3, §7A-7-4, §7A-7-5,
§7A-7-6, §7A-7-7, §7A-7-8 and §7A-8-1, all relating to creating the Consolidated Local Government Act; stating legislative findings and definitions; authorizing municipal consolidation, county consolidation and metro consolidation; setting forth powers of consolidated governments; establishing powers to be construed broadly; stating local consolidated government to be treated like municipality in municipal consolidation, county in county consolidation and municipality and county in metro consolidation; limiting taxing authority in metro consolidation; addressing jurisdiction and limitations of consolidated local governments; commencing consolidation by petition from voters or resolution by governing bodies; creating charter review committees; stating powers and duties of charter review committees; allowing reimbursement of expenses for committee members; submitting charter review committee budget to governing bodies; studying consolidation; addressing territory, fiscal impact, name, seat, representation, governing body, effective date, transition of service and dissolution in charter; drafting proposed charter; providing multiple public hearings; providing for notice of hearing; approving proposed charter and submitting proposed charter to governing bodies to hold elections; providing election by fifty-five percent of the votes cast in each affected local government for municipal consolidation and county consolidation; providing election by fifty-five percent of the votes cast in the principal city and fifty-five percent of the votes cast in the county, excluding the principal city, for metro consolidation; providing for notice of election and ballot; allocating payment for cost of elections; permitting reconsideration of second proposed charter if first is defeated; leaving municipalities incorporated in metro consolidation; disallowing new consolidation effort for two years after defeat; allowing subsequent joining of local governments to consolidated local government after one year of consolidation; and permitting charter to be amended.
Be it enacted by the Legislature of West Virginia:

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

CHAPTER 7A. CONSOLIDATED LOCAL GOVERNMENT.

Article
2. Powers and Limitations.
5. Municipal Consolidation Election.
6. Elections on County Consolidation.
8. Charter Amendment.

ARTICLE 1. GENERAL PROVISIONS.

§7A-1-2. Legislative findings.
§7A-1-4. Authority to consolidate.


1 This chapter may be known and cited as the Consolidated
2 Local Government Act.

§7A-1-2. Legislative findings.
(a) The Legislature finds that:

(1) The fiscal viability of municipal and county governments is challenged by changing demographics and tax bases;

(2) With many local governments there is significant duplicity of services;

(3) Certain local governments are at their taxable limits and yet are facing fee increases to remain financially viable; and

(4) Local governments should perform at the highest level of efficiency and economy while providing the highest standards of governmental services to their citizens.

(b) The Legislature finds that consolidation of local governments:

(1) Is in the public interest;

(2) Would help promote economic growth and development;

(3) Would help local governments provide more efficient local services and more effective public administration; and

(4) Would keep local governments viable and provide more governing flexibility.

(c) Therefore, in order to attain high standards of efficiency, economy, service and flexibility and to assure the ongoing improvement in the quality of life of all citizens of the state, the Legislature hereby encourages and permits all local governments to consolidate part or all of their governmental and corporate functions.

For the purposes of this article, the following words have the meanings assigned unless the context indicates otherwise:

(1) “Affected municipality”, “affected county”, “affected metro government” or “affected area”, or the plural, mean municipalities, counties or metro governments in the territory encompassed by the proposed charter of a consolidated local government.

(2) “Consolidated local government”, or the plural, means a type of government that encompasses municipal consolidation, county consolidation and metro consolidation.

(3) “County consolidation” and “consolidated county” mean the consolidation of two or more counties as defined by the charter.

(4) “Governing body”, or the plural, means the body charged with the responsibility of enacting laws and determining public policy of a municipal or county government or local consolidated government.

(5) “Metro consolidation” and “metro government” mean the consolidation of one or more counties and a principal city as defined by the charter.

(6) “Municipal consolidation” and “consolidated municipality” mean the consolidation of two or more municipalities, including cities, towns and villages, as defined by the charter.

(7) “Principal city” means the municipality with the largest population in the territory encompassed by the proposed charter of the consolidated local government.

§7A-1-4. Authority to consolidate.

A municipality, county or metro government in this state is authorized to form a consolidated local government with
another municipality, county or metro government upon ap-

proval by the voters of the affected areas.

ARTICLE 2. POWERS AND LIMITATIONS.


§7A-2-1. Powers and privileges of consolidated local govern-

ment.

(a) A consolidated local government has, but is not lim-

ited to, all powers and privileges of a municipality for munic-

ipal consolidation, a county for county consolidation and

both a municipality and a county for metro consolidation

under the Constitution and general laws of West Virginia:

Provided, That in a metro consolidation, the governing body

of the principal city shall have only the taxing authority

granted to a municipality and the governing body of the af-

fected county shall have only the taxing authority granted to

a county.

(b) These powers may include the authority to:

(1) Levy and collect taxes on all property taxable for

state purposes within the territory of the consolidated local

government not exempt by law from taxation and at a rate not

in excess of that allowed by law;

(2) License, tax, charge fees and regulate privileges,

occupations, trades and professions as authorized by law;

(3) Make appropriations for the support of the consoli-

dated local government and provide for the payment of all

debts and expenses of the consolidated local government and

the debts and expenses of the local governments of which it

is the successor;
(4) Issue or cause to be issued bonds and other debt instruments or enter into all other financial transactions as may be permitted by law;

(5) Purchase, lease, construct, maintain or otherwise acquire, hold, use and operate any property, real, personal or mixed, for any public purpose and sell, lease or otherwise dispose of any property, real, personal or mixed, belonging to a consolidated local government;

(6) Exercise the power of eminent domain for any public purpose subject to the limitations and exceptions prescribed by the Constitution and the general laws of West Virginia;

(7) Accept federal or state funds and other sources of revenue that are applicable to counties and municipalities;

(8) Pass and enforce by fines and penalties, if necessary, all ordinances, not inconsistent with law, as are expedient in maintaining the peace, safety, good government, health and welfare of the residents of the consolidated local government;

(9) Enforce land-use regulations; and

(10) Enter into contracts and agreements with other governmental entities and with private persons, firms and corporations and address cooperative compacts in existence at the time of consolidation.

(c) Consolidated local governments created under this chapter are entitled to all state and federal monetary assistance to the same extent a municipality or county is entitled to such assistance. A metro government has the status of a municipality and county for purposes of receiving state, federal and any other monetary assistance and the population of the territory encompassed by its charter shall be used for all calculations and distributions.
(d) The powers of the consolidated local government shall be construed broadly in its favor. The specific reference, or failure to do so, of particular powers in this section does not limit the general or specific powers of a consolidated local government.

(e) A consolidated local government acquires and succeeds to all rights, obligations, duties and privileges of the governments of which it is a successor in accordance with the terms of the charter.

(f) Without the necessity or formality of deed, bill of sale or other instrument of transfer, the consolidated local government becomes the owner of all property, assets, contracts and franchises within the territory encompassed by the charter previously belonging to the governments of which it is a successor.

(g) The intent of this chapter is to promote consolidation and the provisions of this chapter shall be construed broadly to permit consolidation.


A consolidated local government has the power and jurisdiction specified in its charter and otherwise provided by law.


Rules, ordinances, resolutions and other effects of law in force within an affected municipality, county or metro government at the time of consolidation that do not conflict with the charter remain in effect until superceded by specific action of the new governing body of the consolidated local government.

CONSOLIDATED LOCAL GOVERNMENT ACT

(a) Public school districts, library districts, fire districts, special taxing districts and public service districts are not affected by consolidation under this chapter.

(b) The adoption of a charter does not alter any right or liability of an affected municipality, county or metro government in effect at the time the charter becomes effective. Ordinances and resolutions relating to public improvements to be paid for, in whole or in part, by special assessments remain in effect until paid in full.

ARTICLE 3. INITIATING CONSOLIDATION AND ESTABLISHING CHARTER REVIEW COMMITTEE.

§7A-3-1. Initiating consolidation.
§7A-3-2. Municipal charter review committee.
§7A-3-3. County charter review committee.
§7A-3-4. Metro charter review committee.
§7A-3-5. Duties and powers of charter review committee.
§7A-3-6. Expenses of charter review committee.
§7A-3-7. Budget of charter review committee.

§7A-3-1. Initiating consolidation.

(a) Consolidation may be initiated by:

(1) A petition signed by at least twenty-five percent of the qualified voters of each affected municipality for a municipal consolidation, each affected county for a county consolidation or each affected principal city and of the entire county excluding the principal city for a metro consolidation;

(2) A resolution by the governing body of each affected municipality for a municipal consolidation, each affected county for a county consolidation or each affected principal city and county for a metro consolidation.
(b) The petition or resolution shall be submitted to the county commission of the affected county for all types of consolidation.

(c) Upon receipt, the county commission shall, within thirty days, verify the petition or resolution and either oversee the establishment of a charter review committee as provided in this chapter or reject the petition or resolution for insufficiency.

(d) If the county commission rejects the petition or resolution, the rejection shall be in writing stating how the insufficiency may be corrected and that the petition or resolution may be resubmitted within ninety days.

§7A-3-2. Municipal charter review committee.

(a) A municipal charter review committee shall be established within thirty days of the county commission verifying the petition or resolution proposing consolidation.

(b) A municipal charter review committee consists of the following members:

(1) Two government officials or their designees from each affected municipality appointed by their respective governing bodies;

(2) One county commissioner or his or her designee appointed by the county commission from each county where the affected municipalities are located; and

(3) Two or three public members elected during executive session by the other members to make the number of charter review committee members an odd number.
(c) A municipal charter review committee continues to exist until it is dissolved pursuant to the charter or the final disapproval of the charter.

§7A-3-3. County charter review committee.

(a) A county charter review committee shall be established within thirty days of the county commissions verifying the petition or resolution proposing consolidation.

(b) A county charter review committee consists of the following members:

(1) Two county commissioners or their designees from each affected county appointed by their respective county commissions; and

(2) Three public members, including one from an unincorporated area, elected during executive session by the other charter review committee members.

(c) A county charter review committee continues to exist until it is dissolved pursuant to the charter or the final disapproval of the charter.

§7A-3-4. Metro charter review committee.

(a) A metro charter review committee shall be established within thirty days of the county commission verifying the petition or resolution proposing consolidation.

(b) A metro charter review committee consists of the following members:

(1) Two government officials or their designees from the principal city appointed by the governing body of the principal city;
(2) Two county commissioners or their designees from each affected county appointed by their respective county commissions;

(3) If the principal city is located in two counties and one is not participating in consolidation, then one county commissioner or his or her designee from the county not participating in consolidation appointed by the county commission;

and

(4) Two or three public members, including one from an unincorporated area, elected by the other members to make the number of charter review committee members an odd number.

(c) A metro charter review committee continues to exist until it is dissolved pursuant to the charter or the final disapproval of the charter.

§7A-3-5. Duties and powers of charter review committee.

(a) A charter review committee shall study consolidation and the feasibility of consolidation.

(b) A charter review committee shall:

(1) Elect officers from committee members;

(2) Adopt rules;

(3) Prepare a budget; and

(4) Conduct public hearings;

(c) A charter review committee may:

(1) Create subcommittees and working groups to include other government officials and diverse public representatives;
11 (2) Prepare a written charter;

12 (3) Employ staff;

13 (4) Contract with consultants;

14 (5) Work with agencies of affected local governments;

15 and

16 (6) Engage in other activities necessary to facilitate the intent of this chapter.

18 (d) A majority of committee members is a quorum for transaction of business and adopting the charter.

20 (e) Vacancies on the charter review committees shall be filled in the same manner as provided for in this article.

§7A-3-6. Expenses of charter review committee.

1 Members of a charter review committee serve without compensation, but are entitled to reimbursement by the charter review committee for necessary expenses incurred by them in the performance of their official duties.

§7A-3-7. Budget of charter review committee.

1 (a) A charter review committee shall submit a budget to the governing bodies of each affected municipality for a municipal consolidation, each affected county for a county consolidation and each affected principal city and county for a metro consolidation. A charter review committee shall pursue public and private funds to augment its budget. The budget shall state in writing the amount each governing body shall pay, which shall be proportionately based on population.

9 (b) Within thirty days of receiving the charter review committee’s budget, the governing body of each affected
municipality, county and metro government shall either ap-
prove the budget or recommend written amendments to the
budget.

(c) If amendments are recommended, then the charter
review committee shall reconsider the budget and resubmit
the budget to the governing bodies for approval within thirty
days.

(d) The governing body of each affected municipality,
county and metro government shall assist the charter review
committee and provide office space if needed.

ARTICLE 4. CHARTER REVIEW COMMITTEE.

§7A-4-1. Study by charter review committee and draft of proposed charter.
§7A-4-2. Public hearings.
§7A-4-3. Approval of proposed charter and submission to governing bodies.

§7A-4-1. Study by charter review committee and draft of proposed charter.

(a) The charter review committee shall study matters
relating to the feasibility of consolidation.

(b) The charter review committee shall further address in
the charter the powers and authority of the proposed consoli-
dated local government, including, but not limited to:

(1) The territory encompassed by the consolidated local
government, including all affected municipalities, counties
and metro governments, or parts thereof, to be included in the
boundaries of the consolidated local government;

(2) The fiscal impact of the proposed consolidation on
the affected municipalities, counties and metro governments
including:
(A) The cost of providing services by the consolidated local government;

(B) Projected revenues available to the consolidated local government based upon proposed classifications and tax structures; and

(C) Projected economies of scale resulting from consolidation;

(3) The name of the proposed consolidated local government;

(4) The seat of the proposed consolidated local government;

(5) The representation plan based upon population for the territory encompassed by the consolidation consistent with state and federal law to include consideration of underrepresented areas and minorities;

(6) The creation of the governing body of the proposed consolidated local government, including an odd number of governing officers of not less than five, their qualifications for holding office, titles, powers, duties, terms of office, manner of election, compensation, method of removal, role of constitutional officers in new government and other pertinent matters consistent with state and federal law;

(7) The effective date of the charter once consolidation is approved by the electorate;

(8) A procedure for the efficient and timely transition of specified services, functions and responsibilities from each affected municipality, county and metro government and its respective departments and agencies to the consolidated local government to occur within two years from the date the charter becomes effective; and
(9) The method by which a consolidated local government may dissolve after existing for a minimum of six years.

(c) The charter review committee shall complete its study and draft a proposed charter within one year from the date of its organizational meeting.

§7A-4-2. Public hearings.

(a) The charter review committee shall hold a public hearing within three months of the organizational meeting or reconvening, a public hearing within six months of its organizational meeting or reconvening and a public hearing within eleven months of its organizational meeting or reconvening prior to finalizing its draft of the proposed charter. The committee is authorized to hold additional public hearings.

(b) The date, time, place and agenda of the public hearing shall be published as a Class II legal advertisement in a newspaper of general circulation in the affected areas.

§7A-4-3. Approval of proposed charter and submission to governing bodies.

(a) Following its final public hearing, the charter review committee shall vote on the proposed charter.

(b) Once approved by a majority vote of the charter review committee, the proposed charter shall be submitted within ten days to the governing bodies of the affected municipalities, counties and metro governments to be voted upon by the electorate.

ARTICLE 5. MUNICIPAL CONSOLIDATION ELECTION.

§7A-5-1. Expenses for election.
§7A-5-3. Election and ballots for municipal consolidation.
The governing body of each affected municipality is responsible for the expenses of holding an election on the question of municipal consolidation.

(a) At least sixty days prior to the election on the question of municipal consolidation, the governing body of each affected municipality shall make copies of the proposed charter available to the public.

(b) At least fourteen days prior to the election on the question of municipal consolidation, the governing bodies of the affected municipalities shall publish the proposed charter and provide notice of the election, as a Class II legal advertisement, in a newspaper of general circulation in the affected areas. The affected municipalities may share the expense of publication.

(a) After receiving the proposed charter from the municipal charter review committee, the governing bodies of the affected municipalities shall hold an election on the question of consolidation at the next primary or general election in accordance with applicable election laws and section two of this article.

(b) The ballots for the election on consolidation shall be as follows:
§7A-5-4. Approval of municipal consolidation and charter.

If at least fifty-five percent of the legal votes cast by the qualified voters of each of the affected municipalities approve consolidation, then consolidation becomes effective pursuant to the charter.

§7A-5-5. Rejection of charter and reconsideration process.

(a) If less than fifty-five percent of the legal votes cast by the qualified voters of any of the affected municipalities approve consolidation, then consolidation is defeated. The charter review committee may reconvene for up to one year to adopt a second proposed charter.

(b) When the second proposed charter is adopted by the municipal charter review committee, then the governing bodies of the affected municipalities shall hold another election on the second proposed charter at the next primary or general election in accordance with applicable election laws and section two of this article.

(c) The ballots for the election on the second proposed charter shall be as follows:

[ ] For (name of consolidated municipality)

[ ] Against (name of consolidated municipality)

(d) If the second proposed charter is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the affected municipalities, then the proposed consolidation is defeated. A new municipal charter review com-
mittee cannot be established for at least two years after the second proposed charter is defeated.

§7A-5-6. Filing charter.

After the charter has been approved by at least fifty-five percent of the legal votes cast by the qualified voters of the affected municipalities, the charter shall be filed with the Secretary of State and recorded in the applicable county clerk’s office.


In preparing the charter, municipalities with excess levies or general obligation bond indebtedness shall fully comply with section nine, article X of the Constitution.

§7A-5-8. Subsequent joining of municipality to consolidated municipality.

(a) After a consolidated municipality has been in existence for at least one year, a municipality may request to join the consolidated municipality by submitting:

(1) A petition signed by at least fifteen percent of the qualified voters in the municipality; or

(2) A resolution by the governing body of the municipality.

(b) Within thirty days of receipt of the petition or resolution, the governing body of the consolidated municipality shall vote to accept or reject the municipality requesting to join.

(c) If the governing body of the consolidated municipality votes to accept the municipality, then the municipality shall hold an election on consolidation at the next primary or
general election in accordance with applicable election laws and section two of this article.

(d) The ballots for the election on consolidation shall be as follows:

[ ] For (name of consolidated municipality)

[ ] Against (name of consolidated municipality)

(e) If at least fifty-five percent of the legal votes cast by the qualified voters of the municipality approve consolidation, then consolidation becomes effective pursuant to the charter.

(f) If consolidation is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the municipality, then the consolidation is defeated and cannot be voted upon for one year.

ARTICLE 6. ELECTIONS ON COUNTY CONSOLIDATION.

§7A-6-1. Expenses for election.

§7A-6-2. Notice for election.

§7A-6-3. Election and ballots for county consolidation.

§7A-6-4. Approval of county consolidation and charter.

§7A-6-5. Rejection of charter and reconsideration process.

§7A-6-6. Filing charter.

§7A-6-7. Subsequent joining of county to consolidated county.

§7A-6-1. Expenses for election.

The governing body of each affected county is responsible for its expenses of holding an election on the question of consolidation.

§7A-6-2. Notice for election.

(a) At least sixty days prior to the election on the question of county consolidation, the governing body of each
affected county shall make copies of the proposed charter available to the public.

(b) At least fourteen days prior to the election on the question of county consolidation, the governing bodies of the affected counties shall publish the proposed charter and provide notice of the election, as a Class II legal advertisement, in a newspaper of general circulation in the affected area. The affected counties may share the expense of publication.

§7A-6-3. Election and ballots for county consolidation.

(a) After receiving the proposed charter from the county charter review committee, the governing bodies of the affected counties shall hold an election on the question of consolidation at the next primary or general election in accordance with applicable election laws and section two of this article.

(b) The ballots for the election on consolidation shall be as follows:

[ ] For (name of consolidated county)

[ ] Against (name of consolidated county)

§7A-6-4. Approval of county consolidation and charter.

If at least fifty-five percent of the legal votes cast by the qualified voters of each of the affected counties approve consolidation, then consolidation becomes effective pursuant to the charter.

§7A-6-5. Rejection of charter and reconsideration process.

(a) If less than fifty-five percent of the legal votes cast by the qualified voters of any of the affected counties approve consolidation, then consolidation is defeated. The county
charter review committee may reconvene for up to one year to adopt a second proposed charter.

(b) When the second proposed charter is adopted by the county charter review committee, then the governing bodies of the affected counties shall hold another election on the second proposed charter at the next primary or general election in accordance with applicable election laws and section two of this article.

(c) The ballots for the election on the second proposed charter shall be as follows:

[ ] For (name of consolidated county)

[ ] Against (name of consolidated county)

(d) If the second proposed charter is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the affected counties, then the proposed consolidation is defeated. A new county charter review committee cannot be established for at least two years after the second proposed charter is defeated.

§7A-6-6. Filing charter.

After the charter has been approved by at least fifty-five percent of the legal votes cast by the qualified voters of the affected counties, the charter shall be filed with the Secretary of State and recorded in all of the applicable county clerk’s offices.

§7A-6-7. Subsequent joining of county to consolidated county.

(a) After a consolidated county has been in existence for at least one year, a county may request to join the consolidated county by submitting:
(1) A petition signed by at least fifteen percent of the qualified voters in the county; or

(2) A resolution by the governing body of the county.

(b) Within thirty days of receipt of the petition or resolution, the governing body of the consolidated county shall vote to accept or reject the county requesting to join.

c) If the governing body of the consolidated county votes to accept the county, then the county shall hold an election on consolidation at the next primary or general election in accordance with applicable election laws and section two of this article.

d) The ballots for the election on consolidation shall be as follows:

[ ] For (name of consolidated county)

[ ] Against (name of consolidated county)

e) If at least fifty-five percent of the legal votes cast by the qualified voters of the county approve the consolidation, then consolidation becomes effective pursuant to the charter.

(f) If consolidation is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the county, then the consolidation is defeated and cannot be voted upon for one year.

ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.
§7A-7-1. Expenses for election.

The governing body of the affected county is responsible for the expenses of holding an election on the question of consolidation.

§7A-7-2. Notice for election.

(a) At least sixty days prior to the election on the question of metro consolidation, the governing bodies of the principal city and affected county shall make copies of the proposed charter available to the public.

(b) At least fourteen days prior to the election on the question of metro consolidation, the governing body of the affected county shall publish the proposed charter and provide notice of the election, as a Class II legal advertisement, in a newspaper of general circulation in the affected county.

§7A-7-3. Election and ballots for metro government.

(a) After receiving the proposed charter from the metro charter review committee, the governing body of the affected county shall hold an election on the question of consolidation at the next primary or general election in accordance with applicable election laws and section two of this article.

(b) The ballots for the election on consolidation shall be as follows:

[ ] For (name of metro government)

[ ] Against (name of metro government)
§7A-7-4. Approval of metro government and charter.

If at least fifty-five percent of the legal votes cast by the qualified voters of the principal city and fifty-five percent of the legal votes cast by the qualified voters of the affected county, excluding the principal city, approve consolidation, then metro government becomes effective pursuant to the charter.

§7A-7-5. Rejection of charter and reconsideration process.

(a) If less than fifty-five percent of the legal votes cast by the qualified voters of the principal city and less than fifty-five percent of the legal votes cast by the qualified voters of the affected county, excluding the principal city, approve consolidation, then consolidation is defeated. The metro charter review committee may reconvene for up to one year to adopt a second proposed charter.

(b) When the second proposed charter is adopted by the metro charter review committee, then the governing body of the affected county shall hold another election on the second proposed charter at the next primary or general election in accordance with applicable election laws and section two of this article.

(c) The ballots for the election on the second proposed charter shall be as follows:

[ ] For (name of metro government)

[ ] Against (name of metro government)

(d) If the second proposed charter is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the principal city and fifty-five percent of the legal votes cast by the qualified voters of the affected county, ex-
22 eluding the principal city, then the proposed consolidation is defeated. A new metro charter review committee cannot be established for at least two years after the second proposed charter is defeated.

§7A-7-6. Municipalities within territory remain incorporated in metro government.

1 Upon the approval by voters of metro consolidation, municipalities within the territory of the metro government, other than the principal city, remain incorporated and continue to perform their functions as permitted by law unless dissolved or consolidated pursuant to section eight of this article.

§7A-7-7. Filing charter.

1 After the charter has been approved by at least fifty-five percent of the legal votes cast by the qualified voters of the affected county, the charter shall be filed with the Secretary of State and recorded in the applicable county clerk’s offices.

§7A-7-8. Subsequent joining of municipality, county or metro government to metro government.

1 (a) After a metro government has been in existence for at least one year, a municipality, county or metro government may request to join the metro government by submitting:

4 (1) A petition signed by at least fifteen percent of the qualified voters in the municipality, county or metro government; or

7 (2) A resolution by the governing body of the municipality, county or metro government.

9 (b) Within thirty days of receipt of the petition or resolution, the governing body of the metro government shall vote
to accept or reject the municipality, county or metro government requesting to join.

(c) If the governing body of the metro government votes to accept the municipality, county or metro government, then the municipality, county or metro government shall hold an election on consolidation at the next primary or general election. The election shall be held in accordance with applicable election laws and section two of this article.

(d) The ballots for the election on consolidation shall be as follows:

[ ] For the (name of metro government)

[ ] Against the (name of metro government)

(e) If at least fifty-five percent of the legal votes cast by the qualified voters of the municipality, county or metro government approve consolidation, then consolidation becomes effective pursuant to the charter.

(f) If consolidation is not approved by at least fifty-five percent of the legal votes cast by the qualified voters of the municipality, county or metro government, then the consolidation is defeated and cannot be voted upon for one year.

ARTICLE 8. CHARTER AMENDMENT.

§7A-8-1. Charter amendment.

(a) If a charter is adopted, it may be amended by one of the following methods:

(1) The governing body of the consolidated local government may submit a proposed amendment by resolution to the voters at the next primary or general election. Notice of the election and the proposed amendment shall be published as a
Class II legal advertisement in a newspaper of general circulation in the affected areas. If a majority of the legal votes cast by the qualified voters of the consolidated local government approve the amendment, then the amendment becomes effective as permitted by law;

(2) The governing body of the consolidated local government may amend the charter by ordinance. However, if a petition signed by at least ten percent of the qualified voters of the consolidated local government is filed with the governing body within thirty days following publication of the ordinance, the governing body shall submit the charter amendment to the voters at the next primary or general election. Notice of the election and the proposed amendment shall be published as a Class II legal advertisement in a newspaper of general circulation in the affected areas. If a majority of the legal votes cast by the qualified voters of the consolidated local government approve the amendment, then the amendment becomes effective as permitted by law; or

(3) If a petition, signed by ten percent of the qualified voters in the consolidated local government, is filed with the governing body of the consolidated local government proposing an amendment to the charter, then the governing body shall submit the proposed amendment to the voters at the next primary or general election. Notice of the election and the proposed amendment shall be published as a Class II legal advertisement in a newspaper of general circulation in the affected areas. If a majority of the legal votes cast by the qualified voters of the consolidated local government approve the amendment, then the amendment becomes effective as permitted by law.

(b) If an election is held, then the governing body shall submit each proposed amendment generally in the following form:
Should the amendment described below be adopted for the charter of (name of consolidated local government)?

[ ] Yes

[ ] No

The ballot shall contain a summary of the proposed amendment.

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CHAPTER 40

(H. B. 4283 — By Mr. Speaker, Mr. Kiss, and Delegates DeLong, Argento, Amores, Caputo, Beach, Perry and Michael)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended, relating to providing a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process.

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

That §5A-3-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.
(a) Other provisions of this article notwithstanding, effective the first day of July, one thousand nine hundred ninety, through the thirtieth day of June, one thousand nine hundred ninety-four, in any instance involving the purchase of construction services for the construction, repair or improvement of any buildings or portions thereof, where the total aggregate cost thereof, whether one or a series of contracts are awarded in completing the project, is estimated by the director to exceed the sum of fifty thousand dollars and where the director or any state department is required under the provisions of this article to make the purchase, construction, repair or improvement upon competitive bids, the successful bid shall be determined as provided in this section. Effective beginning the first day of July, one thousand nine hundred ninety-two, in any instance that a purchase of commodities or printing by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this section. The Secretary of the Department of Revenue shall promulgate any rules necessary to: (i) Determine that vendors have met the residence requirements described in this section; (ii) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (iii) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (iv) otherwise accomplish the objectives of this section. In prescribing the rules, the secretary shall use a strict construction of the residence requirements set forth in this section. For purposes of this section, a successful bid shall be determined and accepted as follows:

(1) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or
subsidiary which employs a minimum of one hundred state
residents and which has maintained its headquarters or principal
place of business within West Virginia continuously for four
years immediately preceding the date on which the bid is
submitted, if the vendor’s bid does not exceed the lowest
qualified bid from a nonresident vendor by more than two and
one-half percent of the latter bid, and if the vendor has made
written claim for the preference at the time the bid was submit-
ted: Provided, That for purposes of this subdivision, any
partnership, association or corporation resident vendor of this
state, which does not meet the requirements of this subdivision
solely because of the continuous four-year residence require-
ment, shall be considered to meet the requirement if at least
eighty percent of the ownership interest of the resident vendor
is held by another individual, partnership, association or
corporation resident vendor who otherwise meets the require-
ments of this subdivision, including the continuous four-year
residency requirement: Provided, however, That the Secretary
of the Department of Revenue shall promulgate rules relating
to attribution of ownership among several resident vendors for
purposes of determining the eighty percent ownership require-
ment; or

(2) From a resident vendor, if, for purposes of producing or
distributing the commodities or completing the project which
is the subject of the vendor’s bid and continuously over the
entire term of the project, on average at least seventy-five
percent of the vendor’s employees are residents of West
Virginia who have resided in the state continuously for the two
immediately preceding years and the vendor’s bid does not
exceed the lowest qualified bid from a nonresident vendor by
more than two and one-half percent of the latter bid, and if the
vendor has certified the residency requirements of this subdivi-
sion and made written claim for the preference, at the time the
bid was submitted; or
(3) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor’s bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor’s employees or the vendor’s affiliate’s or subsidiary’s employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(5) From an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or
(6) From a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor’s bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor’s employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted.

(b) If the Secretary of the Department of Revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor’s bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor’s bid on the project.

(c) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: Provided, That prior to soliciting any competitive
bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

(d) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

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

(f) This section may be cited as the “Jobs for West Virginians Act of 1990.”

CHAPTER 41

(S. B. 791 — By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §60A-2-212 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60A-10-7 and §60A-10-8 of said code, all relating to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying that offenses and penalties for prohibited acts relating to controlled
substances do not apply to ephedrine, pseudoephedrine or phenylpropanolamine; clarifying that the offenses and penalties for prohibited acts set forth in the provisions of article ten of said chapter are applicable to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying the reporting requirements requiring pharmacists and pharmacy technicians to report sales, transfers and distribution of certain substances containing ephedrine, pseudoephedrine and phenylpropanolamine to the Board of Pharmacy; and providing for the methods of reporting the information required to be reported.

Be it enacted by the Legislature of West Virginia:

That §60A-2-212 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60A-10-7 and §60A-10-8 of said code be amended and reenacted, all to read as follows:

Article
2. Standards and Schedules.
10. Methamphetamine Laboratory Eradication Act.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

1. Buprenorphine.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as
the free anhydrous base or alkaloid in limited quantities as set
forth below, which shall include one or more nonnarcotic active
medicinal ingredients in sufficient proportion to confer upon
the compound, mixture or preparation valuable medicinal
qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100
milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per
100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100
milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not
less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100
milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less
than 25 micrograms of atropine sulfate per dosage unit.

(d) Stimulants. — Unless specifically exempted or excluded
or unless listed in another schedule, any material, compound,
mixture or preparation which contains any quantity of the
following substances having a stimulant effect on the central
nervous system, including its salts, isomers and salts of
isomers:

(1) Pyrovalerone.

(e) Any compound, mixture or preparation containing as its
single active ingredient ephedrine, pseudoephedrine or
phenylpropanolamine, their salts or optical isomers, or salts of
optical isomers except products which are for pediatric use
primarily intended for administration to children under the age
of twelve: Provided, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-7. Restricted products; rule-making authority.

§60A-10-8. Reporting requirements; confidentiality.

§60A-10-7. Restricted products; rule-making authority.

(a) On or before the first day of July, two thousand five, the Board of Pharmacy shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement a program wherein the Board of Pharmacy shall consult with the Superintendent of the State Police in identifying drug products which are a designated precursor, in addition to those that contain as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, that are commonly being used in the production and distribution of methamphetamine. Those drug products which the Superintendent of the State Police have demonstrated by empirical evidence are commonly used in the manufacture of methamphetamine shall be added to a supplemental list and shall be subject to all of the restrictions of this article. These rules established pursuant to this section shall include:

(1) A process whereby pharmacies are made aware of all drug products that contain as their single active ingredient ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule V substance and must be sold, transferred or dispensed from behind a pharmacy counter;

(2) A process whereby pharmacies and retail establishments are made aware of additional drug products added to Schedule
V that are required to be placed behind the pharmacy counter for sale, transfer or distribution can be periodically reviewed and updated.

(b) At any time after the first day of July, two thousand five, the Board of Pharmacy, upon the recommendation of the Superintendent of the State Police, shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement an updated supplemental list of products containing the controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient or any other drug used as a precursor in the manufacture of methamphetamine, which the Superintendent of the State Police has demonstrated by empirical evidence is being used in the manufacture of methamphetamine. This listing process shall comport with the requirements of subsection (a) of this section.

§60A-10-8. Reporting requirements; confidentiality.

(a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to in section seven of this article or another designated precursor, the pharmacist or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in a central repository established and maintained by the Board of Pharmacy:

(1) The date of the transaction;

(2) The name, address and driver’s license or state-issued identification number of the person; and

(3) The name, quantity of packages and total gram weight of the product or products purchased, received or otherwise acquired.

(b) The information required to be reported by this section shall be reported by paper log maintained at the point of sale:
Provided, That, beginning on the first day of January, two thousand seven, reporting shall be by electronic transmission to the Board of Pharmacy no more frequently than once a week.

(c) The information required by this section shall be the property of the state and a pharmacy shall have no duty to retain a copy of the information in any format once the information has been reported to the Board of Pharmacy as required by this section.

CHAPTER 42

(H.B. 4018 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend and reenact §62-11C-2 and §62-11C-4 of the Code of West Virginia, 1931, as amended, all relating to the community corrections subcommittee of the Governor’s Committee on Crime, Delinquency and Correction; meetings; funding.

Be it enacted by the Legislature of West Virginia:

That §62-11C-2 and §62-11C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.


§62-11C-4. Special revenue account.

(a) A community corrections subcommittee of the Governor’s Committee on Crime, Delinquency and Correction is hereby created and assigned responsibility for screening community corrections programs submitted by community criminal justice boards or from other entities authorized by the provisions of this article to do so for approval for funding by the Governor’s Committee and for making recommendations as to the disbursement of funds for approved community corrections programs. The subcommittee is to be comprised of fifteen members of the Governor’s Committee including: A representative of the Division of Corrections, a representative of the Regional Jail and Correctional Facility Authority, a person representing the interests of victims of crime, an attorney employed by a public defender corporation, an attorney who practices criminal law, a prosecutor and a representative of the West Virginia coalition against domestic violence. At the discretion of the West Virginia Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(b) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitute a quorum.

§62-11C-4. Special revenue account.

(a) There is hereby created in the State Treasury a special revenue account to be known as the “West Virginia Community Corrections Fund”. Expenditures from the fund are for the purposes set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code.
and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. The West Virginia Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) Beginning on the first day of July, two thousand six, in addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed thirty-five dollars per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person’s ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk or circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) Beginning on the effective date of this article, in addition to the fee required in section five, article eleven-b of this chapter, a fee not to exceed five dollars per day, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person’s ability to pay in determining the imposition and amount of the fee. The circuit clerk, magistrate clerk or municipal court clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk or municipal court clerk shall forward the amount deposited to the State
42 Treasurer to be credited to the West Virginia Community
43 Corrections Fund.

(d) Beginning on the first day of July, two thousand six, in
44 addition to the usual court costs in any criminal case taxed
45 against any defendant convicted in a municipal, magistrate or
46 circuit court, excluding municipal parking ordinances, a ten-
47 dollar fee shall be added. The circuit clerk, magistrate clerk or
48 municipal court clerk shall collect all fees imposed pursuant to
49 this subsection and deposit them in a separate account. Within
50 ten calendar days following the beginning of the calendar
51 month, the circuit clerk, magistrate court clerk and the munici-
52 pal court clerk shall forward the amount deposited to the State
53 Treasurer to be credited to the West Virginia Community
54 Corrections Fund.

(e) The moneys of the West Virginia Community Correc-
56 tions Fund are to be disbursed by the Governor’s Committee on
57 Crime, Delinquency and Correction, upon recommendation by
58 the community corrections subcommittee, for the funding of
59 community corrections programs and to pay expenses of the
60 Governor’s Committee in administering the provisions of this
61 article, which expenses may not in any fiscal year exceed ten
62 percent of the funds deposited to the special revenue account
63 during that fiscal year.

(f) Any disbursements from the West Virginia Community
65 Corrections Fund allocated for community corrections pro-
66 grams by the Governor’s Committee may be made contingent
67 upon local appropriations or gifts in money or in kind for the
68 support of the programs. Any county commission of any county
69 or the governing body of a municipality may appropriate and
70 expend money for establishing and maintaining community
71 corrections programs.

(g) Nothing in this article may be construed to mandate
73 funding for the West Virginia Community Corrections Fund or
74 to require any appropriation by the Legislature.
AN ACT to amend and reenact §62-11C-5 of the Code of West Virginia, 1931, as amended, relating to authorizing the use of community corrections programs in pretrial supervision.

Be it enacted by the Legislature of West Virginia:

That §62-11C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11C. WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-5. Establishment of programs.

(a) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate community corrections programs, as provided for in this section, to be used both prior to trial as a condition of bond in circuit and magistrate court, as well as an alternative sentencing option for those offenders sentenced within the jurisdiction of the county or counties which establish and operate the program: Provided, That the chief judge must certify that the community corrections facility is available for use in connection with the imposition of pretrial bond conditions.
(b) Any county or combination of counties or a county or counties and a Class I or II municipality that seek to establish programs as authorized in this section shall submit plans and specifications for the programs to be established, including proposed budgets, for review and approval by the community corrections subcommittee established in section three of this article.

(c) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate an approved community corrections program to provide alternative sanctioning options for an offender who is convicted of an offense for which he or she may be sentenced to a period of incarceration in a county or regional jail or a state correctional facility and for which probation or home incarceration may be imposed as an alternative to incarceration.

(d) Community corrections programs authorized by subsection (a) of this section may provide, but are not limited to providing, any of the following services:

1. Probation supervision programs;
2. Day fine programs;
3. Community service restitution programs;
4. Home incarceration programs;
5. Substance abuse treatment programs;
6. Sex offender containment programs;
7. Licensed domestic violence offender treatment programs;
8. Day reporting centers;
(9) Educational or counseling programs; or

(10) Drug courts.

(e) A county or combination of counties or a county or counties and a Class I or II municipality which establish and operate community corrections programs as provided for in this section may contract with other counties to provide community corrections services.

(f) For purposes of this section, the phrase “may be sentenced to a period of incarceration” means that the statute defining the offense provides for a period of incarceration as a possible penalty.

(g) No provision of this article may be construed to allow a person participating in or under the supervision of a community corrections program to earn “good time” or any other reduction in sentence.

CHAPTER 44

(Com. Sub. for H. B. 4100 — By Delegates Staton, Browning, Beane, Manchin, Tabb, Howard, Wysong, Barker, Long, Caputo and G. White)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]
prosecuting attorneys generally; and providing that a prosecuting attorney for a class VI county which subsequently becomes a class V county may remain part-time and compensated at the class VI county level.

Be it enacted by the Legislature of West Virginia:

That §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-1. Legislative findings and purpose.
§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

§7-7-1. Legislative findings and purpose.

1 (a) The Legislature finds that it has, since the first day of January, two thousand three, consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county board, new and additional duties by the enactment of new provisions and amendments to this code. The new and additional duties imposed upon the aforesaid county officials by these enactments are such that they would justify the increases in compensation as provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

12 (b) The Legislature further finds that there are, from time to time, additional duties imposed upon all county officials through the acts of the Congress of the United States and that such acts constitute new and additional duties for county officials and, as such, justify the increases in compensation as provided by section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.
(c) The Legislature further finds that there is a direct

13 correlation between the total assessed property valuations of a

14 county on which the salary levels of the county commissioners,

15 sheriffs, county and circuit clerks, assessors and prosecuting

16 attorneys are based, and the new and additional duties that each

17 of these officials is required to perform as they serve the best

18 interests of their respective counties. Inasmuch as the reapp-

19 raisal of the property valuations in each county has now been

20 accomplished, the Legislature finds that a change in classifica-

21 tion of counties by virtue of increased property valuations will

22 occur on an infrequent basis. However, it is the further finding

23 of the Legislature that when such change in classification of

24 counties does occur, that new and additional programs, economic developments, requirements of public safety and the

25 need for new services provided by county officials all increase,

26 that the same constitute new and additional duties for county

27 officials as their respective counties reach greater heights of

28 economic development, as exemplified by the substantial

29 increases in property valuations and, as such, justify the

30 increases in compensation provided in section four of this

31 article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

32

33 (d) The Legislature further finds and declares that the

34 amendments enacted to this article are intended to modify the

35 provisions of this article so as to cause the same to be in full

36 compliance with the provisions of the Constitution of West

37 Virginia and to be in full compliance with the decisions of the

38 Supreme Court of Appeals of West Virginia.

39

40 §7-7-4. Compensation of elected county officials and county

41 commissioners for each class of county; effective
date.

42

43 *CLERK’S NOTE: This section was also amended by H. B. 4047 (Chapter 45), which passed prior to this act.*
(a) (1) All county commissioners shall be paid compensation out of the county treasury in amounts and according to the schedule set forth in subdivision (2) of this subsection for each class of county as determined by the provisions of section three of this article: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

(2) COUNTY COMMISSIONERS

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<thead>
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<td>$ 7,000</td>
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<tr>
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<td>$ 4,000</td>
</tr>
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</table>

(3) The compensation, set out in subdivision (2) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

(4) For the purpose of determining the compensation to be paid to the elected county officials of each county, the compensations for each office by class, set out in subdivision (5) of this subsection, are established and shall be used by each county commission in determining the compensation of each of their
county officials other than compensation of members of the county commission.

(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Attorney</th>
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<td>$17,200</td>
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</table>

(6) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting attorney of a Class II county shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. The compensation, set out in subdivision (5) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

(7) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) The Legislature finds that the duties imposed upon county clerks by the provisions of chapter sixty-four, Acts of
the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, Acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(9) The Legislature further finds that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, Acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, Acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(b)(1) Prior to the primary election in the year one thousand nine hundred ninety-two, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, or for any subsequent fiscal year if the approval, set out in subdivision (2) of this subsection, is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the Auditor.

(2) Upon submission by the county commission to the Auditor of a proposed annual budget which contains anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance and
any federal or state special grants, for the immediately preceding fiscal year, plus such additional amount as is necessary for payment of the increases in the salaries set out in subdivisions (3) and (5) of this subsection, and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the Auditor, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year, for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are established and shall be used by each county commission in determining the compensation of each of their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county.

(3) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Amount</th>
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(4) If the approval, set out in subdivision (2) of this subsection, is granted, the compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each county commissioner. Within each county, every county commissioner shall receive the same annual compensation by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter one hundred seventy-two, Acts of the Legislature, second regular session, one thousand nine hundred ninety and chapter five, Acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.
(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
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</table>

(6) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting attorney of a Class II county shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. If the approval, set out in subdivision (2) of this subsection, is granted, the compensation, set out in subdivision (5) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each elected county official.

(7) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) Prior to the primary election in the year one thousand nine hundred ninety-two, in the case of a Class III, Class IV or Class V county which has a part-time prosecuting attorney, the
COUNTIES

county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full-time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full-time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.

(9) For any county: (A) Which on and after the first day of July, one thousand nine hundred ninety-four, is classified as a Class II county; and (B) which prior to such date was classified as a Class III, Class IV or Class V county and maintained a part-time prosecuting attorney, the county commission may elect to maintain the prosecuting attorney as a part-time prosecuting attorney: Provided, That prior to the first day of January, one thousand nine hundred ninety-six, the county commission shall make a finding, by proper order and entered, whether to maintain a full-time or part-time prosecuting attorney. The part-time prosecuting attorney shall be compensated at the same rate of compensation as that of a prosecuting attorney in the class for the county prior to being classified as a Class II county.

(c)(1) Prior to the primary election in the year one thousand nine hundred ninety-six, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-six, or for any subsequent fiscal year if the approval, set out in subdivision (2) of this subsection, is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the Auditor.
(2) Upon submission by the county commission to the Auditor of a proposed annual budget which contains anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, plus such additional amount as is necessary for payment of the increases in the salaries set out in subdivisions (3) and (6) of this subsection, and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the Auditor, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are established and shall be used by each county commission in determining whether county revenues are sufficient to pay the compensation mandated herein for their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county: Provided, however, That should there be an insufficient projected increase in revenues to pay the increased compensation and related employment taxes, then the compensation of that county’s elected officials shall remain at the level in effect at the time certification was sought.

(3) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$28,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$27,500</td>
</tr>
<tr>
<td>Class III</td>
<td>$27,000</td>
</tr>
<tr>
<td>Class IV</td>
<td>$26,500</td>
</tr>
</tbody>
</table>
(4) The compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each county commissioner. Every county commissioner in each county, whose term of office commenced prior to or on or after the first day of January, one thousand nine hundred ninety-seven, shall receive the same annual compensation by virtue of legislative findings of extra duties as set forth in section one of this article.

(5) For the purpose of determining the compensation to be paid to the elected county officials of each county, the compensations for each county office by class, set out in subdivision (6) of this subsection, are established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission.

(6) **OTHER ELECTED OFFICIALS**

<table>
<thead>
<tr>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$34,000</td>
<td>$42,000</td>
<td>$42,000</td>
<td>$34,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$33,500</td>
<td>$41,500</td>
<td>$41,500</td>
<td>$33,500</td>
</tr>
<tr>
<td>Class III</td>
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<tr>
<td>Class V</td>
<td>$32,750</td>
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<td>$32,750</td>
</tr>
<tr>
<td>Class VI</td>
<td>$32,500</td>
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<td>Class VII</td>
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<td>$37,000</td>
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<tr>
<td>Class VIII</td>
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<td>$36,500</td>
<td>$36,500</td>
<td>$32,000</td>
</tr>
<tr>
<td>Class IX</td>
<td>$31,750</td>
<td>$36,000</td>
<td>$36,000</td>
<td>$31,750</td>
</tr>
<tr>
<td>Class X</td>
<td>$29,000</td>
<td>$32,000</td>
<td>$32,000</td>
<td>$29,000</td>
</tr>
</tbody>
</table>
(7) The compensation, set out in subdivision (6) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each elected county official. Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(8) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(9) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and
shall compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand one, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part-time for the end of that term, and thereafter the position of prosecuting attorney shall become full-time.

(d) (1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this subsection on and after the first day of July, two thousand two, are set out in subdivisions (5) and (7) of this subsection. Every county commissioner and elected county official in each county, whose term of office commenced prior to or on or after the first day of July, two thousand two, shall receive the same annual salary by virtue of legislative findings of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subdivisions (5) and (7) of this subsection, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The Auditor has certified that the proposed annual county budget for the fiscal year beginning the first days of July, two thousand two, has increased over the previous fiscal year in an amount sufficient for the payment of the increase in the salaries, set out in subdivisions (5) and (7) of this subsection, and the related employment taxes: Provided, That the Auditor may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term "receipts" does not include unencumbered fund balance or federal or state grants; and
(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has prior to that date filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.

(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$30,800</td>
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<tr>
<td>Class II</td>
<td>$30,250</td>
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<tr>
<td>Class III</td>
<td>$29,700</td>
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<tr>
<td>Class IV</td>
<td>$29,150</td>
</tr>
<tr>
<td>Class V</td>
<td>$28,600</td>
</tr>
<tr>
<td>Class VI</td>
<td>$23,650</td>
</tr>
<tr>
<td>Class VII</td>
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<tr>
<td>Class VIII</td>
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<tr>
<td>Class IX</td>
<td>$20,350</td>
</tr>
<tr>
<td>Class X</td>
<td>$16,500</td>
</tr>
</tbody>
</table>
(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$35,200</td>
<td>$35,200</td>
<td>$31,900</td>
<td>$38,500</td>
</tr>
</tbody>
</table>

(8) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(9) In the case of a county that has a joint clerk of the county commission and circuit court, the salary of the joint clerk shall be fixed in an amount twenty-five percent higher than the salary would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.
(10) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecutor at the same salary as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same salary as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand three, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part-time for the end of that term and thereafter the position of prosecuting attorney shall become full-time: And provided further, That a prosecuting attorney for a Class VI county which subsequently becomes a Class V county on or before the first day of July, two thousand ten, may continue as a part-time attorney, and continue to be compensated at the Class VI county level, until such time as determined by the prosecuting attorney and the county commission that a full-time prosecuting attorney is needed.

(e) (1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this subsection on and after the first day of July, two thousand six, are set out in subdivisions (5) and (7) of this subsec-
(2) Before the increased salaries, as set out in subdivisions (5) and (7) of this subsection, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The Auditor has certified that the proposed annual county budget for the fiscal year beginning the first days of July, two thousand six, has increased over the previous fiscal year in an amount sufficient for the payment of the increase in the salaries, set out in subdivisions (5) and (7) of this subsection, and the related employment taxes: Provided, That the Auditor may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term “receipts” does not include unencumbered fund balance or federal or state grants; and

(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has prior to that date filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.
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(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$36,960</td>
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<tr>
<td>II</td>
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</tr>
<tr>
<td>III</td>
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<tr>
<td>IV</td>
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<td>V</td>
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<td>VI</td>
<td>$28,380</td>
</tr>
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<td>VII</td>
<td>$27,720</td>
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<tr>
<td>VIII</td>
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<td>IX</td>
<td>$24,420</td>
</tr>
<tr>
<td>X</td>
<td>$19,800</td>
</tr>
</tbody>
</table>

(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$53,154</td>
<td>$43,560</td>
<td>$90,000</td>
</tr>
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</table>
(8) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(9) In the case of a county that has a joint clerk of the county commission and circuit court, the salary of the joint clerk shall be fixed in an amount twenty-five percent higher than the salary would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(10) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecutor at the same salary as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior
provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same salary as that of a prosecuting attorney in a Class V county: Provided further, That a prosecuting attorney for a Class VI county which subsequently becomes a Class V county on or before the first day of July, two thousand ten, may continue as a part-time attorney, and continue to be compensated at the Class VI county level, until such time as determined by the prosecuting attorney and the county commission that a full-time prosecuting attorney is needed.

CHAPTER 45

(Com. Sub. for H. B. 4047 — By Delegates Pethtel, Varner and Proudfoot)

[Passed March 2, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2006.]

AN ACT to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to prosecuting attorneys generally; providing that a prosecuting attorney for a Class VI county which subsequently becomes a Class V county may remain part-time; and providing that the part-time attorney be compensated at the Class VI county level.

Be it enacted by the Legislature of West Virginia:

That §7-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

*§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(a)(1) All county commissioners shall be paid compensation out of the county treasury in amounts and according to the schedule set forth in subdivision (2) of this subsection for each class of county as determined by the provisions of section three of this article: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

(2) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$20,000</td>
</tr>
<tr>
<td>II</td>
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</tr>
<tr>
<td>III</td>
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<td>IV</td>
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</tr>
<tr>
<td>V</td>
<td>$7,000</td>
</tr>
<tr>
<td>VI</td>
<td>$4,000</td>
</tr>
</tbody>
</table>

(3) The compensation, set out in subdivision (2) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of

*CLERK’S NOTE:* This section was also amended by H. B. 4100 (Chapter 44), which passed subsequent to this act.
chapter fifteen, Acts of the Legislature, first extraordinary
session, one thousand nine hundred eighty-three.

(4) For the purpose of determining the compensation to be
paid to the elected county officials of each county, the compens-
sations for each office by class, set out in subdivision (5) of this
subsection, are established and shall be used by each county
commission in determining the compensation of each of their
county officials other than compensation of members of the
county commission.

(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
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</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$24,200</td>
<td>$31,300</td>
<td>$31,300</td>
<td>$24,200</td>
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<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,000</td>
</tr>
</tbody>
</table>

(6) Any county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, county assessor, sheriff
and prosecuting attorney of a Class I county, any assessor of a
Class II and Class III county, any sheriff of a Class II and Class
III county and any prosecuting attorney of a Class II county
shall devote full-time to his or her public duties to the exclusion
of any other employment: Provided, That any public official,
whose term of office begins when his or her county’s classifica-
tion imposes no restriction on his or her outside activities, shall
not be restricted on his or her outside activities during the
remainder of the term for which he or she is elected. The
compensation, set out in subdivision (5) of this subsection, shall
be paid on and after the first day of January, one thousand nine
hundred eighty-five, to each elected county official.
(7) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) The Legislature finds that the duties imposed upon county clerks by the provisions of chapter sixty-four, Acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, Acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(9) The Legislature further finds that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, Acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, Acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(b)(1) Prior to the primary election in the year one thousand nine hundred ninety-two, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, or for any subsequent fiscal year if the approval, set out in subdivision (2) of this subsection, is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the Auditor.
(2) Upon submission by the county commission to the auditor of a proposed annual budget which contains anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the immediately preceding fiscal year, plus such additional amount as is necessary for payment of the increases in the salaries set out in subdivisions (3) and (5) of this subsection, and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the auditor, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year, for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are established and shall be used by each county commission in determining the compensation of each of their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county.

(3) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$24,000</td>
</tr>
<tr>
<td>II</td>
<td>$18,600</td>
</tr>
<tr>
<td>III</td>
<td>$16,800</td>
</tr>
<tr>
<td>IV</td>
<td>$12,000</td>
</tr>
<tr>
<td>V</td>
<td>$8,400</td>
</tr>
</tbody>
</table>

(4) If the approval, set out in subdivision (2) of this subsection, is granted, the compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each county commissioner. Within each county, every county
commissioner shall receive the same annual compensation by
virtue of the new duties imposed upon county commissioners
pursuant to the provisions of chapter one hundred seventy-two,
Acts of the Legislature, second regular session, one thousand
nine hundred ninety and chapter five, Acts of the Legislature,
third extraordinary session, one thousand nine hundred ninety.

(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
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<td>$37,560</td>
<td>$37,560</td>
<td>$29,040</td>
<td>$59,500</td>
</tr>
<tr>
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<td>$33,600</td>
<td>$33,600</td>
<td>$29,040</td>
<td>$59,500</td>
</tr>
<tr>
<td>Class III</td>
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<td>$33,600</td>
<td>$29,040</td>
<td>$36,000</td>
</tr>
<tr>
<td>Class IV</td>
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<td>$31,800</td>
</tr>
<tr>
<td>Class V</td>
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<td>$26,400</td>
<td>$26,400</td>
<td>$24,480</td>
<td>$28,200</td>
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<tr>
<td>Class VI</td>
<td>$24,480</td>
<td>$26,400</td>
<td>$26,400</td>
<td>$24,480</td>
<td>$28,200</td>
</tr>
</tbody>
</table>

(6) Any county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, county assessor, sheriff
and prosecuting attorney of a Class I county, any assessor of a
Class II and Class III county, any sheriff of a Class II and Class
III county and any prosecuting attorney of a Class II county
shall devote full-time to his or her public duties to the exclusion
of any other employment: Provided, That any public official,
whose term of office begins when his or her county’s classification
imposes no restriction on his or her outside activities, shall
not be restricted on his or her outside activities during the
remainder of the term for which he or she is elected. If the
approval, set out in subdivision (2) of this subsection, is
granted, the compensation, set out in subdivision (5) of this
subsection, shall be paid on and after the first day of January,
one thousand nine hundred ninety-three, to each elected county
official.

(7) In the case of a county that has a joint clerk of the
county commission and circuit court, the compensation of the
joint clerk shall be fixed in an amount twenty-five percent
higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) Prior to the primary election in the year one thousand nine hundred ninety-two, in the case of a Class III, Class IV or Class V county which has a part-time prosecuting attorney, the county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full-time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full-time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.

(9) For any county: (A) Which on and after the first day of July, one thousand nine hundred ninety-four, is classified as a Class II county; and (B) which prior to such date was classified as a Class III, Class IV or Class V county and maintained a part-time prosecuting attorney, the county commission may elect to maintain the prosecuting attorney as a part-time prosecuting attorney: Provided, That prior to the first day of January, one thousand nine hundred ninety-six, the county commission shall make a finding, by proper order and entered, whether to maintain a full-time or part-time prosecuting attorney. The part-time prosecuting attorney shall be compensated at the same rate of compensation as that of a prosecuting attorney in the class for the county prior to being classified as a Class II county.

(c)(1) Prior to the primary election in the year one thousand nine hundred ninety-six, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-six, or for
any subsequent fiscal year if the approval, set out in subdivision 195 (2) of this subsection, is not granted for any fiscal year, and at 196 least thirty days prior to the meeting to approve the county 197 budget, the commission shall provide notice to the public of the 198 date and time of the meeting and that the purpose of the 199 meeting of the county commission is to decide upon their 200 budget certification to the Auditor.

201 (2) Upon submission by the county commission to the 202 auditor of a proposed annual budget which contains anticipated 203 receipts into the county's general revenue fund, less anticipated 204 moneys from the unencumbered fund balance, equal to antici- 205 pated receipts into the county's general revenue fund, less 206 anticipated moneys from the unencumbered fund balance and 207 any federal or state special grants, for the fiscal year beginning 208 the first day of July, one thousand nine hundred ninety-six, plus 209 such additional amount as is necessary for payment of the 210 increases in the salaries set out in subdivisions (3) and (6) of 211 this subsection, and related employment taxes over that paid for 212 the immediately preceding fiscal year, and upon approval 213 thereof by the auditor, which approval shall not be granted for 214 any proposed annual budget containing anticipated receipts 215 which are unreasonably greater or lesser than that of the 216 immediately preceding fiscal year for the purpose of determin- 217 ing the compensation to be paid to the elected county officials 218 of each county office by class are established and shall be used 219 by each county commission in determining whether county 220 revenues are sufficient to pay the compensation mandated 221 herein for their county officials: Provided, That as to any 222 county having a tribunal in lieu of a county commission, the 223 county commissioners of the county may be paid less than the 224 minimum compensation limits of the county commission for 225 the particular class of the county: Provided, however, That 226 should there be an insufficient projected increase in revenues to 227 pay the increased compensation and related employment taxes, 228 then the compensation of that county's elected officials shall 229 remain at the level in effect at the time certification was sought.
COUNTY COMMISSIONERS

Class I: $28,000
Class II: $27,500
Class III: $27,000
Class IV: $26,500
Class V: $26,000
Class VI: $21,500
Class VII: $21,000
Class VIII: $19,000
Class IX: $18,500
Class X: $15,000

(4) The compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each county commissioner. Every county commissioner in each county, whose term of office commenced prior to or on or after the first day of January, one thousand nine hundred ninety-seven, shall receive the same annual compensation by virtue of legislative findings of extra duties as set forth in section one of this article.

(5) For the purpose of determining the compensation to be paid to the elected county officials of each county, the compensations for each county office by class, set out in subdivision (6) of this subsection, are established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission.

OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th></th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
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<td>$42,000</td>
<td>$34,000</td>
<td>$76,000</td>
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<td>$74,000</td>
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<td>$33,250</td>
<td>$72,000</td>
</tr>
<tr>
<td>Class</td>
<td>IV</td>
<td>V</td>
<td>VI</td>
<td>VII</td>
<td>VIII</td>
</tr>
<tr>
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<td>$68,000</td>
<td>$45,000</td>
<td>$43,000</td>
<td>$41,000</td>
</tr>
</tbody>
</table>

(7) The compensation, set out in subdivision (6) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each elected county official. Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(8) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(9) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county
commission shall then compensate said prosecuting attorney at
the same rate of compensation as that of a prosecuting attorney
in a Class V county: *Provided, however,* That any county
which under the prior provisions of this section was classified
as a Class II county and which did not elect to maintain a
part-time prosecutor shall maintain a full-time prosecuting
attorney and shall compensate said prosecuting attorney at the
same rate of compensation as that of a prosecuting attorney in
a Class V county: *Provided further,* That, until the first day of
January, two thousand one, when a vacancy occurs in the office
of prosecuting attorney prior to the end of a term, the county
commission of a Class IV or Class V county may elect to allow
the position to become part-time for the end of that term, and
thereafter the position of prosecuting attorney shall become
full-time.

(d) (1) The increased salaries to be paid to the county
commissioners and the other elected county officials described
in this subsection on and after the first day of July, two
thousand two, are set out in subdivisions (5) and (7) of this
subsection. Every county commissioner and elected county
official in each county, whose term of office commenced prior
to or on or after the first day of July, two thousand two, shall
receive the same annual salary by virtue of legislative findings
of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subdivisions
(5) and (7) of this subsection, are paid to the county commis-
ioners and the elected county officials, the following require-
ments must be met:

(A) The Auditor has certified that the proposed annual
county budget for the fiscal year beginning the first day of July,
two thousand two, has increased over the previous fiscal year
in an amount sufficient for the payment of the increase in the
salaries, set out in subdivisions (5) and (7) of this subsection,
and the related employment taxes: *Provided,* That the auditor
may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term “receipts” does not include unencumbered fund balance or federal or state grants; and

(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has, prior to that date, filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.

(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$30,800</td>
</tr>
<tr>
<td>Class II</td>
<td>$30,250</td>
</tr>
<tr>
<td>Class III</td>
<td>$29,700</td>
</tr>
</tbody>
</table>
(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$37,400</td>
<td>$46,200</td>
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<td>$35,200</td>
<td>$31,900</td>
<td>$38,500</td>
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</tbody>
</table>

(8) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, may
not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(9) In the case of a county that has a joint clerk of the county commission and circuit court, the salary of the joint clerk shall be fixed in an amount twenty-five percent higher than the salary would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(10) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecutor at the same salary as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same salary as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand three, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part-time for the end of that term and thereafter the position of prosecuting attorney shall become full-time. And provided further, That a prosecuting attorney for a Class VI county which subsequently becomes a Class V county on or before the first day of July, two thousand ten, may continue as a part-time attorney, and
continue to be compensated at the Class VI county level, until such time as determined by the prosecuting attorney and the county commission that a full-time prosecuting attorney is needed.

CHAPTER 46
(Com. Sub. for H. B. 4431 — By Mr. Speaker, Mr. Kiss, and Delegate Staton)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §59-1-10 of the Code of West Virginia, 1931, as amended, relating to allowing the clerk of the county commission to set reasonable fees charged for electronic or other medium versions of documents received or duplicated.

Be it enacted by the Legislature of West Virginia:

That §59-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word “page” is defined as being a paper or electronic writing of not more than legal size, 8 ½” x 14”.

4 The clerk of the county commission shall charge and collect the following fees:
(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk’s certificate of recordation thereon and indexing in a proper index, where the writing is a:

   (1) Deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease ............... $10.00

   (2) Financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code ............... $10.00

   (3) Plat or map (with no deed of conveyance) ... $10.00

   (4) Service discharge record ................. No Charge

   (5) Any document or writing other than those referenced in subdivisions (1), (2), (3) and (4)

   of this subsection .............................. $5.00

   (6) If any document or writing contains more than five pages, for each additional page ............. $1.00

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(b) For administering any oath other than oaths by officers and employees of the state, political subdivisions of the state, or a public or quasi-public entity of the state or a political subdivision of the state, taken in his or her official capacity ............................ $5.00
(c) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister’s return to one of the licensees and notification to a licensee after sixty days of the nonreceipt of the minister’s return) .................. $35.00

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the family protection shelter support act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) (1) For a copy of any writing or document, if it is not otherwise provided for .................. $1.50

(2) If the copy of the writing or document contains more than two pages, for each additional page ............ $1.00

(3) For annexing the seal of the commission or clerk to any paper ............................. $1.00

(4) For a certified copy of a birth certificate, death certificate or marriage license .................. $5.00
(e) For copies of any record in electronic form or a medium other than paper, a reasonable fee set by the clerk of the county commission not to exceed the costs associated with document search and duplication.

CHAPTER 47

(H. B. 4075 — By Delegates Michael, Doyle, Kominar, Cann, H. White, Proudfoot, Stalnaker, Hall, Ashley, Carmichael and G. White)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §59-1-28a of the Code of West Virginia, 1931, as amended, relating to the dedication of moneys to the Regional Jail Operations Partial Reimbursement Fund.

Be it enacted by the Legislature of West Virginia:

That §59-1-28a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§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 Author-
ity 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 Author-
ity 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) Of every fee for service received in any criminal case against any respondent convicted in circuit court, 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, 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 an amount equal to five dollars and 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 an amount equal to thirty dollars.

(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 48

(Com. Sub. for H. B. 2235 — By Delegates H. White, Kominar, Frederick, Stalnaker, Cann, Browning and G. White)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating to employ-
Be it enacted by the Legislature of West Virginia:

That §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.
§50-1-9a. Magistrate court deputy clerks; duties; salary.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of two thousand five hundred dollars per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.

(b) Magistrate court clerks shall be paid a monthly salary by the State. Magistrate court clerks serving magistrates who serve less than eight thousand four hundred in population shall be paid up to twenty-six thousand four hundred thirty-six dollars per year and magistrate court clerks serving magistrates who serve eight thousand four hundred or more in population shall be paid up to thirty-one thousand three hundred forty-four
18 dollars per year: *Provided*, That on and after the first day of
19 July, two thousand six, magistrate court clerks serving magis-
20 trates who serve less than eight thousand four hundred in
21 population shall be paid up to thirty-one thousand four hundred
22 thirty-six dollars per year and magistrate court clerks serving
23 magistrates who serve eight thousand four hundred or more in
24 population shall be paid up to thirty-six thousand three hundred
25 forty-four dollars per year: *Provided, however*, That on and
26 after the first day of July, two thousand seven, magistrate court
27 clerks serving magistrates who serve less than eight thousand
28 four hundred in population shall be paid up to thirty-six
29 thousand four hundred thirty-six dollars per year and magistrate
30 court clerks serving magistrates who serve eight thousand four
31 hundred or more in population shall be paid up to forty-one
32 thousand three hundred forty-four dollars per year: *Provided
33 further*, That after the effective date of this section, any general
34 salary increase granted to all state employees, whose salaries
35 are not set by statute, expressed as a percentage increase or an
36 “across-the-board” increase, may also be granted to magistrate
37 court clerks. For the purpose of determining the population
38 served by each magistrate, the number of magistrates autho-
39 rized for each county shall be divided into the population of
40 each county. The salary of the magistrate court clerk shall be
41 established by the judge of the circuit court, or the chief judge
42 of the circuit court if there is more than one judge of the circuit
43 court, within the limits set forth in this section.

44 (c) In addition to other duties that may be imposed by the
45 provisions of this chapter or by the rules of the Supreme Court
46 of Appeals or the judge of the circuit court or the chief judge of
47 the circuit court if there is more than one judge of the circuit
48 court, it is the duty of the magistrate court clerk to establish and
49 maintain appropriate dockets and records in a centralized
50 system for the magistrate court, to assist in the preparation of
51 the reports required of the court and to carry out on behalf of
52 the magistrates or chief magistrate if a chief magistrate is
53 appointed, the administrative duties of the court.
(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


(a) In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the State of West Virginia. For the purpose of this section, “immediate family” means the relationships of mother, father, sister, brother, child or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magistrates;
3. The collection of all costs, fees, fines, forfeitures and penalties which are payable to the court;
4. The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;
(5) The daily disposition of closed files which are to be located in the magistrate clerk’s office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.

(c) Magistrate assistants shall be paid a monthly salary by the State. Magistrate assistants serving magistrates who serve less than eight thousand four hundred in population shall be paid up to twenty-three thousand one hundred forty-eight dollars per year and magistrate assistants serving magistrates who serve eight thousand four hundred or more in population shall be paid up to twenty-six thousand two hundred forty-four dollars per year: Provided, That on and after the first day of July, two thousand six, magistrate assistants serving magistrates who serve less than eight thousand four hundred in population shall be paid up to twenty-eight thousand one hundred forty-eight dollars per year and magistrate assistants serving magistrates who serve eight thousand four hundred or more in population shall be paid up to thirty-one thousand two hundred forty-four dollars per year: Provided, however, That on and after the first day of July, two thousand seven, magistrate assistants serving magistrates who serve less than eight thousand four hundred in population shall be paid up to thirty-three thousand one hundred forty-eight dollars per year and magistrate assistants serving magistrates who serve eight thousand four hundred or more in population shall be paid up to thirty-three thousand one hundred forty-eight dollars per year.
thousand four hundred or more in population shall be paid up to thirty-six thousand two hundred forty-four dollars per year: 

Provided further, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an “across-the-board” increase, may also be granted to magistrate assistants. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

*§50-1-9a. Magistrate court deputy clerks; duties; salary.*

(a) Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, the Supreme Court of Appeals may, by rule, provide for the appointment of magistrate court deputy clerks, not to exceed seventy-two in number. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

*CLERK’S NOTE: This section was also amended by H. B. 2016 (Chapter 49), which passed prior to this act.*
(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant or judge of the circuit court within the same county, may not have been convicted of a felony or any misdemeanor involving moral turpitude and must reside in this state. For purposes of this subsection, "immediate family member" means a mother, father, sister, brother, child or spouse.

(d) Magistrate court deputy clerks shall be paid an annual salary by the state on the same basis and in the same amounts established for magistrate assistants in each county, as provided in section nine of this article.
ARTICLE 1. COURTS AND OFFICERS.

*§50-1-9a. Magistrate court deputy clerks; duties; salary.*

(a) Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, the Supreme Court of Appeals may, by rule, provide for the appointment of magistrate court deputy clerks, not to exceed seventy-two in number. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant or judge of the circuit court within the same county, may not have been convicted of a felony or any misdemeanor involving moral turpitude and must reside in this State. For purposes of this subsection, “immediate family member” means a mother, father, sister, brother, child or spouse.

(d) Magistrate court deputy clerks shall be paid an annual salary by the State on the same basis and in the same amounts

*CLERK’S NOTE: This section was also amended by H. B. 2235 (Chapter 48), which passed subsequent to this act.*
established for magistrate assistants in each county, as provided in section nine of this article.

CHAPTER 50

(Com. Sub. for H. B. 2146 — By Delegate Stemple)

[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §50-1-13 of the Code of West Virginia, 1931, as amended, relating to payment to magistrates who serve temporarily in another county.

Be it enacted by the Legislature of West Virginia:

That §50-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-13. Temporary service within or outside of county.

(a) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may order a magistrate to serve temporarily at locations within the county other than at the regular office or offices of the magistrate.

(b) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may by order direct a magistrate to
serve temporarily in any other county within the judicial circuit for such purposes as the judge may direct. The magistrate’s authority, to the extent ordered by the judge, shall be equal to the jurisdiction and authority of a magistrate elected in the county to which the magistrate is ordered to serve. The temporary assignment may not exceed sixty days in length in any given calendar year, except with the consent of the transferred magistrate.

(c) A magistrate who is temporarily assigned to a county with a higher salary schedule for magistrates than the salary schedule in the county from which the magistrate was elected, shall be reimbursed for the difference of the salary in the assigned county and the lower salary which the magistrate received in the county of election, prorated for the number of days of the temporary assignment. An assigned magistrate may not be reimbursed on a pro rata basis for less than the salary received in the county of that magistrate’s election.

(d) A magistrate shall be reimbursed for reasonable expenses incurred in service outside of the county, as provided by rule of the Supreme Court of Appeals.

CHAPTER 51

(S. B. 480 — By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Caruth, Deem, Lanham and Weeks)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §50-3-2 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of time to pay costs of criminal proceedings.
Be it enacted by the Legislature of West Virginia:

That §50-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§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 of said article. 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 one hundred eighty 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
29 court clerk, or if there is no magistrate court clerk to the clerk  
30 of the circuit, together with information as may be required by  
31 the rules of the Supreme Court of Appeals and the rules of the  
32 Office of Chief Inspector. These moneys are paid to the sheriff  
33 who shall distribute the moneys solely in accordance with the  
34 provisions of section fifteen, article five, chapter seven of this  
35 code. Amendments made to this section during the regular  
36 session of the Legislature, two thousand one, are effective after  
37 the thirtieth day of June, two thousand one.

38 (b) A magistrate shall assess costs in the amount of two  
39 dollars and fifty cents for issuing a sheep warrant and the  
40 appointment and swearing appraisers and docketing the  
41 proceedings.

42 (c) In each criminal case which must be tried by the circuit  
43 court but in which a magistrate renders some service, costs in  
44 the amount of ten dollars shall be imposed by the magistrate  
45 court and is certified to the clerk of the circuit court in accor-
46 dance with the provisions of section six, article five, chapter  
47 sixty-two of this code.

CHAPTER 52

(Com. Sub. for S. B. 11 — By Senators Yoder and Barnes)

[Passed March 11, 2006; in effect July 1, 2006.]  
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia,  
1931, as amended; and to amend said code by adding thereto a  
new section, designated §51-3-18, all relating generally to the  
appointment of judges and magistrates to fill vacancies; providing
for an additional circuit court judge to be appointed to the twenty-third judicial circuit; and providing for the expeditious filling of judicial vacancies by limiting the time during which a challenge to an appointment may be instituted.

Be it enacted by the Legislature of West Virginia:

That §51-2-1 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 §51-3-18, all to read as follows:

Article 2. Circuit Courts; Circuit Judges.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) The state shall be divided into the following judicial circuits with the following number of judges:

The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge; the counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges; the counties of Calhoun, Jackson, Mason and Roane shall constitute the fifth circuit and shall have two judges; the county of Cabell shall constitute the sixth circuit and shall have four judges; the county of Logan shall constitute the seventh circuit and shall have two judges; the county of McDowell shall constitute the eighth circuit and shall have two judges; the county of Mercer shall constitute the ninth circuit and shall have two judges; the county of Raleigh shall constitute the tenth circuit and shall have three judges; the
counties of Greenbrier and Pocahontas shall constitute the
eleventh circuit and shall have two judges; the county of
Fayette shall constitute the twelfth circuit and shall have two
judges; the county of Kanawha shall constitute the thirteenth
circuit and shall have seven judges; the counties of Braxton,
Clay, Gilmer and Webster shall constitute the fourteenth circuit
and shall have two judges; the county of Harrison shall
constitute the fifteenth circuit and shall have three judges; the
county of Marion shall constitute the sixteenth circuit and shall
have two judges; the county of Monongalia shall constitute the
seventeenth circuit and shall have two judges; the county of
Preston shall constitute the eighteenth circuit and shall have one
judge; the counties of Barbour and Taylor shall constitute the
nineteenth circuit and shall have one judge; the county of
Randolph shall constitute the twentieth circuit and shall have
one judge; the counties of Grant, Mineral and Tucker shall
constitute the twenty-first circuit and shall have two judges; the
counties of Hampshire, Hardy and Pendleton shall constitute
the twenty-second circuit and shall have one judge; the counties
of Berkeley, Jefferson and Morgan shall constitute the twenty-
third circuit and shall have four judges: Provided, That effective
the first day of August, two thousand six, said circuit shall have
five judges; the county of Wayne shall constitute the twenty-
fourth circuit and shall have one judge; the counties of Lincoln
and Boone shall constitute the twenty-fifth circuit and shall
have two judges; the counties of Lewis and Upshur shall
constitute the twenty-sixth circuit and shall have one judge; the
county of Wyoming shall constitute the twenty-seventh circuit
and shall have one judge; the county of Nicholas shall constitu-
tute the twenty-eighth circuit and shall have one judge; the
county of Putnam shall constitute the twenty-ninth circuit and
shall have two judges; the county of Mingo shall constitute the
thirtieth circuit and shall have one judge; and the counties of
Monroe and Summers shall constitute the thirty-first circuit and
shall have one judge: Provided, however, That the Kanawha
County circuit court shall be a court of concurrent jurisdiction
with each single judge circuit where the sitting judge in such
single judge circuit is unavailable by reason of sickness,
vacation or other reason.

(b) Any judge in office on the effective date of the
reenactment of this section shall continue as a judge of the
circuit as constituted under prior enactments of this section,
unless sooner removed or retired as provided by law, until the
thirty-first day of December, two thousand.

(c) The term of office of all circuit court judges shall be for
eight years. The term of office for all circuit court judges
elected during the general election conducted in the year two
thousand shall commence on the first day of January, two
thousand one, and end on the thirty-first day of December, two
thousand eight.

(d) Beginning with the primary and general elections to be
conducted in the year one thousand nine hundred ninety-two, in
all judicial circuits having two or more judges there shall be, for
election purposes, numbered divisions corresponding to the
number of circuit judges in each circuit. Each judge shall be
elected at large from the entire circuit. In each numbered
division of a judicial circuit, the candidates for nomination or
election shall be voted upon and the votes cast for the candi-
dates in each division shall be tallied separately from the votes
cast for candidates in other numbered divisions within the
circuit. The candidate receiving the highest number of the votes
cast within a numbered division shall be nominated or elected,
as the case may be: Provided, That beginning with the primary
and general elections to be conducted in the year two thousand,
judges serving a judicial circuit comprised of four or more
counties with two or more judges shall not be residents of the
same county.

(e) The Supreme Court of Appeals shall, by rule, establish
the terms of court of circuit judges.
ARTICLE 3. COURTS IN GENERAL.

§51-3-18. Expeditious filling of judicial vacancies.

(a) The Legislature finds that when judicial offices created under the constitution and laws of the state are vacant for extended periods of time, the proper functioning of the judicial branch of the government is impeded. The Legislature further finds that when a vacancy in a judicial office is to be filled by appointment, it is in the public interest that any questions regarding the qualifications or eligibility of the person nominated or appointed to fill the vacancy be determined expeditiously.

(b) When, pursuant to the provisions of section seven, article VIII of the Constitution of West Virginia, the Governor appoints a person to fill a vacancy in the office of Justice of the Supreme Court of Appeals or in the office of judge of the circuit court, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment by the Governor.

(c) When, pursuant to the provisions of section ten, article VIII of the Constitution of West Virginia and the general laws adopted thereunder, a person is appointed to fill a vacancy in the office of magistrate, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment.

(d) When, pursuant to the provisions of section sixteen, article VIII of the Constitution of West Virginia, the Governor appoints a person to fill a vacancy in the office of judge of the family court, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any
fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment by the Governor.

(e) Following a judicial appointment, if no suit or action is commenced within the time specified above, or if, in a suit having been timely brought, it is finally adjudged that the appointee is qualified and eligible to hold the office to which he or she has been appointed, then the appointee may take the oath of office and thereafter execute the office for the unexpired term to which he or she has been appointed, subject to removal under section eight, article VIII of the Constitution of West Virginia, in the case of a judge of the Supreme Court of Appeals, the circuit court or the family court, only by impeachment, and in the case of a magistrate, in the manner provided by general law for removal of a magistrate.

(f) An action timely brought to challenge the qualifications or eligibility of an appointee to judicial office shall be given priority over all other actions on the docket of the court in which the action is brought.

(g) Nothing contained in this section is intended by the Legislature to interfere with the authority of the Supreme Court of Appeals to discipline or retire judges or magistrates as that authority is set forth in the Constitution of West Virginia and in rules adopted by the Supreme Court of Appeals pursuant to the Constitution of West Virginia.

(h) The Legislature declares that the offices of magistrate, judge of the family court, judge of the circuit court and Justice of the Supreme Court of Appeals are elective in nature and are all “offices to be filled by election by the people” within the meaning of the exceptions clause of section fifteen, article VI of the Constitution of West Virginia, which clause describes the kind and character of the offices thereby removed from the operation of the prohibitory clause and not the method by which the offices are to be filled.
AN ACT to amend and reenact §51-2A-6 of the Code of West Virginia, 1931, as amended, relating to the compensation of secretary-clerks and case coordinators to family court judges.

Be it enacted by the Legislature of West Virginia:

That §51-2A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

(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-seven thousand
thirty-six dollars: Provided, That on and after the first day of
July, two thousand six, the annual salary of the secretary-clerk
shall be established by the administrative director of the
Supreme Court of Appeals, but may not exceed thirty-five
two thousand 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 Administra-
tive Director of the Supreme Court of Appeals but may not
exceed thirty-six thousand sixty dollars: Provided, That on and
after the first day of July, two thousand six, the annual salary of
the family case coordinator of the family court judge may not
exceed forty-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 Administra-
tive 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 54

(S. B. 636 — By Senator Bailey)

[Passed March 9, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §51-3-14 of the Code of West
Virginia, 1931, as amended, relating to the Court Security Fund
and administrative costs therein; and authorizing a fee of three
percent not to exceed thirty-thousand dollars to Department of Military Affairs and Public Safety for administering Court Security Fund.

Be it enacted by the Legislature of West Virginia:

That §51-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COURTS IN GENERAL.

§51-3-14. Court security fund.

(a) The offices and the clerks of the magistrate courts and the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs received for the Court Security Fund in accordance with the provisions of sections one and two, article three, chapter fifty of this code and section eleven, article one, chapter fifty-nine of this code for deposit in the State Treasury to the credit of a special revenue fund to be known as the Court Security Fund, which is hereby created under the Department of Military Affairs and Public Safety. The Court Security Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund. All moneys collected and received and paid into the State Treasury and credited to the Court Security Fund shall be expended by the board exclusively to implement the improvement measures agreed upon in accordance with the security plans submitted pursuant to section sixteen of this article and in accordance with an appropriation by the Legislature and to pay expenses of the Department of Military Affairs and Public Safety in administering this fund, which expenses may not in any fiscal year exceed the lesser of three percent of the funds deposited into the court security fund or thirty thousand dollars. 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 redesignated for other purposes
upon appropriation by the Legislature.

(b) Notwithstanding any provision of this code to the
contrary, after the thirtieth day of June, two thousand, the court
security board shall transfer such amounts from the Court
Security Fund as may, from time to time, be directed by the
Legislature in an appropriation act to the Domestic Violence
Legal Services Fund created in section four-c, article two-c,
chapter forty-eight of this code. Any moneys transferred to the
Domestic Violence Legal Services Fund pursuant to the
provisions of this section shall be expended for the purposes
specified in said section.

CHAPTER 55

(H. B. 2136 — By Delegates Amores, Webster and Palumbo)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §36-4-18, relating to
certain unlawful covenants or restrictions; requiring the clerk of
the county commission to execute, record and post a disclaimer;
and suggested form of disclaimer.

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 §36-4-18, to read as
follows:
ARTICLE 4. COVENANTS.

§36-4-18. Recorded disclaimer of unlawful restrictions.

The clerk of the county commission shall execute, record and post in a prominent place in the county record room a document that disclaims the validity and enforceability of certain restrictions and covenants in deeds. The document shall contain a disclaimer in substantially the following form:

"Except as provided in section eight, article eleven-a, chapter five of the code of West Virginia, it is the law of this state that certain covenants or restrictions that are based on race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin are invalid and unenforceable. If an invalid covenant or restriction is contained in a document that is recorded in this county, the invalid covenant or restriction is void notwithstanding its recordation."

CHAPTER 56

(S. B. 566 — By Senators Kessler, Chafin, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, McKenzie and Weeks)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-19a of the Code of West Virginia, 1931, as amended, all relating to increasing the maximum payment for crime scene cleanup costs involving real property damaged by a methamphetamine laboratory; redefining claimant to include as a victim the owner of real
property damaged by a methamphetamine laboratory; amending exclusions for motor vehicle claims to include instances in which a third party leaves the scene of the accident; redefining work loss to include the loss of income from work by a parent or guardian of a minor child who was the victim of a crime; redefining allowable expense to include reasonable travel expenses for out-of-state travel to return a minor or incapacitated adult who has been unlawfully taken from the state; specifying the maximum amounts for such travel expenses; imposing certain duties and restrictions on health care providers that file an assignment of benefits with the court; and tolling of statute of limitations to collect unpaid medical bills until the claim is processed by the court.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 and §14-2A-19a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.


1 As used in this article, the term:

2 (a) “Claimant” means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

3 (1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

4 (2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;
11 (3) A third person other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

16 (4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source, including, but not limited to, assignees, persons holding power of attorney or other persons who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor; and

25 (5) A person who is a secondary victim in need of mental health counseling due to the person’s exposure to the crime committed. An award to a secondary victim may not exceed one thousand dollars.

29 (6) A person who owns real property damaged by the operation of a methamphetamine laboratory without the knowledge or consent of the owner of the real property.

(b) “Collateral source” means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him or her, from any of the following sources:

36 (1) The offender, including any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;
(2) The government of the United States or any of its agencies, a state or any of its political subdivisions or an instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its nature poses a substantial threat of personal injury or death and is punishable by fine or imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct also includes an act of terrorism, as defined in 18 U. S. C. §2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause
personal injury or death, or when the person engaging in the 
conduct committed negligent homicide, driving under the 
influence of alcohol, controlled substances or drugs, reckless 
driving, or when the person leaves the scene of the accident.

(d) “Dependent” means an individual who received over 
half of his or her support from the victim. For the purpose of 
determining whether an individual received over half of his or 
her support from the victim, there shall be taken into account 
the amount of support received from the victim as compared to 
the entire amount of support which the individual received from 
all sources, including support which the individual himself or 
herself supplied. The term “support” includes, but is not limited 
to, food, shelter, clothing, medical and dental care and educa-
tion. The term “dependent” includes a child of the victim born 
after his or her death.

(e) “Economic loss” means economic detriment consisting 
only of allowable expense, work loss and replacement services 
loss. If criminally injurious conduct causes death, economic 
loss includes a dependent’s economic loss and a dependent’s 
replacement services loss. Noneconomic detriment is not 
economic loss; however, economic loss may be caused by pain 
and suffering or physical impairment. For purposes of this 
article, the term “economic loss” includes a lost scholarship as 
defined in this section.

(f)(1) “Allowable expense” means reasonable charges 
incurred or to be incurred for reasonably needed products, 
services and accommodations, including those for medical care, 
mental health counseling, prosthetic devices, eye glasses, 
dentures, rehabilitation and other remedial treatment and care.

(2) Allowable expense includes a total charge not in excess 
of six thousand dollars for expenses in any way related to 
funeral, cremation and burial. It does not include that portion of 
a charge for a room in a hospital, clinic, convalescent home,
nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(3) Allowable expense also includes:

(A) A charge, not to exceed five thousand dollars, for cleanup of real property damaged by a methamphetamine laboratory, or a charge, not to exceed one thousand dollars, for any other crime scene cleanup;

(B) Victim relocation costs, not to exceed one thousand dollars; and

(C) Reasonable travel expenses, not to exceed one thousand dollars, for a claimant to attend court proceedings that are conducted for the prosecution of the offender.

(D) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country, if such removal constitutes a crime under the laws of this state. Reasonable travel expenses to another state for such purpose may not exceed two thousand dollars and reasonable travel expenses for such purpose to another county may not exceed three thousand dollars.

(g) “Work loss” means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of
performing but unreasonably failed to undertake. “Work loss” also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) “Dependent’s economic loss” means loss after a victim’s death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) “Dependent’s replacement service loss” means loss reasonably incurred or to be incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death and not subtracted in calculating dependent’s economic loss.

(k) “Victim” means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension. “Victim” shall also include the owner of real property damaged by the operation of a methamphetamine laboratory.
(l) “Contributory misconduct” means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.

(m) “Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a postsecondary school educational program and, which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

(a) As part of the order, the court, or a judge or commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the court, or a judge or commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out.
of the amount awarded the crime victim under this article
directly to the physician, hospital or other health care provider.
The requirements of this section shall be applicable to, and any
such unpaid fees shall be determined and payable from, the
awards made by the Legislature at regular session, one thousand
nine hundred eighty-seven, and subsequently: Provided, That
when a claim is filed under this section, the court shall deter-
mine the total damages due the crime victim, and where the
total damages exceed the maximum amount which may be
awarded under this article, the amount paid the health care
provider shall be paid in the same proportion to which the
actual award bears to the total damages determined by the
court. In any case wherein an award is made which includes an
amount for funeral, cremation or burial expenses, or a combina-
tion thereof, the court shall provide for the payment directly to
the provider or providers of such services, in an amount deemed
proper by the court, where such expenses are unpaid at the time
of the award.

(b) If the health care provider has filed an assignment of
benefits, the provider shall aid the crime victim in the develop-
ment of his or her claim by providing the court with the amount
of such fees as well as the amount of any portion of the fees
paid the provider by the crime victim directly or paid the
provider for the crime victim by a collateral source.

(c) Whether or not a health care provider has filed an
assignment of benefits, the court shall disclose no information
regarding the status of the claim to the provider: Provided, That
the court shall promptly notify the provider of the final disposi-
tion of the claim, if the provider is known to the court.

(d) Whenever a person files a claim under this article, the
statute of limitations for the collection of unpaid fees paid for
such health care services shall be tolled during the pendency of
the claim before the court.
CHAPTER 57

(Com. Sub. for H. B. 4588 — By Delegates Carmichael and Armstead)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-5a, relating to creating a crime for concealing a deceased human body; exceptions; defense of affirmatively informing law enforcement; and prescribing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-5a, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.


1 (a) Any person who, by any means, knowingly and willfully conceals, attempts to conceal or who otherwise aids and abets any person to conceal a deceased human body where death occurred as a result of criminal activity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than five years and fined not less than one thousand dollars, nor more than five thousand dollars.

9 (b) It shall be a complete defense in a prosecution pursuant to subsection (a) of this section that the defendant affirmatively
brought to the attention of law enforcement within forty-eight hours of concealing the body and prior to being contacted regarding the death by law enforcement the existence and location of the concealed deceased human body.

(c) The provisions of subsection (a) of this section do not apply to practitioners regulated by the provisions of article six, chapter thirty of this code or their agents while acting in their lawful professional capacities.

CHAPTER 58

(Com. Sub. for H. B. 3213 — By Delegates Delong, Craig, Amores)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-16a, relating to creating crimes against common carriers and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-16a, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.
(a) **Malicious assault.** — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill any driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) **Unlawful assault.** — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes any driver, conductor, motorman, captain or other person in charge of any vehicle, aircraft or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) **Battery.** — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a driver, conductor,
motorman, captain or other person in charge of any vehicle or
boat, driven by steam, electricity, gasoline or other motive
power and used for public conveyance, in such capacity, and
the person committing the battery knows or has reason to know
that the victim is a driver, conductor, motorman, captain or
other person in charge of any vehicle or boat used as a public
conveyance, acting in his or her official capacity is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in
the county or regional jail for not less than one month nor more
than twelve months, fined the sum of five hundred dollars, or
both. If any person commits a second such offense, he or she is
guilty of a felony and, upon conviction thereof, shall be
confined in a correctional facility for not less than one year nor
more than three years or fined the sum of one thousand dollars
or both fined and confined. Any person who commits a third
violation of this subsection is guilty of a felony and, upon
conviction thereof, shall be confined in a correctional facility
not less than two years nor more than five years or fined not
more than two thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to
commit a violent injury to the person of a driver, conductor,
motorman, captain or other person in charge of any vehicle or
boat, driven by steam, electricity, gasoline or other motive
power and used for public conveyance, acting in his or her
official capacity, or unlawfully commits an act which places a
driver, conductor, motorman, captain or other person in charge
of any vehicle or boat, driven by steam, electricity, gasoline or
other motive power and used for public conveyance, acting in
his or her official capacity, in reasonable apprehension of
immediately receiving a violent injury, and the person commit-
ting the assault knows or has reason to know that the victim is
a driver, conductor, motorman, captain or other person in
charge of any vehicle or boat used as a public conveyance,
acting in his or her official capacity is guilty of a misdemeanor
and, upon conviction thereof, shall be confined in the county or
AN ACT to amend and reenact §61-8B-15 of the Code of West Virginia, 1931, as amended, relating to clarification of permissible expenditures from the Forensic Medical Examination Fund.

Be it enacted by the Legislature of West Virginia:

That §61-8B-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-15. Forensic Medical Examination Fund; training of sexual assault nurse examiners.

There is continued the “Forensic Medical Examination Fund”, created as a special fund in the State Treasury, into which shall be deposited legislative appropriations to the fund. The West Virginia Prosecuting Attorneys Institute, created by the provisions of section six, article four, chapter seven of this code, shall make expenditures from the fund, where it is determined to be practical by the executive council and the executive director to pay the costs of forensic medical examinations as defined in section sixteen of this article, to train nurses
to examine sexual assault victims and to reimburse the institute for its expenses in administering payments from the fund.

CHAPTER 60

(Com. Sub. for H. B. 4036 — By Mr. Speaker, Mr. Kiss, and Delegates Varner, Campbell, Stemple, Kominar, Amores, Crosier, Ron Thompson and Craig)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-8a, relating to creating the offense of solicitation to commit a felony crime of violence against the person; defining terms; penalties; and defenses.

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 §61-11-8a, to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-8a. Solicitation to commit certain felonies; classification; defenses.

(a) Any person who solicits another to commit a violation of the law which constitutes a felony crime of violence against the person is guilty of a felony, and upon conviction thereof, shall be:
(1) Confined in a state correctional facility for not less than three nor more than fifteen years if the offense solicited is punishable by life imprisonment;

(2) Imprisoned in the state correctional facility for not less than one nor more than three years or fined not more than five thousand dollars, or both, if the offense solicited is punishable by incarceration in the state correctional facility for a term of less than life imprisonment. In the circuit court’s discretion a person so convicted may be ordered confined in jail for a term not to exceed one year in lieu of incarceration in a state correctional facility;

(b)(1) As used in this section, “solicitation” means the willful and knowing instigation or inducement of another to commit a felony crime of violence against the person of a third person; and

(2) As used in this section, “felony crime of violence against the person” means the felony offense set forth in sections one, nine, ten-b and twelve, article two of this chapter.

(c) In a prosecution under the provisions of this section, it is not a defense:

(1) That the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(2) That a person whom the defendant solicits could not be guilty of a crime that is the object of the solicitation.

(d) It is an affirmative and complete defense to a prosecution under the provisions of this section that the defendant under circumstances manifesting a voluntary and complete renunciation of the defendant’s criminal intent, after soliciting another person to engage in conduct constituting a felony, prevented the commission of the crime.
AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating to authorizing a court to order a defendant to contribute monetarily or through hours of service to a local crime victim’s assistance program or juvenile mediation program which meets certain requirements.

Be it enacted by the Legislature of West Virginia:

That §61-11A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:


§61-11A-4. Restitution; when ordered.

(a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article.

If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.
(b) The order shall require that the defendant:

(1) In the case of an offense resulting in damage to, loss of, or destruction of property of a victim of the offense:

(A) Return the property to the owner of the property or someone designated by the owner; or

(B) If return of the property under subparagraph (A) is impossible, impractical or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing; or (ii) the value of the property on the date of the damage, loss or destruction less the value (as of the date the property is returned) of any part of the property that is returned;

(2) In the case of an offense resulting in bodily injury to a victim:

(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) Reimburse the victim for income lost by the victim as a result of the offense;

(3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) In any case, if the victim (or if the victim is deceased, the victim’s estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or
make restitution to a person or organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim’s estate.

(d) The court shall impose an order of restitution to the extent that the order is as fair as possible to the victim and the imposition of the order will not unduly complicate or prolong the sentencing process.

(e) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all restitution to victims under the order be made before any restitution to any other person under the order is made.

(f) The court may require that such defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than: (i) The end of the period of probation, if probation is ordered; (ii) five years after the end of the term of imprisonment imposed, if the court does not order probation; and (iii) five years after the date of sentencing in any other case.

If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(g) If the defendant is placed on probation or paroled under this article, any restitution ordered under this section shall be a condition of the probation or parole unless the court or Parole Board finds restitution to be wholly or partially impractical as set forth in this article.
The court may revoke probation and the Parole Board may revoke parole if the defendant fails to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(h) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(i) Notwithstanding any provision of this section to the contrary, the court may order, in addition to or in lieu of, restitution, that a defendant be required to contribute monetarily, or through hours of service, to a local crime victim's assistance program or juvenile mediation program which meets the following requirements:

(1) The program is approved by a circuit judge presiding in the judicial circuit; and

(2) The program is a nonprofit organization certified as a corporation in this state, and is governed by a board of directors.

CHAPTER 62

(Com. Sub. for H. B. 2118 — By Delegate Azinger)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §62-IC-12 of the Code of West Virginia, 1931, as amended, relating to forfeiture of bail bond for
failure of a defendant to appear in court; providing for reimbursement to the bail bondsman for the amount of the forfeited bond if the bail bondsman later returns the bonded person to the custody of court; and authorizing the Administrator of the West Virginia Supreme Court to oversee bondsmen and audit, review and suspend bondsmen who have insufficient assets.

Be it enacted by the Legislature of West Virginia:

That §62-1C-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. BAIL.

§62-1C-12. Same — Exoneration; return of deposit.

(a) When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or magistrate shall exonerate the surety and release any bail and, if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.

(b) Notwithstanding any provision of this code to the contrary, when a bail bondsman, as defined in article ten, chapter fifty-one of this code, has a surety bond forfeited because of the failure of a defendant to appear before a court or magistrate, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, be it cash or surety, if the bail bondsman returns the defendant to the custody of the court or magistrate, within two years of the forfeiture of the bond.

(c) The Administrator of the West Virginia Supreme Court of Appeals shall, ex officio, be empowered to audit, review and suspend any bail bondsman whose surety on bonds is or becomes insufficient or whose assets are below the amount of bonds he or she has in existence.
CHAPTER 63

(H. B. 4854 — By Delegates Morgan, Craig, Webster, Hamilton, Howard, Pino, Moore, DeLong, Ellem, Long, Hrutkay)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §62-6B-3 of the Code of West Virginia, 1931, as amended, relating to allowing expert opinions of licensed psychologists with at least five years clinical experience in treatment and evaluation of children; and taking testimony of child witness through use of live two-way closed-circuit television.

Be it enacted by the Legislature of West Virginia:

That §62-6B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.


1 (a) Upon a written motion filed by the prosecuting attorney, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, two-way closed-circuit television.
(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, two-way closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:

(1) The child is an otherwise competent witness;

(2) That, absent the use of live, two-way closed-circuit television, the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state’s ability to proceed against the defendant without the child witness’ live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, two-way closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child’s live testimony to the prosecution’s ability to proceed;

(4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, two-way closed-circuit television the court
shall appoint a psychiatrist, licensed psychologist with at least five years clinical experience or a licensed clinical social worker with at least five years of significant clinical experience in the treatment and evaluation of children who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist, licensed psychologist or licensed clinical social worker shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, two-way closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.

CHAPTER 64

(S. B. 538 — By Senators Chafin, Helmick and Love)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all relating to government employees’ deferred compensation plans; transferring responsibility for the State Employee Deferred Compensation Plan to the State Treasurer on
the first day of July, two thousand six; authorizing political subdivisions without plans to request the Treasurer include its employees in the state plan; allowing political subdivision employees to participate in the state plan; allowing political subdivision employees to participate in the state plan when their employer does not offer a plan; clarifying various powers and requirements; authorizing employees to attend meetings called by the state or public employer during regular working hours to explain the plan; authorizing the state and public employers to charge fees for plan administration; clarifying liability; establishing trust fund and administrative account in the State Treasury; providing that information that would tend to disclose the identity of a participating employee is exempt from disclosure under the Freedom of Information Act; and protecting the moneys from certain legal processes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-1. Legislative purpose.
§5-10B-2. Definitions.
§5-10B-3. Powers; contracts; meetings.
§5-10B-4. Responsibility for implementing plans — Payroll reductions — Billing and administration.
§5-10B-5. Investment of funds.
§5-10B-9. Liabilities of State of West Virginia or political subdivisions.
§5-10B-10. Deferred compensation plan funds held in trust.
§5-10B-11. Deferred Compensation Administrative Account.
§5-10B-12. Confidential information exempt from disclosure.
§5-10B-13. Moneys not subject to legal process.
§5-10B-1. Legislative purpose.

The legislative purpose of this enactment is to enable employees of the state, its agencies, counties, municipalities and political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferment plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state and to authorize county, municipal and political subdivision employees to participate in the state deferred compensation plan if their employer does not have a plan.

§5-10B-2. Definitions.

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

(a) “Board” means the Consolidated Public Retirement Board provided for in article ten of this chapter.

(b) “Deferred compensation” means the income and earnings on that income an employee may legally defer for personal income tax purposes pursuant to the Internal Revenue Code until distribution.

(c) “Deferred compensation plan” or “plan” means a trust whereby the state employer or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible
state deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(d) "Deferred compensation trust fund" or "trust" means the fund in which deferred amounts and investment income of participating employees are held.

(e) "Employee" means any person, whether appointed, elected or under contract, providing services for the state employer or public employer for which compensation is paid.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(g) "Investment product" means any fixed or variable rate annuity, life insurance contract, savings account, certificate of deposit, money market account, bond, mutual fund or any other form of investment not prohibited under the Internal Revenue Code and authorized by the state employer or the public employer for the purpose of receiving funds under a plan.

(h) "Public employer" means counties, municipalities or political subdivisions of those governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (d)(1), but which do not meet the definition of "state employer" as used in this article.

(i) "State employer" means the State of West Virginia, which includes every state board, commission, agency and instrumentality.

(j) "Treasurer" means the State Treasurer.

(k) "Vendor" means a private entity that sells investment products or provides goods and services.

§5-10B-3. Powers; contracts; meetings.
(a) Notwithstanding any provision of this code to the contrary, including, without limitation, this chapter and chapter five-a of this code, the state employer and a public employer have the power necessary or appropriate to carry out the provisions and objectives of this article and to operate the trust, including, without limitation, entering into contracts and executing and delivering instruments; engaging consultants, auditors, counsel, managers, advisors, trustees or any other contractors or professionals; and charging and collecting administrative fees.

(b) The state employer or any public employer may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee’s compensation and may subsequently purchase or acquire from vendors licensed to do business in the State of West Virginia investment products for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

(c) Employees are authorized to attend meetings called by the state employer or public employer for the purpose of explaining a plan during regular working hours.

§5-10B-4. Responsibility for implementing plans — Payroll reductions — Billing and administration.

(a) The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees through the thirtieth day of June, two thousand six. On the first day of July, two thousand six, the Treasurer shall manage any deferred compensation plan for state employees. Any and all records, moneys, contracts, property and other matters involving deferred compensation plans for state employees shall transfer on the first day of July, two thousand six, to the Treasurer.
(b) The responsibility for implementing the deferred compensation plan for employees of a public employer is delegated to the county commission of a county, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission or other similar body responsible for determining the policy of such political subdivision. A county commission or a governing body of another public employer may request the Treasurer authorize its employees to participate in the state plan instead of implementing its own plan.

(c) If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan or plans in which he or she desires to participate. When a public employer has not implemented a plan, its employees may participate in the state plan.

(d) Payroll reductions shall be remitted as specified by the state employer or public employer for deposit in the trust, in each instance, by the appropriate payroll officer. The board of trustees, the Treasurer or appropriately designated local officer, board or committee of deferred compensation plan may contract with one or more vendors to provide consolidated billing and all or any other goods and services needed for a plan.

(e) Plans shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll salary reductions and the remittance thereof.

(f) The state employer and the public employers may charge fees on plan contributions, total assets, total return or other selected method as necessary to provide for the administrative expenses of a plan.
§5-10B-5. Investment of funds.

1 Notwithstanding any other provision of law to the contrary, the board, or the Treasurer beginning the first day of July, two thousand six, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to a deferred compensation plan in investment products.

§5-10B-9. Liabilities of State of West Virginia or political subdivisions.

1 The state employer and the public employers shall not incur any liability for losses suffered or change in value of an investment product. The financial liability of the state employer or public employer under any deferred compensation plan shall be limited in each instance to amounts paid over to the trust but not invested.

§5-10B-10. Deferred compensation plan funds held in trust.

(a) Notwithstanding anything herein to the contrary, as of the first day of January, one thousand nine hundred ninety-eight, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

(b) The West Virginia Deferred Compensation Trust Fund is created within the accounts held by the Treasurer or with one or more financial institutions, vendors or any other entities selected by the Treasurer for the purpose of managing and investing the trust. A public employer managing a trust shall create a trust fund and select one or more financial institutions, vendors or other entities to hold the trust.
(c) The corpus, assets and earnings of the trust do not constitute public funds of the state or public employer and are available solely for carrying out the purposes of this article.

Any contract entered into by or any obligation of the state employer or a public employer in connection with a plan does not create or constitute a debt, but is solely an obligation of the trust.

§5-10B-11. Deferred Compensation Administrative Account.

The Deferred Compensation Administrative Account is created in the accounts of the Treasurer for the purposes of implementing, operating and maintaining the trust and plan. The account shall receive all fees charged and collected by the Treasurer under this article.

§5-10B-12. Confidential information exempt from disclosure.

All information contained in the records maintained pursuant to this article that would tend to disclose the identity of a participating employee, including, without limitation, social security number, account number, address, telephone number, e-mail address, amounts invested, selected investments, returns and medical or disability information, are confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code. Employees and persons authorized by employees are permitted access to their own information.

§5-10B-13. Moneys not subject to legal process.

No account, benefit or right, created pursuant to this article, accrued or accruing, is subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.
AN ACT to amend and reenact §22-1-2, §22-1-7 and §22-1-8 of the Code of West Virginia, 1931, as amended, all relating to the organization of offices within the Department of Environmental Protection; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

That §22-1-2, §22-1-7 and §22-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-2. Definitions.
§22-1-7. Offices within division.

§22-1-2. Definitions.

1 As used in this chapter, unless otherwise provided or indicated by the context:

2 (1) “Chief” means the Secretary of the Department of Environmental Protection, or his or her designee, who is also the chief executive officer of an office, division or section within the department.

3 (2) “Department” means the Department of Environmental Protection.
(3) "Director" means the Secretary of the Department of Environmental Protection or his or her designee.

(4) "Division" means the Department of Environmental Protection.

(5) "Function" means any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(6) "Office" means any office, division, board, agency, unit, organizational entity or component thereof within the Department of Environmental Protection.

(7) "Secretary" means the Secretary of the Department of Environmental Protection.

§22-1-7. Offices within division.

Consistent with the provisions of this article, the secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervi-
(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; and

(6) The Office of Explosives and Blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.


(a) The secretary shall appoint a competent and qualified person to be the chief executive officer of each office specified in section seven of this article. The chief executive officer is the principal administrative officer of that office and is accountable and responsible for the orderly and efficient performance of the duties, functions and services of her or his office.

(b) There shall be in the department such other supervisory officers as the secretary determines is necessary to administer the functions of the department. Such supervisory officers are “administrators” as such term is defined in section two, article six, chapter twenty-nine of this code, notwithstanding the fact that the positions filled by such persons are not statutorily created. Any such supervisory officer may be designated by the secretary as a deputy director, assistant director, chief, administrator or other administrative title or designation. Each of the supervisory officers shall be appointed by the secretary and serve at the will and pleasure of the secretary. The compensation of such supervisory officers shall be fixed by the secretary. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where a dual
appointment is made, the supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory position.

(c) A supervisory officer appointed pursuant to the provisions of this section shall report directly to the secretary and shall, in addition to any functions vested in or required to be delegated to such officer, perform additional functions as the secretary may prescribe.

(d) Each supervisory officer of the department shall, before entering upon the discharge of his or her duties, take the oath of office prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the Governor, conditioned upon the faithful discharge of their duties, a certificate of the oath and bond shall be filed in the office of the Secretary of State. Premiums on the bond shall be paid from the department funds.

CHAPTER 66


[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all relating to establishment of individual diabetes care plans for students with diabetes by county boards of education; requiring the State Board of Education to
adopt guidelines for the development and implementation of individual diabetes care plans on or before the first day of January, two thousand seven; requiring each county board of education to adopt a diabetes care plan meeting the guidelines for diabetes care plans adopted by the State Board of Education; requiring the State Board of Education to report to the Legislature regarding adoption of the guidelines and the establishment and implementation of diabetes care plans by county boards of education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all to read as follows:

ARTICLE 2K. THE DIABETES CARE PLAN ACT.

§18-2K-1. Title of article.

This article shall be known as “The Diabetes Care Plan Act.”

§18-2K-2. Adoption of guidelines for individual diabetes care plans.

(a) The State Board of Education shall adopt guidelines for the development and implementation of individual diabetes care plans on or before the first day of January, two thousand seven. The guidelines for information and allowable actions in a diabetes care plan shall meet or exceed the American Diabetes Association’s recommendations for the management of children with diabetes in the school and day care setting. The State
Board of Education shall consult with the Bureau for Public Health and the Department of Health and Human Resources in the development of these guidelines. The State Board of Education also shall consult with county board of education employees who have been designated as responsible for coordinating their individual county’s efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board of Education shall consider recent resolutions by the Office of Civil Rights of the United States Department of Education regarding investigation of complaints alleging discrimination against students with diabetes.

The guidelines adopted by the state board shall include:

1. Procedures for school nurses to develop an individual diabetes care plan for any student diagnosed with diabetes, which shall involve the parent or guardian, the student’s health care provider, the student’s classroom teacher, the student if appropriate, and other appropriate school personnel;

2. Procedures for regular review of an individual care plan.

3. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student’s diabetes care and management and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student; and

4. Procedures for information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.
(b) The State Board of Education shall provide that the guidelines and any subsequent changes are published and disseminated to county boards of education.

§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.

Each county board of education shall establish and adopt a diabetes care plan which shall be implemented in schools in which students diagnosed with diabetes are enrolled. The plan shall be adopted not later than six months after the State Board of Education adopts guidelines for the plans pursuant to section two of this article. The plan shall meet all of the guidelines for diabetes care plans adopted by the State Board of Education pursuant to section two of this article. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. County boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans.

§18-2K-4. Progress report to the Legislature.

The State Board of Education shall report no later than the first day of September, two thousand seven, to the Legislative Oversight Commission on Health and Human Resources Accountability on the board’s progress regarding the adoption and dissemination of the guidelines pursuant to section two of this article and the establishment and implementation of diabetes care plans by county boards of education pursuant to section three of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all relating to increasing the awareness and understanding of the history and contributions of people with disabilities in the state, nation and world; designating the third week of October as Disability History Week for the State of West Virginia; requiring integration of instruction on disability history, people with disabilities and the disability rights movement into the existing public school curriculum; legislative findings; and defined terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all to read as follows:

ARTICLE 100. DISABILITY HISTORY WEEK.

§18-100-1. Short title.
§18-100-2. Legislative findings.
§18-100-3. Purpose.
§18-100-4. Definitions.
§18-100-5. Disability History Week designated.

§18-100-1. Short title.
This article is known and may be cited as the “Disability History Week Act.”

§18-10O-2. Legislative findings.

The Legislature finds that:

(1) According to the two thousand United States Census over four hundred thousand West Virginians have disabilities, which is nearly twenty-four percent of the state’s general population;

(2) In order to ensure the full inclusion of people with disabilities into society, it is necessary to expand the public’s knowledge, awareness and understanding of the history of disabilities and the disability rights movement;

(3) The disability rights movement is a civil rights movement that is an important part of the history of this state and this country;

(4) October is recognized nationally as Disability Awareness Month; and

(5) By designating the third week of October as Disability History Week, students and the public will have the opportunity to learn about the history and contributions of people with disabilities.

§18-10O-3. Purpose.

The purpose of this article is to increase the awareness and understanding of the history and contributions of people with disabilities in the state, nation and world by designating the annual observance of the third week of October as Disability History Week.

§18-10O-4. Definitions.
As used in this article the following words and phrases have the following meanings:

(a) “Disability history” means the people, events and timelines of the development and evolution of services to, and the civil rights of, people with disabilities. Disability history includes the contributions of specific people with disabilities; and

(b) “Existing school curriculum” means all the courses and curricula currently in place at a public school.

§18-100-5. Disability History Week designated.

(a) The third week of October annually is designated as Disability History Week for the State of West Virginia.

(b) In recognition of and to further the purposes of Disability History Week, each public school shall provide instruction on disability history, people with disabilities and the disability rights movement. The instruction shall be integrated into the existing school curriculum in a manner such as, but not limited to, supplementing existing lesson plans, holding school assemblies or providing other school activities. The instruction may be delivered by school personnel or by guest speakers.

(c) State institutions of higher education are encouraged to conduct and promote activities that provide education, awareness and understanding of disability history, people with disabilities and the disability rights movement.

(d) The Legislature is encouraged to annually recognize Disability History Week by introducing a concurrent resolution to:

(1) Recognize youth leaders in the disability rights movement;
(2) Reaffirm a commitment to the full inclusion of people with disabilities in society; and

(3) Recognize the disability rights movement as an important part of the history of this state and nation.

(e) Recognized resources for information, materials and speakers regarding disability history, people with disabilities and the disability rights movement include, but are not limited to:

(1) Centers for Independent Living;

(2) The Statewide Independent Living Council;

(3) The Developmental Disabilities Council; and

(4) The State Americans with Disabilities Act Coordinator.

(f) The provisions of this article are not intended to create a burden, financial or otherwise, for public schools, teachers or state institutions of higher education.

CHAPTER 68

(Com. Sub. for S. B. 576 — By Senators Jenkins, Harrison, Foster, Oliverio, Kessler and McKenzie)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]
prejudgment and post-judgment awards; providing interest rate for domestic relation judgment obligations; establishing methodology for establishing rates for judgments or decrees generally; allowing exceptions to established interest rate based on prior written agreements; requiring the state Supreme Court of Appeals to annually determine and publish annual interest rate; providing that the interest rate applies for the entire term of the judgment or decree; and providing internal effective dates.

Be it enacted by the Legislature of West Virginia:

That §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §56-6-31 of said code be amended and reenacted, all to read as follows:

Chapter
48. Domestic Relations.
56. Pleading and Practice.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 3. MISCELLANEOUS PROVISIONS RELATING TO DOMESTIC RELATIONS.

§48-1-302. Calculation of interest.

1 (a) Notwithstanding any other provisions of the code, if an obligation to pay interest arises under this chapter, the rate of interest is ten percent per annum and proportionate thereto for a greater or lesser sum, or for a longer or shorter time. Interest awarded shall only be simple interest and nothing in this section may be construed to permit awarding of compound interest. Interest accrues only upon the outstanding principal of such obligation.

9 (b) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic
relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), Rule 11 of the West Virginia Rules of Civil Procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court pursuant to subsection (a) of this section.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within twenty-four months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest.

(d) Amendments to this section enacted by the Legislature during the two thousand six regular session shall become effective the first day of January, two thousand seven.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 6. TRIAL.

§56-6-31. Interest on judgment or decree.

(a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract or otherwise, entered by any court of this state shall bear interest from the date thereof, whether it be so stated in the judgment or decree or not: Provided, That if the judgment or decree, or any part thereof, is
for special damages, as defined below, or for liquidated
damages, the amount of special or liquidated damages shall
bear interest at the rate in effect for the calendar year in which
the right to bring the same shall have accrued, as determined by
the court and that established rate shall remain constant from
that date until the date of the judgment or decree, notwithstand-
ing changes in the federal reserve district discount rate in effect
in subsequent years prior to the date of the judgment or decree.
Special damages includes lost wages and income, medical
expenses, damages to tangible personal property and similar
out-of-pocket expenditures, as determined by the court. If an
obligation is based upon a written agreement, the obligation
shall bear a prejudgment interest at the rate set forth in the
written agreement until the date the judgment or decree is
entered and, thereafter, the judgment interest rate shall be the
same rate as provided for in this section.

(b) Notwithstanding the provisions of section five, article
six, chapter forty-seven of this code, the rate of interest on
judgments and decrees for the payment of money, including
prejudgment interest, is three percentage points above the Fifth
Federal Reserve District secondary discount rate in effect on the
second day of January of the year in which the judgment or
decree is entered: Provided, That the rate of prejudgment and
post-judgment interest shall not exceed eleven percent per
annum or be less than seven percent per annum. The adminis-
trative office of the Supreme Court of Appeals shall annually
determine the interest rate to be paid upon judgments or decrees
for the payment of money and shall take appropriate measures
to promptly notify the courts and members of the West Virginia
State Bar of the rate of interest in effect for the calendar year in
question. Once the rate of interest is established by a judgment
or decree as provided in this section, that established rate shall
thereafter remain constant for that particular judgment or
decree, notwithstanding changes in the Federal Reserve District
discount rate in effect in subsequent years.
Chapter 69

(H. B. 4472 — By Delegates Kominar, Varner and Craig)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]


Be it enacted by the Legislature of West Virginia:

That §48-10-101, §48-10-301, §48-10-401, §48-10-501, §48-10-901, §48-10-1001, §48-10-1002 and §48-10-1101 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-101. Legislative findings.
§48-10-301. Persons who may apply for grandparent visitation; venue.
§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.
§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.
§48-10-901. Effect of remarriage of the custodial parent.
§48-10-1001. Continuing jurisdiction of circuit court or family court.
§48-10-1002. Termination of grandparent visitation.
§48-10-1101. Attorney’s fees; reasonable costs.
§48-10-101. Legislative findings.

1 The Legislature finds that circumstances arise where it is appropriate for circuit courts or family courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration.

§48-10-301. Persons who may apply for grandparent visitation; venue.

1 A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court or family court of the county in which that child resides for an order granting visitation with his or her grandchild.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

1 (a) The provisions of this section apply to any pending actions for divorce, custody, legal separation, annulment or establishment of paternity.

(b) After the commencement of the action, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the circuit court or family court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.
1 The circuit court or family court shall grant reasonable
2 visitation to a grandparent upon a finding that visitation would
3 be in the best interests of the child and would not substantially
4 interfere with the parent-child relationship.

§48-10-901. Effect of remarriage of the custodial parent.

1 The remarriage of the custodial parent of a child does not
2 affect the authority of a circuit court or family court to grant
3 reasonable visitation to any grandparent.

§48-10-1001. Continuing jurisdiction of circuit court or family
   court.

1 Any circuit court or family court that grants visitation rights
2 to a grandparent shall retain jurisdiction throughout the
3 minority of the minor child with whom visitation is granted to
4 modify or terminate such rights as dictated by the best interests
5 of the minor child.

§48-10-1002. Termination of grandparent visitation.

1 A circuit court or family court shall, based upon a petition
2 brought by an interested person, terminate any grant of the right
3 of grandparent visitation upon presentation of a preponderance
4 of the evidence that a grandparent granted visitation has
5 materially violated the terms and conditions of the order of
6 visitation.

§48-10-1101. Attorney’s fees; reasonable costs.

1 In an action brought under the provisions of this article, a
2 circuit court or family court may order payment of reasonable
3 attorney’s fees and costs based upon the equities of the posi-
4 tions asserted by the parties to pay such fees and costs.
AN ACT to amend and reenact §48-27-311 of the Code of West Virginia, 1931, as amended, relating to domestic violence protective orders served on persons out-of-state having the same force and effect as those served in-state.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (1) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to Rule 4 of the West Virginia Rules of Civil Procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (2) a copy of the order is mailed by certified or registered mail to the respondent
Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state’s boundaries.

CHAPTER 71

(Com. Sub. for H. B. 4313 — By Delegates Brown, Amores, Howard and Longstreth)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §48-27-510 of the Code of West Virginia, 1931, as amended, relating to petitions of appeal of domestic violence protective orders.

Be it enacted by the Legislature of West Virginia:

That §48-27-510 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


(a) A petitioner who has been denied an emergency protective order may file a petition for appeal of the denial, within five days of the denial, to the family court.
(b) Any party who alleges that he or she will be adversely affected or aggrieved by a final protective order, or the denial or dismissal of a petition for a protective order, may file a petition for appeal with the circuit court within ten days of the entry of the order by the family court. The order shall remain in effect pending an appeal unless stayed by order of the family court sua sponte or upon motion of a party, or by order of the circuit court upon motion of a party. No bond shall be required for any appeal under this section.

(c) A petition for appeal filed pursuant to this section shall be heard by the court within ten days from the filing of the petition.

(d) The standard of review of findings of fact made by the family court is clearly erroneous and the standard of review of application of the law to the facts is an abuse of discretion standard.

CHAPTER 72

(Com. Sub. for S. B. 219 — By Senators Foster, Oliverio, Minard and Hunter)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-2-3a of said code, all relating to graduated-driver’s licenses generally; changing the expiration for level one permits and level two licenses; prohibiting the use of a handheld wireless communication device while driving by a minor holding a level one instruc-
tion permit or a level two license; and providing penalties for such violations.

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

That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-2-3a of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

§17B-1-1. Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:

(a) *Vehicle.* — Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

(b) *Motor vehicle.* — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

(c) *Motorcycle.* — Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five-a, article one, chapter seventeen-c of this code, a snowmobile as defined in section one-mm, article one, chapter seventeen-a of this code and an all-terrain vehicle as defined in section one-ii, article one, chapter seventeen-a of this code;
(d) **Farm tractor.** — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;

(e) **School bus.** — Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;

(f) **Person.** — Every natural person, firm, copartnership, association or corporation;

(g) **Operator.** — Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;

(h) **Chauffeur.** — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;

(i) **Driver.** — Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver’s license;

(j) **Driver’s License.** — Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;

(k) **Owner.** — A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of
purchase upon performance of the conditions stated in the
agreement and with an immediate right of possession vested in
the conditional vendee or lessee, or in the event a mortgagor of
a vehicle is entitled to possession, then such conditional vendee
or lessee or mortgagor shall be deemed the owner for the
purpose of this chapter;

(l) Nonresident. — Every person who is not a resident of
this state;

(m) Street or highway. — The entire width between the
boundary lines of every way publicly maintained when any part
thereof is open to the use of the public for purposes of vehicular
tavel;

(n) Commissioner. — The Commissioner of Motor
Vehicles of this state;

(o) Division. — The Division of Motor Vehicles of this
state acting directly or through its duly authorized officers or
agents;

(p) Suspension. — Suspension means that the driver’s
license and privilege to drive a motor vehicle on the public
highways are temporarily withdrawn but only during the period
of such suspension;

(q) Revocation. — Revocation means that the driver’s
license and privilege to drive a motor vehicle on the public
highways are terminated and shall not be renewed or restored,
except that an application for a new license may be presented
and acted upon by the division after the expiration of at least
one year after the date of revocation, except as otherwise
provided in section two, article five-a, chapter seventeen-c of
this code;

(r) Cancellation. — Cancellation means that a driver’s
license is annulled and terminated because of some error or
defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice
and application for a new license may be made at any time after such cancellation.

(s) "9-1-1 system" means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty-four of this code.

(t) "Wireless communication device" means a handheld device used to access a wireless telephone service or a text messaging device.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver’s licenses.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver’s license in accordance with the three level graduated driver’s license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, and section two, article five-a both of chapter seventeen-c of this code. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance provisions of section eleven, article eight, chapter eighteen of this code.

(c) Level one instruction permit. — An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) Eligibility. — The division shall not issue a level one instruction permit unless the applicant:
(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver’s license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified birth certificate issued by a state or other governmental entity responsible for vital records, evidencing that the applicant meets the minimum age requirement;

(C) Passes the vision and written knowledge examination, and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars.

(2) Terms and conditions of instruction permit. — A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has
been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver’s education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;

(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit or a level two intermediate driver’s license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement
officer with probable cause detains a driver for a suspected violation of another provision of this code.

(d) *Level two intermediate driver’s license.* — An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver’s license.

(1) *Eligibility.* — The division shall not issue a level two intermediate driver’s license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver’s education course approved by the state department of education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: *Provided,* That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver’s education courses or to provide driver’s education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) *Terms and conditions of a level two intermediate driver’s license.* — A level two intermediate driver’s license
issued under the provisions of this section shall expire thirty
days after the applicant attains the age of eighteen, or until the
licensee qualifies for a level three full Class E license, whichever
comes first. In addition to all other provisions of this code
for which a driver’s license may be restricted, suspended,
revoked or canceled, the holder of a level two intermediate
driver’s license may only operate a motor vehicle under the
following conditions:

(A) Unsupervised between the hours of five a.m. and eleven
p.m.;

(B) Only under the direct supervision of a licensed driver,
age twenty-one years or older, between the hours of eleven p.m.
and five a.m. except when the licensee is going to or returning
from:

(i) Lawful employment;

(ii) A school sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to
operate a motor vehicle to prevent bodily injury or death of
another;

(C) All occupants shall use safety belts in accordance with
the provisions of section forty-nine, article fifteen, chapter
seventeen-c of this code;

(D) Operates the vehicle with no more than three passen-
gers under the age of nineteen, unless the passengers are family
members, in addition to the driver;

(E) Without any measurable blood alcohol content in
accordance with the provisions of subsection (h), section two,
article five, chapter seventeen-c of this code;
(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level one instruction permit or a level two intermediate driver’s license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver’s license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction free driving criteria for early eligibility for a level three driver’s license; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver’s license, the licensee’s privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee’s eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver’s license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and
if otherwise eligible may reapply for an instruction permit, then
a driver’s license in accordance with the provisions of sections
five, six and seven of this article.

(e) Level three, full Class E license. — The level three
license is valid until the day designated by the commissioner of
the month in which the licensee attains the age of twenty-one.
Unless otherwise provided in this section or any other section
of this code, the holder of a level three full Class E license is
subject to the same terms and conditions as the holder of a
regular Class E driver’s license.

A level two intermediate licensee whose privilege to
operate a motor vehicle has not been suspended, revoked or
otherwise canceled and who meets all other requirements of the
code, may be issued a level three full Class E license without
further examination or road skills testing, if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the
provisions of section six of this article;

(B) Has held the level two intermediate license conviction-free for the twelve-month period immediately preceding
the date of the application;

(C) Has completed any driver improvement program
required under paragraph (G), subdivision (2), subsection (d) of
this section; and

(D) Pays a fee of two dollars and fifty cents for each year
the license is valid. An additional fee of fifty cents shall be
collected to be deposited in the combined voter registration and
driver’s licensing fund established in section twelve, article
two, chapter three of this code; or
(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver’s licensing fund established in section twelve, article two, chapter three of this code.

CHAPTER 73

(S. B. 785 — By Senators Plymale, Edgell, Dempsey, Hunter, Oliverio, White, Boley and Sprouse)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended, relating to requirements for physical education in public schools; additional condition authorizing development of alternative programs to meet requirements; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection, use and reporting body mass index data.

Be it enacted by the Legislature of West Virginia:

That §18-2-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.
§18-2-7a. Legislative findings; required physical education; program in physical fitness.

(a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this state. There is increasing evidence that all segments of the population, beginning with children, are becoming more sedentary, more overweight and more likely to develop health risks and diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further finds that the promotion of physical activity during the school day for school children is a crucial step in combating this growing epidemic and in changing the attitudes and behavior of the residents of this state toward health promoting physical activity.

(b) As a result of these findings, the State Department of Education shall establish the requirement that each child enrolled in the public schools of this state actively participates in physical education classes during the school year to the level of his or her ability as follows:

(1) *Elementary school grades.* -- Not less than thirty minutes of physical education, including physical exercise and age-appropriate physical activities, for not less than three days a week.

(2) *Middle school grades.* -- Not less than one full period of physical education, including physical exercise and age-appropriate physical activities, each school day of one semester of the school year.

(3) *High school grades.* -- Not less than one full course credit of physical education, including physical exercise and age-appropriate physical activities, which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.
(c) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: Provided, That schools which do not currently have the number of certified physical education teachers, do not currently have the required physical setting or would have to significantly alter academic offerings to meet the physical education requirements may develop alternate programs that will enable current staff, physical settings and offerings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the State Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

(d) The state board shall prescribe a program within the existing health and physical education program which incorporates fitness testing, reporting, recognition, fitness events and incentive programs which requires the participation in grades four through eight and the required high school course. The program shall be selected from nationally accepted fitness testing programs designed for school-aged children that test cardiovascular fitness, muscular strength and endurance, flexibility and body composition: Provided, That nothing in this subsection shall be construed to prohibit the use of programs designed under the auspices of the President's Council on Physical Fitness and Sports. The program shall include modified tests for exceptional students. Each school in the state shall participate in National Physical Fitness and Sports Month in May of each year and shall make every effort to involve the community it serves in the related events.

(e) The state board shall promulgate a rule in accordance with the provisions article three-b, chapter twenty-nine-a of this code that includes at least the following provisions to provide
(1) The data shall be collected using the appropriate methodology for assessing the body mass index from student height and weight data;

(2) The data shall be collected on a scientifically drawn sample of students;

(3) The data shall be collected and reported in a manner that protects student confidentiality;

(4) The data shall be reported to the Department of Education; and

(5) All body mass index data shall be reported in aggregate to the Governor, the State Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resources Accountability for use as an indicator of progress toward promoting healthy lifestyles among school-aged children.

CHAPTER 74

(Com. Sub. for S. B. 127 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]  

[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]  

AN ACT to amend and reenact §18-2-15a of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-8a
of said code, all relating to regional education service agencies; study by the State Superintendent of Schools; and foundation allowance for regional education service agencies.

Be it enacted by the Legislature of West Virginia:

That §18-2-15a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-8a of said code be amended and reenacted, all to read as follows:

Article 2. State Board of Education.

9a. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.


(a) The state superintendent shall conduct a comprehensive study of the programs, governance and administration of the regional education service agencies established pursuant to section twenty-six of this article.

(b) The study shall include, but is not limited to, the following:

(1) The general structure and specific processes for governance and oversight of the regional education service agencies to ensure efficiency of operations and accountability in the areas of:

(A) Financial integrity, oversight and accountability;

(B) Fiscal oversight of budgeting, salaries, benefits and employment;

(C) Service delivery in priority areas, including, but not limited to: (i) The types, cost, convenience and results of in-
service training programs and other efforts to assist low
performing schools and school systems; and (ii) the costs and
turnaround time of computer repair services; and

(D) The costs and benefits of other services provided to the
respective members’ counties;

(2) Areas of needed improvements, including any existing
limitations or hindrances to improvement;

(3) The powers and duties of state board and state superin-
tendent relating to regional education service agencies;

(4) The qualifications and procedures for selection of
agency executive directors;

(5) The selection and supervision of agency staff;

(6) Development of agency budget;

(7) Oversight of agency purchasing and auditing proce-
dures;

(8) Development of programs and delivery of services; and

(9) Procedures to ensure fiscal and programmatic account-
ability.

(c) The state superintendent shall report findings generated
by the study, together with recommendations and any legisla-
tion necessary to effectuate the recommendations, to the
Legislative Oversight Commission on Education Accountability
by the first day of December, two thousand six.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8a. Foundation allowance for regional education service
agencies.
For the fiscal year beginning on the first day of July, two
thousand six, and for each fiscal year thereafter, the foundation
allowance for regional education service agencies shall be equal
to sixty-three one-hundredths percent of the allocation for
professional educators as determined in section four of this
article, but not more than four million two hundred thousand
dollars. The allowance shall be distributed to the regional
education service agencies in accordance with rules adopted by
the state board. The allowance for regional education service
agencies shall be excluded from the computation of total basic
state aid as provided in section twelve of this article.

CHAPTER 75
(Com. Sub. for S. B. 53 — By Senators Hunter, Dempsey and Unger)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §18-5-22 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §18-9A-10a, all relating to
improving the capacity of county boards of education to provide
school health services; providing for distribution to counties of
appropriations to support certain school health service needs;
eliminating the authority of the Commissioner of the Bureau for
Public Health to promulgate a rule to implement certain training
and create certain standards and giving that authority to the State
Board of Education; and establishing an allowance for new nurse
positions to the extent funds are available.

Be it enacted by the Legislature of West Virginia:
That §18-5-22 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 §18-9A-10a, all to read as follows:

Article
5. County Board of Education.
9A. Public School Support.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

(a) County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county and have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

(b) Each county board shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: Provided, That each county shall employ full time at least one school nurse: Provided, however, That a county board may contract with a public health department for services considered equivalent to those required by this section in accordance with a plan to be approved by the state board: Provided further, That the state board shall promulgate rules requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils. An appropriation may be made to the state department to be distributed to county boards to support school health service needs that exceed the capacity of staff as mandated in this section. Each county board shall apply to the state superintendent for receipt of this funding
in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of students with specialized health care needs.

(c) Any person employed as a school nurse must be a registered professional nurse properly licensed by the West Virginia Board of Examiners for Registered Professional Nurses in accordance with article seven, chapter thirty of this code.

(d) Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional may be performed only by school nurses, other licensed school health care providers as provided in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student’s physician, parents and, in some instances, an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse: Provided, That nothing in this section prohibits any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section “specialized health procedures” means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. “School employee” means “teachers” as defined in section one, article one of this chapter and “aides” as defined in section eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning on the first day of July, two thousand two, “school employee” also means “secretary I”, “secretary II” and “secretary III” as defined in section eight, article four, chapter
eighteen-a of this code: *Provided, however*, That a “secretary I”, “secretary II” and “secretary III” shall be limited to the dispensing of medications.

(e) Any school service employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: *Provided,* That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: *Provided, however,* That commencing with the first day of July, one thousand nine hundred eighty-nine, any newly employed school employee in the field of special education is required to undergo the training and retraining as provided in this section: *Provided further,* That if an employee who holds a class title of an aide is employed in a school and the aide has received the training, pursuant to this section, then an employee in the field of special education is not required to perform the specialized health care procedures.

(f) Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

(g) There shall be a council of school nurses which shall be convened by the State Board of Education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the Commissioner of the Bureau for Public Health who shall consult with the State
Department of Education. The state board then has the authority to promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement the training and to create standards used by those school nurses and school employees performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

(h) The State Board of Education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the Council of School Nurses and implemented by the rule promulgated by the state board.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10a. Allowance for student health services.

(a) The Legislature finds that the need for health services has grown over the years in the public schools, particularly with respect to serving special needs students and regulations on the administration of medications, and the existing statutorily required ratio of one nurse for each one thousand five hundred students in net enrollment in grades kindergarten through seven is no longer adequate. The Legislature further finds that limits on state-funded professional personnel, required ratios for instructional personnel and declining student population and population density require county boards to make increasingly difficult decisions with respect to the instructional personnel employed in the classroom and those that provide health and other services to students. Therefore, the intent of this section is to augment the funding of instructional personnel and to assure improved health services for students by partially funding nurse positions for certain counties as an intermediate step toward improving instructional personnel staffing. The Legislature intends to further examine the state basic foundation program in context with the changing educational environ-
ment and address the staffing and other needs of the public 
schools as may be indicated through that examination.

(b) Commencing with the school year beginning on the first
day of July, two thousand six, notwithstanding any other
 provision of this code to the contrary and not subject to nor
counted toward the respective ratios of professional and
instructional personnel per students in adjusted and net enroll-
ment set forth in sections four and five-a of this article, counties
shall receive funding at the state average contracted salary for
nurses plus fixed charges, retirement and the public employee
insurance employer premium for nurse positions as determined
by applying a ratio of one nurse per each one thousand five
hundred students in net enrollment, or major fraction thereof, in
grades prekindergarten through twelve, less existing nurses
employed during the two thousand five-two thousand six school
year, to the extent funds are available.

CHAPTER 76

(S. B. 635 — By Senators Edgell, Plymale, Bailey, Dempsey, Hunter,
Unger, White, Boley, Guills, Harrison and Sprouse)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §18-5-47, relating to
requiring flood insurance on certain buildings, and the contents of
those buildings, owned by a county board of education.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-47, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-47. County board flood insurance requirements.

(a) Each county board shall maintain flood insurance on each insurable building that it owns and that meets one or both of the following requirements:

1. The building is within the identified special flood hazard area which is the area on a flood hazard boundary map or a flood insurance rate map that is identified as an “A zone”, a numbered “A zone” or an “AE zone” or regulatory one hundred year floodplain and the building has a replacement value that is greater than three hundred thousand dollars; or

2. The building has been damaged in a previous flood and flood insurance is required by the Federal Emergency Management Agency.

(b) Each county board also shall maintain flood insurance on the contents of each insurable building that it owns and that meets one or both of the requirements set forth in subsection (a) of this section.

(c) The buildings and the contents of those buildings required to be insured by this section shall be insured at the maximum amounts available through the National Flood Insurance Program or the estimated replacement value of the structure and contents, whichever is less.
AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to process, service and parties charged in summons or warrants for violations of compulsory school attendance; authorizing charge of more than one parent, custodian or guardian in single complaint; and continuing attempts to serve until executed or end of school term.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age and students who remain enrolled beyond the sixteenth birthday as defined under this article and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which result
in absences from school even though not clearly in violation of
law.

(b) In the case of five consecutive or ten total unexcused
absences of a child during a school year, the attendance director
or assistant shall serve written notice to the parent, guardian or
custodian of such child that the attendance of such child at
school is required and that within ten days of receipt of the
notice the parent, guardian or custodian, accompanied by the
child, shall report in person to the school the child attends for
a conference with the principal or other designated representa-
tive of the school in order to discuss and correct the circum-
stances causing the inexcusable absences of the child; and if the
parent, guardian or custodian does not comply with the
provisions of this article, then the attendance director or
assistant shall make complaint against the parent, guardian or
custodian before a magistrate of the county. If it appears from
the complaint that there is probable cause to believe that an
offense has been committed and that the accused has committed
it, a summons or a warrant for the arrest of the accused shall
issue to any officer authorized by law to serve the summons or
to arrest persons charged with offenses against the state. More
than one parent, guardian or custodian may be charged in a
complaint. Initial service of a summons or warrant issued
pursuant to the provisions of this section shall be attempted
within ten calendar days of receipt of the summons or warrant
and subsequent attempts at service shall continue until the
summons or warrant is executed or until the end of the school
term during which the complaint is made, whichever is later.

(c) The magistrate court clerk, or the clerk of the circuit
court performing the duties of the magistrate court as autho-
ized in section eight, article one, chapter fifty of this code,
shall assign the case to a magistrate within ten days of execut-
on of the summons or warrant. The hearing shall be held
within twenty days of the assignment to the magistrate, subject
to lawful continuance. The magistrate shall provide to the accused at least ten days’ advance notice of the date, time and place of the hearing.

(d) When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of the child. The county attendance director or assistant shall, in the performance of his or her duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

(e) The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director shall be responsible under direction of the county superintendent for the efficient administration of school attendance in the county.

(f) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;
(3) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;

(4) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that shall be excluded for accountability purposes. The absences that shall be excluded by the rule shall include, but not be limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers’ conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.
AN ACT to amend and reenact §18-19-1, §18-19-2 and §18-19-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18C-1-4 of said code, all relating to state-funded student financial aid resources; modifying eligibility criteria for certain programs; modifying the types of institutions at which certain benefits may be used; expanding certain benefit eligibility to children of certain military personnel; increasing certain benefit amounts; extending eligibility age limits for certain benefits; and extending the benefit eligibility until a date certain to certain students who attend public high school outside the state.

Be it enacted by the Legislature of West Virginia:

That §18-19-1, §18-19-2 and §18-19-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18C-1-4 of said code be amended and reenacted, all to read as follows:

Chapter
  18. Education.
  18C. Student Loans; Scholarships and State Aid.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.
§18-19-1. Appropriation to provide educational opportunities.

(a) The purpose of this article is to provide educational opportunities for the children of those:

1. Who served in:

   (A) The Army, Navy or Marine Corps of the United States during the world war from the sixth day of April, one thousand nine hundred seventeen, to the second day of July, one thousand nine hundred twenty-one, all dates inclusive;

   (B) The armed forces of the United States of America at any time between the first day of December, one thousand nine hundred forty-one, and the declaration of peace by the Congress of the United States, all dates inclusive;

   (C) The armed forces of the United States of America at any time between the twenty-seventh day of June, one thousand nine hundred fifty, and the thirty-first day of January, one thousand nine hundred fifty-five, all dates inclusive;

   (D) The armed forces of the United States of America at any time between the fifth day of August, one thousand nine hundred sixty-four, and the seventh day of May, one thousand nine hundred seventy-five, all dates inclusive; or

   (E) The Armed Forces of the United States of America at any time during which the forces or members of the reserve components are called to active duty by the President of the United States under Title 10 of the United States Code for the purpose of entering into armed combat; and
(2) Who were killed in action or have died or may hereafter die from disease or disability resulting from this war service.

(b) For the purpose of this article, there is appropriated from the State Fund, General Revenue the sum of at least five thousand dollars for each fiscal year commencing the first day of July and ending on the thirtieth day of June of each year of the next biennium to be used for the benefit of these children while attending post-secondary education or training institutions.

(c) This benefit also shall be given to children of a service member killed during hostile actions as defined by the agency administering this section.

(d) The term “children” as used in this article includes any child of a veteran who has been legitimized by operation of law prior to the veteran’s demise.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

(a) To be eligible for the benefits of this article, a child set forth in section one of this article shall be:

(1) At least sixteen and not more than twenty-five years of age;

(2) Enrolled in a post-secondary education or training institution in this state; and

(3) The child of an enlistee who designated West Virginia as his or her state of record.

(b) The application shall be made to, and upon forms provided by, the West Virginia Division of Veterans’ Affairs. The division shall determine the eligibility of those who apply
and the yearly amount to be allotted each applicant. The amount, in the discretion of the division, may vary from year to year, but may not exceed the sum of one thousand dollars in any one semester or a total of two thousand dollars in any one year. In selecting those to receive the benefits of this article, preference shall be given those who are otherwise financially unable to secure the educational opportunities.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

(a) A state post-secondary education or training institution may not charge tuition and fees to an eligible applicant attending that institution pursuant to this article. The funds herein appropriated shall be expended by the West Virginia Division of Veterans’ Affairs only for matriculation fees, board, room rent, books, supplies and other necessary living expenses of those children.

(b) In the event that a child eligible for a tuition waiver pursuant to this section attends a private post-secondary education or training institution where the tuition waiver is not applicable, that child remains eligible for up to two thousand dollars per year in education benefits pursuant to section two of this article.

(c) In addition to the tuition waiver available pursuant to this section, a child attending a state post-secondary education or training institution is eligible for up to two thousand dollars per year in education benefits as provided in section two of this article.

(d) The division is charged with the duty of disbursing the funds herein provided and shall draw its requisitions upon the State Auditor for that purpose. In its discretion the division, if satisfied as to the accuracy and amounts of the expenditures,
shall make the requisitions payable to the post-secondary education or training institutions or to those furnishing to the children board, room rent, books, supplies and other necessary living expenses.

(e) If a child receiving benefits or tuition waivers pursuant to this article withdraws from the institution, all allowances to the child shall cease.

(f) A member or employee of the division may not receive any additional compensation for the services herein required.

(g) Acceptance of benefits or tuition waivers pursuant to this article does not limit the acceptance of any other scholarship or grant for which a student may be eligible.

(h) Notwithstanding the provisions of this article to the contrary, until the first day of January, two thousand seven, benefits received pursuant to this article may be used for educational opportunities received at an education or training institution that is below the post-secondary level.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

*§ 18C-1-4. Eligibility of commuting students and children of military personnel for state-funded student financial aid, grants and scholarships.

(a) Notwithstanding any other provision of this code or rule to the contrary, a student who attended a public or private high school outside the state is eligible for state-funded student financial aid, grants and scholarships if:

*CLERK’S NOTE: This section was also amended by H. B. 4049 (Chapter 79), which passed subsequent to this act.
The student meets all other eligibility requirements for the aid, grant or scholarship; and either

(2) The student resided in West Virginia while attending high school in another state, and:

(A) The student resided with his or her parent or legal guardian who:

(i) Was a resident of this state; and

(ii) Had been a resident of this state for at least two years immediately preceding the student’s attendance at the school;

(B) The student commuted during the school term on a daily basis from this state to the school;

(C) The student is a dependent of the parent or legal guardian upon which eligibility is based;

(D) The student has not established domicile outside the state; and

(E) At the discretion of the State Superintendent of Schools, as defined in section one, article one, chapter eighteen of this code:

(i) The school is fully accredited in that state to the degree acceptable to the State Superintendent of Schools; and

(ii) The school’s curriculum requirements for graduation are equivalent to the curriculum requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the State Superintendent of Schools; or

(3) The student resided and attended high school in another state or a United States territory, United States possession or foreign country and:
(A) The student resided with his or her parent or legal guardian; and

(B) The student’s parent or legal guardian:

(i) Served in the United States armed forces while the student attended high school in such state, territory, possession or country;

(ii) Was stationed for military purposes in such state, territory, possession or country; and

(iii) Maintained legal residence in West Virginia while stationed in such state, territory, possession or country.

(b) This section may not be construed to alter, amend or extend any application deadlines or other requirements established by law or policy.

(c) The provisions of this section expire on the thirtieth day of June, two thousand ten.

CHAPTER 79

(H. B. 4049 — By Delegates Campbell, Williams, Perry, Paxton, Spencer, Crosier, Fragale, Eldridge, Wysong, Leggett and Tansill)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on March 31, 2006.]

AN ACT to repeal §18B-14-9 of the Code of West Virginia, 1931, as amended; to repeal §18C-5-8 of said code; to repeal §18C-7-9 of said code; to repeal §18C-8-1, §18C-8-2 and §18C-8-3 of said code; to amend and reenact §18-30-6 of said code; to amend and
reenact §18B-1B-2 of said code; to amend and reenact §18B-4-1 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18C-1-1, §18C-1-3 and §18C-1-4 of said code; to amend said code by adding thereto a new section, designated §18C-1-5; to amend and reenact §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code; and to amend and reenact §18C-7-2, §18C-7-3, §18C-7-4 §18C-7-5, §18C-7-6 and §18C-7-7 of said code, all relating to higher education generally; the Higher Education Policy Commission; student financial aid programs; need-based and merit-based student financial aid programs; West Virginia Prepaid Tuition Trust Program; PROMISE Scholarship Program; Higher Education Grant Program; increasing amount to be transferred annually to Prepaid Tuition Trust Escrow Fund; establishing additional eligibility requirements for Higher Education Policy Commission members; requiring coordination among certain public education entities; deleting certain requirement relating to supervision of Higher Education Policy Commission staff; establishing conditions limiting tuition and fee increases for certain students at certain state institutions of higher education; providing exceptions to cap on tuition and fee increases; requiring state institutions of higher education to provide certain information; requiring report to Legislative Oversight Commission on Education Accountability annually; expanding certain legislative findings; establishing certain legislative intent; defining purposes of state-supported financial aid programs; expanding eligibility for PROMISE scholarship awards to certain students attending high school outside the state; creating the Student Financial Aid Advisory Board; providing for membership of advisory board; specifying powers, duties and responsibilities of advisory board; providing for reimbursement of member expenses; continuing Higher Education Grant Program; specifying purposes of grant program; requiring consultation among entities for student financial aid administration; creating the “higher education grant fund” special revenue fund; establishing legislative intent regarding increased levels of appropriation to the Higher Education Grant Fund and
the PROMISE Scholarship Fund; modifying PROMISE Scholarship eligibility requirements; clarifying flexibility to change PROMISE eligibility requirements; expanding membership of PROMISE Scholarship Board of Control; establishing additional eligibility requirements for members of PROMISE Board; encouraging PROMISE Board to use certain staff for administrative and technical support; specifying additional duties of PROMISE Board; requiring PROMISE Board to report annually to Joint Standing Committee on Education; specifying limits on certain grant awards; defining purposes of PROMISE Scholarship Program; modifying the calculation for determining student financial aid award levels for certain higher education grant recipients; defining terms and clarifying the definitions of certain terms; requiring promulgation of legislative rules and emergency rule; limiting authority of PROMISE Board to require scholarship recipients to repay all or part of scholarship amount; modifying definition of “eligible institution” for purpose of participating in PROMISE scholarship program; making technical corrections; and repealing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18B-14-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18C-5-8 of said code be repealed; that §18C-7-9 of said code be repealed; that §18C-8-1, §18C-8-2 and §18C-8-3 of said code be repealed; that §18-30-6 of said code be amended and reenacted; that §18B-1B-2 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18C-1-1, §18C-1-3 and §18C-1-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18C-1-5; that §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code be amended and reenacted; and that §18C-7-2, §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted, all to read as follows:
ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-6. West Virginia prepaid tuition trust.

(a) The “Prepaid Tuition Trust Fund” is continued within the accounts held by the State Treasurer for administration by the board.

(b) The Prepaid Tuition Trust Fund shall continue to receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall remain in the Prepaid Tuition Trust Fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.

(c) The corpus, assets and earnings of the Prepaid Tuition Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the prepaid tuition plan does not constitute a debt of the state, but is solely an obligation of the Prepaid Tuition Trust Fund. The state has no obligation to any designated beneficiary or any other person as a result of the prepaid tuition plan. All amounts payable from the Prepaid Tuition Trust Fund are limited to amounts available in the Prepaid Tuition Trust Fund.
(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The prepaid tuition plan and the Prepaid Tuition Trust Fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan and after payment of all fees, charges, expenses and penalties, the assets of the Prepaid Tuition Trust Fund are paid to current account owners, to the extent possible, on a pro rata basis as their interests may appear, and any assets presumed abandoned are reported and remitted to the unclaimed property administrator in accordance with the Uniform Unclaimed Property Act in article eight, chapter thirty-six of this code. Any assets then remaining in the Prepaid Tuition Trust Fund shall revert to the state General Revenue Fund.

(g) Effective the eighth day of March, two thousand three, the prepaid tuition plan is closed to new contracts until the Legislature authorizes the plan to reopen. Closing the plan to new contracts shall not mean the prepaid tuition plan is closed and shall not affect any prepaid tuition plan contracts in effect on the eighth day of March, two thousand three. All contract owners shall continue to pay any amounts due, including without limitation monthly installments, penalties and fees. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is closed in accordance with this article.

(h) The board shall continue to have the actuarial soundness of the Prepaid Tuition Trust Fund evaluated annually.
(i) On or before the first day of December, two thousand three, and each year thereafter, the chairman of the board shall submit to the Governor, the President of the Senate, the Speaker of the House of Delegates, Joint Committee on Government and Finance and the unclaimed property administrator a report certified by an actuary of the actuarial status of the Prepaid Tuition Trust Fund at the end of the fiscal year immediately preceding the date of the report. In the event the report for fiscal year two thousand three states there is a projected unfunded liability in the Prepaid Tuition Trust Fund, the report shall also state the amount needed for the next fiscal year to eliminate the projected unfunded liability in equal payments over a period of ten fiscal years, concluding the thirtieth day of June, two thousand thirteen. In the event the projected unfunded liability of the Prepaid Tuition Trust Fund increases in subsequent reports, the actuary shall calculate the amount needed, less any amount in the prepaid tuition trust escrow fund, to eliminate the projected unfunded liability over a period the actuary determines is fiscally responsible.

(2) The Prepaid Tuition Trust Escrow Fund is hereby created in the State Treasury to guarantee payment of prepaid tuition plan contracts. The board shall invest the Prepaid Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income securities, and all earnings of the escrow fund shall remain in the escrow fund.

(3) In the event the actuary determines an unfunded liability exists in the Prepaid Tuition Trust Fund, the report shall certify the amount of money needed for the next fiscal year to eliminate the projected unfunded liability pursuant to the provisions of subdivision (1) of this subsection. The certified amount may not exceed one million dollars each year. On or before the fifteenth day of December in which the chairman submitted a report stating the amount needed for the next fiscal year to eliminate a projected unfunded liability, the unclaimed property
administrator shall transfer the amount requested, not to exceed one million dollars each year, from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(4) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the amount of money needed to meet the current obligations of the Prepaid Tuition Trust Fund, the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed to meet current obligations of the Prepaid Tuition Trust Fund.

(5) Notwithstanding any provision of this code to the contrary, the Governor, after consultation with the budget office of the Department of Revenue, may request an appropriation to the board in the amount of the deficiency to meet the current obligations of the Prepaid Tuition Trust Fund, in the budget presented to the next session of the Legislature for its consideration. The Legislature is not required to make any appropriation pursuant to this subsection, and the amount of the deficiency is not a debt or a liability of the state.

(6) As used in this section, “current obligations of the Prepaid Tuition Trust Fund” means amounts required for the payment of contract distributions or other obligations of the Prepaid Tuition Trust Fund, the maintenance of the fund, and operating expenses for the current fiscal year.

(7) Nothing in this subsection creates an obligation of state general revenue funds or requires any level of funding by the Legislature.

(8) After the Prepaid Tuition Trust Fund has been closed and all moneys paid in accordance with this section, any moneys remaining in the prepaid tuition trust escrow fund shall be transferred to the General Revenue Fund and the account closed.
(j) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the Prepaid Tuition Trust Fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition Trust Fund is exempt from creditor process and not subject to attachment, garnishment or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

(l) The provisions of this section may not be construed to interfere with the operation of the savings plan authorized under this article.

CHAPTER 18B. HIGHER EDUCATION.

Article
1b. Higher Education Policy Commission.
4. General Administration.
10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of ten members, all of whom are entitled to vote. The membership of the commission is as follows:

(1) The Secretary of Education and the Arts, ex officio.
(2) The State Superintendent of Schools, ex officio;

(3) The chair of the West Virginia Council for Community and Technical College Education, ex officio.

(4) Seven at-large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate: Provided, That prior to appointment, the Governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The Governor shall invite the President of the Senate, the Speaker of the House of Delegates, the chairs of the Senate and House of Delegates Committees on Finance and Education and such other legislative leaders as the Governor may determine to participate in interviewing potential candidates.

(b) Each of the at-large members appointed by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in state law and policy.

(c) The Governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an appointee or employee of any governing board; or an immediate family member of any employee under the jurisdiction of the commission, the council or any governing board.

(d) Of the seven, at-large members appointed by the Governor:

(1) No more than four may belong to the same political party;
(2) At least two shall be appointed from each congressional district; and

(3) Effective the first day of July, two thousand eight, no more than one member may serve from the same county.

(e) The at-large members appointed by the Governor serve overlapping terms of four years.

(f) The Governor shall appoint a member to fill any vacancy among the seven at-large members, by and with the advice and consent of the Senate. Any member appointed to fill a vacancy serves for the unexpired term of the vacating member. The Governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) An at-large member appointed by the Governor may not serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(i) A member of the commission appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.
(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

1. Each chancellor serves at the will and pleasure of the hiring body.

2. Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

3. Each chancellor is responsible for carrying out the directives of the body by whom employed and shall work with that body in developing policy options.

4. The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the Vice Chancellor for Administration.

5. For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff of the institutions under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, the Vice Chancellor for Administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.
(c) The Vice Chancellor for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine.

(d) Suitable offices for the vice chancellor of administration and other staff shall be provided in Charleston.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

1. Tuition and required educational and general fees;
2. Auxiliary and auxiliary capital fees; and
3. Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

1. All tuition and required educational and general fees collected;
2. All auxiliary and auxiliary capital fees collected; and
3. All required educational and general capital fees collected to support existing systemwide and institutional debt.

*CLERK'S NOTE: This section was also amended by H. B. 4690 (Chapter 85) and S. B. 792 (Chapter 84), which passed subsequent to this act.*
17 service and future systemwide and institutional debt service, 18 capital projects and campus renewal for educational and general 19 facilities.

20 (4) Subject to any covenants or restrictions imposed with 21 respect to revenue bonds payable from such accounts, an 22 institution may expend funds from each such special revenue 23 account for any purpose for which funds were collected within 24 that account regardless of the original purpose for which the 25 funds were collected.

26 (c) The purposes for which tuition and fees may be 27 expended include, but are not limited to, health services, student 28 activities, recreational, athletic and extracurricular activities. 29 Additionally, tuition and fees may be used to finance a stu- 30 dent’s attorney to perform legal services for students in civil 31 matters at the institutions: Provided, That the legal services are 32 limited only to those types of cases, programs or services 33 approved by the administrative head of the institution where the 34 legal services are to be performed.

35 (d) The commission and council jointly shall propose a rule 36 for legislative approval in accordance with the provisions of 37 article three-a, chapter twenty-nine-a of this code to govern the 38 fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and, 40 therefore, the commission and council jointly shall file the rule 41 required by subsection (d) of this section as an emergency rule 42 pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the 43 Legislative Oversight Commission on Education Accountabil- 44 ity.

46 (f) The schedule of all tuition and fees, and any changes 47 therein, shall be entered in the minutes of the meeting of the 48 appropriate governing board and the board shall file with the
commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(h) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may
allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, defining conditions under which an institution may offer tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government. The fee may not be used to finance litigation against the institution.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:
(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The
institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(1) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) Subject to the provisions of subdivisions (4) and (8) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three-quarters percent for undergraduate resident students for any fiscal year. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.

(4) Subject to the provisions of subdivision (8) of this subsection, the governing boards of Marshall University and West Virginia University, as these provisions relate to the state
institutions of higher education known as Marshall University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:

(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;
204 (B) Is consistently achieving the benchmarks established in
205 the compact of the institution pursuant to the provisions of
206 article one-a of this chapter;

207 (C) Is continuously pursuing the statewide goals for
208 post-secondary education and the statewide compact established
209 in articles one and one-a of this chapter;

210 (D) Has demonstrated to the satisfaction of the commission
211 or council that an increase will be used to maintain high-quality
212 programs at the institution;

213 (E) Has demonstrated to the satisfaction of the commission
214 or council that the institution is making adequate progress
215 toward achieving the goals for education established by the
216 southern regional education board; and

217 (F) To the extent authorized, will increase by up to five
218 percent the available tuition and fee waivers provided by the
219 institution. The increased waivers may not be used for athletics.

220 (6) This section does not require equal increases among
221 institutions or require any level of increase at an institution.

222 (7) The commission and council shall report to the Legisla-
223 tive Oversight Commission on Education Accountability
224 regarding the basis for each approval or denial as determined
225 using the criteria established in subdivision (5) of this subsec-
226 tion.

227 (8) Notwithstanding the provisions of subdivisions (1) and
228 (4) of this subsection, tuition and fee increases at state institu-
229 tions of higher education which are under the jurisdiction of the
230 commission, including the state institutions of higher education
231 known as Marshall University and West Virginia University,
232 are subject to the following conditions:
(A) Institutions may increase tuition and fees for resident, undergraduate students by no more than an average of seven and one-half percent per year during any period covering four consecutive fiscal years, with the first fiscal year of the first four-fiscal year cycle beginning on the first day of July, two thousand seven;

(B) The seven and one-half percent average cap does not apply to an institution for any fiscal year in which the total state base operating budget appropriations to that institution are less than the total state base operating budget appropriations in the fiscal year immediately preceding;

(C) A new capital fee or an increase in an existing capital fee is excluded from the tuition and fee increase calculation in this subdivision:

(i) If the new fee or fee increase is approved by an institutional governing board or by a referendum of an institution’s undergraduate students, or both, on or before the first day of February, two thousand six; or

(ii) If the following conditions are met:

(I) The new fee or fee increase was approved by an institutional governing board or by a referendum of an institution’s undergraduate students, or both, on or before the first day of July, two thousand six;

(II) The institution for which the capital fee is approved has been designated a university pursuant to the provisions of section six, article two-a of this chapter by the effective date of this section; and

(III) The institutional board of governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of governors;
(D) Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission has the power and the duty to:

(i) Collect such data from any institution under its jurisdiction; and

(ii) Annually by the first day of July, provide a detailed analysis of the institutions’ compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Legislative findings; purpose; administration generally.

§18C-1-3. Additional legislative findings; purpose of financial aid programs.

§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

§18C-1-1. Legislative findings; purpose; administration generally.

1. (a) The Legislature finds:

2. (1) That although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace there continues to exist an underdevelopment of the state’s human talent and resources because of the inability of many able, but needy, students to finance a higher education program;
(2) That the state can achieve its full economic and social potential only when the following elements are in place:

(A) Every individual has the opportunity to contribute to the full extent of his or her capability; and

(B) The state assists in removing such financial barriers to the individual’s education goals as may remain after he or she has utilized all resources and work opportunities available;

(b) The ultimate state goal in providing student financial aid is to create a culture that values education, to improve the quality of the state’s workforce, and thereby to enhance the quality of life for the citizens of West Virginia.

(c) The Vice Chancellor for Administration jointly employed by the commission and the council has a ministerial duty to administer, oversee or monitor all state and federal student loan, scholarship and state aid programs which are administered at the state level in accordance with established guidelines under the direction of the commission and council and in consultation with the Higher Education Student Financial Aid Advisory Board.

(d) Such programs include, but are not limited to, the following programs pursuant to the provisions of this chapter:

(1) The Guaranteed Student Loan Program, which may be administered by a private nonprofit agency;

(2) The Medical Student Loan Program;

(3) The Underwood-Smith Teacher Scholarship Program;

(4) The Engineering, Science and Technology Scholarship Program;

(5) The West Virginia Higher Education Grant Program;
(6) The Higher Education Adult Part-time Student Grant Program;

(7) The Higher Education Student Assistance Loan Program under article twenty-two-d, chapter eighteen of this code;

(8) The West Virginia College Prepaid Tuition and Savings Program under article thirty, chapter eighteen of this code, which is administered by the State Treasurer;

(9) The state aid programs for students of optometry, pursuant to article three of this chapter;

(10) The state aid programs for students of veterinary medicine pursuant to section six-a, article eleven, chapter eighteen of this code;

(11) Any reciprocal program and contract program for student aid under sections three and four, article four, chapter eighteen-b of this code;

(12) Any other state level student aid program in this code; and

(13) Any federal grant or contract student assistance or support programs administered at the state level.

§18C-1-3. Additional legislative findings; purpose of financial aid programs.

(a) Legislative findings:

(1) Education attainment is inextricably linked to economic development, and, in the current global economy, the state is competing not only with other states, but also with other countries;
(2) The federal government no longer funds student financial aid as generously as it has in the past. Therefore, the state must commit to increase both access and affordability to higher education opportunities for its citizens;

(3) In recent years the state has substantially increased appropriations to both merit-based and need-based student financial aid programs;

(4) The ultimate state goal in providing student financial aid is to create a culture that values education and improves the quality of the state’s workforce, thereby enhancing the quality of life for its citizens;

(5) The state can provide a successful system of student financial aid only by balancing the needs of students from all levels of financial need and academic ability;

(6) A comprehensive system of student financial aid will yield the maximum return on the state’s investment by increasing the skills, qualifications and education achievement of citizens from all backgrounds; and

(7) Sources of student financial aid can be distinguished as providing either access or affordability to higher education opportunities;

(8) Access refers to a student’s financial ability to pursue post-secondary education. Affordability refers a student’s freedom to choose where to attend college based on available resources;

(9) West Virginia is committed to making post-secondary education both accessible and affordable for its citizens. To this end, it is essential that the state provide multiple financial aid programs which accomplish different goals;
(b) *Purposes of financial aid programs:*

1. The West Virginia Higher Education Grant Program is a need-based program that provides funding primarily to traditional college-age students who do not have sufficient financial resources to attempt post-secondary education. This grant program is a vitally important source of financial assistance for needy residents of the state and should continue to receive strong financial support.

2. The HEAPS Grant Program is a need-based program that provides funding primarily to non-traditional college students, including:

   A. Adult students who desire to pursue post-secondary education on a part-time basis and who do not qualify for other forms of financial assistance;
   
   B. Place-bound students, often parents employed full-time, who require evening and weekend access to college courses; and
   
   C. Individuals pursuing workforce training or skill development training necessary to enter the job market quickly.

3. The Underwood-Smith Teacher Scholarship Program is a merit-based program that encourages students who have demonstrated outstanding academic abilities to pursue teaching careers. This program serves to meet West Virginia’s statewide, geographic and discipline-specific needs for highly qualified teachers.

4. The West Virginia Engineering, Science and Technology Scholarship Program is a merit-based program that encourages talented students to pursue baccalaureate degrees in engineering, science and technology-related disciplines. This program serves to increase the size and quality of the pool of
individuals pursuing careers in engineering, science and technology-related fields.

(5) The PROMISE Scholarship Program is a merit-based program that enhances student achievement by encouraging high school students to work harder to attain the necessary grades and test scores to qualify for a PROMISE scholarship and provides an incentive for the most capable students to attend college in the state. PROMISE provides affordability to traditional college-age students.

(c) An appropriate blend of student financial aid programs provides the state with the necessary tools to educate its citizenry for a broad range of economic opportunities:

1. Without proper funding for need-based programs, lower income students may not be able to realize their full potential;
2. Adults may not obtain the training they need to compete in the current and future job market;
3. High-achieving students may not pursue rigorous courses in high school or attend college in West Virginia, all of which contribute to devaluing post-secondary education and perpetuating the culture of educational underachievement; and
4. The state must continue to strive to support equally the need-based and merit-based student financial aid programs.

*§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.*

(a) Notwithstanding any other provision of this code or rule to the contrary, a student who attended a public or private high school in another state or another state of the United States who...

*CLERK'S NOTE: This section was also amended by S. B. 32 (Chapter 78), which passed prior to this act.*
A school outside the state is eligible for state funded student financial aid, grants and scholarships if:

(1) The student meets all other eligibility requirements for the aid, grant or scholarship; and either

(2) The student resided in West Virginia while attending high school in another state, and:

(A) The student resided with his or her parent or legal guardian who:

(i) Was a resident of this state; and

(ii) Had been a resident of this state for at least two years immediately preceding the student’s attendance at the school;

(B) The student commuted during the school term on a daily basis from this state to the school;

(C) The student is a dependent of the parent or legal guardian upon which eligibility is based;

(D) The student has not established domicile outside the state; and

(E) At the discretion of the State Superintendent of Schools, as defined in section one, article one, chapter eighteen of this code:

(i) The school is fully accredited in that state to the degree acceptable to the State Superintendent of Schools; and

(ii) The school’s curriculum requirements for graduation are equivalent to the curriculum requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the State Superintendent of Schools; or
(3) The student resided and attended high school in another state or a United States territory, United States possession or foreign country and:

(A) The student resided with his or her parent or legal guardian; and

(B) The student’s parent or legal guardian:

(i) Served in the United States armed forces while the student attended high school in such state, territory, possession or country;

(ii) Was stationed for military purposes in such state, territory, possession or country; and

(iii) Maintained legal residence in West Virginia while stationed in such state, territory, possession or country.

(b) This section may not be construed to alter, amend or extend any application deadlines or other requirements established by law or policy.

(c) The provisions of this section expire on the thirtieth day of June, two thousand ten.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

(a) The Higher Education Student Financial Aid Advisory Board is established.

(b) The purpose of the board is to provide financial aid expertise and policy guidance to the commission, the council, the PROMISE Scholarship Board, the Vice Chancellor for Administration and the Executive Director of the PROMISE Scholarship Program on all matters related to federal, state and private student financial aid resources and programs.
(c) It is the intent of the Legislature that the advisory board have the following responsibilities:

(1) Recommend methods to balance the needs of state students from all levels of financial need and academic ability by focusing attention on multiple financial aid programs which meet a variety of state objectives;

(2) Recommend methods for achieving a comprehensive system of student financial aid:

(A) To maximize the return on the state’s investment in such programs by increasing the skills, qualifications and education achievement of the citizens receiving the benefits; and

(B) To establish methods for coordinating administration among state-funded student financial aid programs so that the state achieves the appropriate blend of student financial aid programs to expand the range of economic opportunities available to state citizens;

(d) The advisory board consists of twelve members as follows:

(1) The chair of the Higher Education Policy Commission or a designee who is a member of the commission;

(2) The chair of the West Virginia Council for Community and Technical College Education or a designee who is a member of the council;

(3) The State Superintendent of Schools or a designee;

(4) The Secretary of Education and the Arts or a designee;

(5) The State Treasurer or a designee;
(6) A member of the PROMISE Scholarship Board selected by that board;

(7) Three financial aid administrators, excluding the president of the West Virginia Association of Student Financial Aid Administrators.

(A) All financial aid administrators are appointed by the Vice Chancellor for Administration in consultation with the commission and the council, as appropriate. Of the initial appointments, the vice chancellor shall appoint one member to a two-year term, one member to a three-year term and one member to a four-year term. Thereafter, all terms are for four years.

(B) It is the duty of the Vice Chancellor for Administration to select financial aid administrators so that the following types of institutions have representatives serving on the board on a rotating basis:

(i) State institutions of higher education which are doctoral-degree granting research universities;

(ii) State institutions of higher education which primarily grant baccalaureate degrees;

(iii) State institutions of higher education which are free-standing community and technical colleges;

(iv) State institutions of higher education which are administratively linked community and technical colleges; and

(v) Private institutions of higher education which are regionally accredited and located within the state.

(8) Three at-large private sector members who are appointed jointly by the commission and the council. Of the initial
appointments, the commission and the council jointly shall appoint one member to a two-year term, one member to a three-year term and one member to a four-year term. Thereafter, all terms are for four years.

(A) At-large members shall:

(i) Be representative of the state’s business and economic community;

(ii) Demonstrate knowledge, skill and experience in an academic, business or financial field; and

(iii) Reside within this state.

(B) An at-large member may not be:

(i) A member of a governing board or institutional board of advisors of any public or private institution of higher education; nor

(ii) A publicly elected official or an employee of any state, county or municipal agency.

(e) No more than two of the at-large members may be from the same political party and no more than one may reside in any congressional district.

(1) After the initial appointments, each appointed member serves a term of four years and may be reappointed upon expiration of the term.

(2) In the event of a vacancy among appointed members, the commission and the council shall appoint a person for the remainder of the unexpired term to represent the same interests as those of the original appointee. A person appointed to fill a vacancy is eligible for reappointment. Unless a vacancy occurs due to death or resignation, an appointed member continues to
serve until a successor has been appointed and qualified as
provided in this section.

(f) Members of the advisory board serve without compensa-
tion, but are entitled to reimbursement by the commission for
expenses, including travel expenses, which are actually incurred
by the member in the official conduct of the business of the
advisory board. Members are reimbursed in a manner consistent
with rules of the Higher Education Policy Commission.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§ 18C-5-1. Grant program established; legislative purpose and intent; rule required.
§ 18C-5-2. Definitions.
§ 18C-5-3. Grant program administered by Vice Chancellor for Administration;
Higher Education Grant Fund created.
§ 18C-5-4. Powers and duties of Vice Chancellor for Administration.
§ 18C-5-5. Eligibility for a grant.
§ 18C-5-6. Recipients, awards and distribution of grant awards; authority of vice
chancellor to enter into reciprocal agreements with other states
concerning grants.

§ 18C-5-1. Grant program established; legislative purpose and intent; rule required.

(a) The Higher Education Grant Program is continued.

(b) It is the policy of the Legislature and the purpose of this
article to continue the Higher Education Grant Program within
the limits of appropriations made therefor from time to time for
such purpose by the Legislature.

(1) The Grant Program is designed to guarantee that the
most able and needy students from all sectors of the state are
given the opportunity to continue their program of
self-improvement in an approved institution of higher education
of their choice located in this state.

(2) The Grant Program is a vitally important source of
financial assistance for needy residents of the state; and
(3) The Grant Program aids lower income students to realize their full academic potential;

(c) Therefore, in recent years the state has substantially increased appropriations to need-based student financial aid programs.

(d) The commission, in consultation with the council and the advisory board, shall propose a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, to implement the provisions of this article. The commission shall file the rule with the Legislative Oversight Commission on Education Accountability no later than the first day of September, two thousand six. The rule shall address administration of the grant program, including, but not limited to, the following:

(1) Eligibility criteria for awards;

(2) Coordination with other student financial aid programs; and

(3) Appeal procedures.

§ 18C-5-2. Definitions.

(a) “Approved institution of higher education” means:

(1) A state institution of higher education as defined in section two, article one, chapter eighteen-b of this code; Alderson-Broaddus College, Appalachian Bible College, Bethany College, Mountain State University, Davis and Elkins College, Ohio Valley University, Salem International University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia; and
Any other regionally or nationally accredited institution of higher education in this state, public or private, approved by the vice chancellor if the institution has been licensed for a minimum of fifteen years subject to the provisions of section nine, article two-b, chapter eighteen-b of this code and section six, article two-b of said chapter.

(b) “Grant” or “grant program” means a higher education grant or the higher education grant program authorized and established by the provisions of this article.

(c) “Senior administrator” and “vice chancellor” mean the Vice Chancellor for Administration, as provided in section two, article four, chapter eighteen-b of this code.

§18C-5-3. Grant program administered by Vice Chancellor for Administration; Higher Education Grant Fund created.

(a) The grant program established in this article is administered by the Vice Chancellor for Administration.

(b) There is hereby created a special revenue fund in the state treasury which is designated and known as the “Higher Education Grant Fund”.

(1) The fund consists of:

(A) All appropriations by the Legislature for the higher education grant program;

(B) Any gifts, grants or contributions received for the higher education grant program; and

(C) All interest or other income earned from investment of the fund.
(2) The fund does not consist of federal funds received nor higher education resource assessment funds received pursuant to section two, article ten, chapter eighteen-b of this code.

(3) Any moneys remaining in the fund at the close of the fiscal year are carried forward for use in the next fiscal year.

(4) The allocations to the fund are subject to appropriation by the Legislature.

(5) Nothing in this article requires any specific level of funding by the Legislature nor guarantees nor entitles any individual to any benefit or grant of funds.

(c) For the fiscal year beginning the first day of July, two thousand six, it is the intent of the Legislature to appropriate twenty-five million dollars for the grant program. For each fiscal year thereafter until and including the fiscal year ending the thirtieth day of June, two thousand eleven, it is the intent of the Legislature to appropriate two percent more than each prior year’s appropriation for the grant program. For the fiscal year beginning the first day of July, two thousand eleven, and in each fiscal year thereafter, it is the intent of the Legislature to appropriate an amount for the grant program equal to the amount appropriated for the fiscal year beginning the first day of July, two thousand eleven.

(d) The vice chancellor may expend the moneys in the fund to implement the provisions of this article.

§18C-5-4. Powers and duties of Vice Chancellor for Administration.

Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the vice chancellor may:
4 (1) Prepare and supervise the issuance of public information concerning the grant program;

6 (2) Prescribe the form and regulate the submission of applications for grants;

8 (3) Select qualified recipients of grants;

9 (4) Award grants;

10 (5) Accept grants, gifts, bequests and devises of real and personal property for the purposes of the grant program;

12 (6) Administer federal and state financial loan programs;

13 (7) Cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program;

16 (8) Make the final decision pertaining to residency of an applicant for grant or renewal of grant;

18 (9) Employ, fix the duties of and compensate such employees as may be necessary to assist the vice chancellor in the performance of his or her duties; and

21 (10) Administer the higher education adult part-time student grant program established in section seven of this article.

§18C-5-5. Eligibility for a grant.

1 A person is eligible for consideration for a grant if the person:

3 (1) Is a citizen of the United States;

4 (2) Has been a resident of the state for one year immediately preceding the date of application for a grant;
(3) Meets the admission requirements of, and is admitted into, the approved institution of higher education to which admission is sought; and

(4) Satisfactorily meets the qualifications of financial need, academic promise and academic achievement established by the vice chancellor.

§18C-5-6. Recipients, awards and distribution of grant awards; authority of vice chancellor to enter into reciprocal agreements with other states concerning grants.

(a) A grant recipient may attend any approved institution of higher education. An institution is not required to accept a grant recipient for enrollment, but may exact compliance with its own admission requirements, standards and policies.

(b) Grants may only be awarded to undergraduate students.

(c) Each grant is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. The academic years are not required to be consecutive years, and the grant will be terminated if the student receives a bachelor’s degree in a shorter period of time.

(d) Qualifications for renewal include the following, as determined by the vice chancellor:

(1) Maintaining satisfactory academic standing;

(2) Making normal progress toward completion of the course of study; and

(3) Continued eligibility.

(e) Grants are awarded:
(1) Without regard to the applicant’s race, creed, color, sex, national origin or ancestry; and

(2) In accordance with the provisions of this article.

(f) The vice chancellor shall treat all approved institutions of higher education in a fair and equitable manner when awarding grants.

(g) The vice chancellor periodically shall identify areas of professional, vocational and technical expertise that are, or will become, of critical need in this state. To the extent feasible the vice chancellor may direct grants to students who are pursuing instruction in those areas.

(h) The vice chancellor may enter into reciprocal agreements with state grant and grant program agencies in other states which provide financial assistance to their residents attending institutions of higher education located in West Virginia. In connection therewith, the vice chancellor may authorize residents of West Virginia to use financial assistance under this article to attend institutions of higher education in such other states. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such state must meet all of the eligibility standards set forth in section five of this article.

(i) Grant awards may not exceed the cost of the tuition and those related compulsory fees charged by an institution to all West Virginia undergraduate students.

(j) Grant payments are made directly to the institution.

(k) In the event that a grant recipient transfers from one approved institution of higher education to another, the grant is transferable only with the approval of the vice chancellor.
(1) If a recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the commission in accordance with the commission’s policy for issuing refunds. The commission shall transfer such funds to the appropriate account for allocation and expenditure pursuant to the provisions of this article.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-2. Legislative findings and purpose.
§18C-7-3. Definitions.
§18C-7-4. Appointment of the PROMISE Scholarship Board; compensation; proceedings generally.
§18C-7-5. Powers and duties of the West Virginia PROMISE Scholarship Board.
§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.
§18C-7-7. West Virginia PROMISE Scholarship Fund created.

§18C-7-2. Legislative findings and purpose.

(a) The Legislature finds and declares that:

(1) West Virginia must have an educated work force in order to attract and retain the high wage, high skill jobs of the twenty-first century;

(2) A large percentage of West Virginia residents who graduate from the state’s colleges and universities do not work in the state following graduation;

(3) The percentage of West Virginia’s adult population over the age of twenty-five with at least a baccalaureate degree is less than fifteen percent and does not compare favorably with the member states of the Southern Regional Education Board average nor with the national average of twenty-five percent;

(4) Higher levels of education attainment result in higher levels of personal income over a lifetime;
(5) Students who acquire a baccalaureate degree will earn an estimated one million dollars more over their lifetimes than those who attain only a high school diploma. This translates into an increased tax base and economic development for West Virginia and more discretionary income for its citizens;

(6) Students at all education levels should have an incentive to perform at a high academic level;

(7) There is a need to provide parents with all tools possible to aid them in helping their children understand the importance of high academic achievement in high school and college;

(8) The PROMISE Scholarship Program is highly successful and should be maintained with merit as its strongest component. The merit component:

(A) Provides an incentive for students to set high academic standards in high school;

(B) Encourages students to increase their high school achievement levels;

(C) Encourages students to enroll in more rigorous courses;

(D) Effects a culture change in West Virginia towards increased education attainment;

(E) Results in improved ACT scores in the state since the inception of the program; and

(F) Influences increased numbers of students, including those students who are the highest academic achievers, to remain in West Virginia to attend college.

(b) It is the purpose of this article to continue the West Virginia PROMISE Scholarship Program to deal effectively with the findings set forth in this section.
(c) Nothing in this article guarantees:

(1) A PROMISE scholarship award or any specific amount of a PROMISE scholarship award to any student; or

(2) That the requirements necessary for a student to qualify for a PROMISE scholarship will not be changed by legislation or rule before the student is eligible to receive an award.

§ 18C-7-3. Definitions.

(a) “Eligible institution” means:

(1) A state institution of higher education as defined in section two, article one, chapter eighteen-b of this code;

(2) Alderson-Broaddus College, Appalachian Bible College, Bethany College, Davis and Elkins College, Mountain State University, Ohio Valley University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it:

(A) Loses regional accreditation; or

(B) Changes its status as a private, not for profit institution.

(3) Any other regionally accredited institution in this state, public or private, approved by the board.

(b) “Board” means the West Virginia PROMISE Scholarship Board of the West Virginia PROMISE Scholarship Program as provided for in section four of this article.

(c) “Tuition” means the quarter, semester or term charges imposed by a state institution of higher education and all mandatory fees required as a condition of enrollment by all students.
(d) “Enrolled” means either currently enrolled or in the process of enrolling in an eligible institution.

§18C-7-4. Appointment of the PROMISE Scholarship Board; compensation; proceedings generally.

(a) The West Virginia PROMISE Scholarship Board is comprised of fifteen members. Any member appointed by the Governor prior to the effective date of this section may continue to serve the term for which the member has been appointed: Provided, That by the first day of April, two thousand seven, and thereafter, the membership of the board is comprised as follows:

(1) The chairperson of the commission or a designee who is a member of the commission;

(2) The chancellor of the commission or his or her designee;

(3) The State Superintendent of Schools or his or her designee;

(4) The Secretary of Education and the Arts;

(5) The State Treasurer or his or her designee;

(6) The President of the West Virginia Association of Student Financial Aid Administrators;

(7) The Executive Director of the Governor’s Workforce Investment Division;

(8) Eight at-large members, appointed by the Governor with the advice and consent of the Senate:

(A) One of the eight at-large members has knowledge, skill and expertise in state and federal student financial aid policy and management;
(B) Seven of the eight at-large members represent the state’s business and economic community and have knowledge, skill and experience in an academic, business or financial field.

(C) The eight at-large members shall be residents of the state. No more than five of the eight at-large members may be from the same political party. No more than three of the eight at-large members may be from the same congressional district.

(b) At-large members serve a term of four years and may be reappointed at the expiration of their terms. In the event of a vacancy among at-large members, the Governor shall appoint a person representing the same interests to fill the unexpired term. A person appointed to fill a vacancy shall be appointed only for the remainder of that term and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or removal pursuant to subsection (e) of this section, an at-large member of the board shall continue to serve until a successor has been appointed and qualified as provided in subsection (a) of this section. All terms are for four years.

(c) Members of the board shall serve without compensation, but shall be reimbursed by the Office of the Secretary of Education and the Arts for expenses, including travel expenses, actually incurred by a member in the official conduct of the business of the board at the same rate as is paid the employees of the state.

(d) The Secretary of Education and the Arts is the chairperson and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of business.

(e) The at-large members appointed by the Governor may be removed by the Governor for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the Governor of
the state elective officers in accordance with section five, article six, chapter six of this code.

§18C-7-5. Powers and duties of the West Virginia PROMISE Scholarship Board.

(a) Powers of board –

In addition to the powers granted by any other provision of this article, the board has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:

(1) To adopt and amend bylaws;

(2) To propose legislative rules to the commission for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

(3) To invest any of its funds at the board’s discretion, with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(4) To execute contracts and other necessary instruments;

(5) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, the require-
ments shall include that an eligible student must have met the following requirements:

(A) Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

(B) Received instruction in the home or other approved place pursuant to Exemption B, section one, article eight, chapter eighteen of this code for the two years immediately preceding application.

(C) This subdivision may not be construed to establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(6) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program;

(A) The board is encouraged to utilize the employees of the Vice Chancellor for Administration to provide administrative and technical assistance.

(B) Any services provided for the board by such employees remain under the direction and authority of the vice chancellor.

(7) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;

(8) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and
(9) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) Duties of board —

In addition to any duty required by any other provision of this article, the board has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the PROMISE Scholarship Program as a merit-based program;

(3) To raise academic eligibility requirements before taking any other steps to limit student awards should projections indicate that available funds will not be sufficient to cover future costs; and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of intent to recipients who are selected to receive a PROMISE scholarship after the effective date of this section notifying them that acceptance of the scholarship entails a responsibility to supply:

(A) Information requested by the board to determine the number and percentage of recipients who:

(i) Continue to live in West Virginia after graduation;

(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs and the name of the state in which each post-graduate institution is located; and
83 (B) Such other relevant information as the board may reasonably request to implement the provisions of this subdivision.

86 (5) To analyze the data collected pursuant to subdivision (4) of this subsection, and:

88 (A) Report the findings to the Joint Standing Committee on Education by the tenth day of January, two thousand seven, and annually thereafter; and

91 (B) Make recommendations annually to the Joint Standing Committee on Education regarding any actions the board considers necessary or expedient to encourage PROMISE recipients to live and work in the state after graduation.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

1 (a) A PROMISE scholarship annual award meets the following conditions:

3 (1) Equals but does not exceed the cost of tuition for a student enrolled in a state institution of higher education;

5 (2) Equals an amount determined by the board, but not to exceed the cost of tuition at state institutions of higher education, for a student enrolled in an eligible institution that is not a state institution of higher education; and

9 (3) Is used by an eligible institution to supplement, but not to supplant, a tuition and fee waiver for which the individual is eligible pursuant to sections five, six-a or seven, article ten, chapter eighteen-b of this code.

13 (b) The total cost of all scholarships awarded by the board in any year may not exceed the amount of funds available to the board during that fiscal year.
(c) An individual shall meet the following conditions in order to be eligible to receive a PROMISE scholarship award:

(1) Submit a scholarship award application to the board:

(A) Within two years of graduating from high school or within two years of acquiring a General Equivalency Degree if provided instruction in the home or other approved place pursuant to Exemption B, section one, article eight, chapter eighteen of this code; or

(B) Within seven years of initially entering military service, and within one year of discharge from such military service, if the individual has entered the United States armed services within two years after graduating from high school;

(2) Apply for and submit to the board a Free Application for Federal Student Aid;

(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as determined by the board, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;

(4) Maintain appropriate academic progress toward the completion of a degree at the undergraduate education level as determined by the board if the individual has completed more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;
(5) Meet additional objective standards as the board considers necessary to promote academic excellence and to maintain the financial stability of the fund;

(6) Enroll in an eligible institution. Any student enrolled at an eligible institution who receives a PROMISE scholarship award may retain and renew the scholarship to complete his or her undergraduate education at that institution, or any other eligible institution:

(A) If the institution at which the student is enrolled loses its status as an eligible institution pursuant to the provisions of subdivision (2), subsection (a), section three of this article; and

(B) If the student meets all other renewal requirements of this code and of board rules.

(7) It is the intent of the Legislature that the board shall strongly encourage prospective candidates for the PROMISE scholarship to perform at least twenty hours of unpaid community service while in high school to help prepare them for success in post-graduate education. The community service may include, but is not limited to, participation with nonprofit, governmental or community-based organizations designed to:

(A) Improve the quality of life for community residents;

(B) Meet the needs of community residents; or

(C) Foster civic responsibility.

(d) The board shall recommend a legislative rule to the commission to implement the provisions of this article. The commission shall promulgate a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) The rule shall include at least the following provisions:
(A) The amount of a PROMISE scholarship award may not exceed the cost of tuition at state institutions of higher education;

(B) The amount of a PROMISE scholarship award in combination with aid from all other sources may not exceed the cost of education at the institution the recipient is attending. This provision does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship, and recipients of a West Virginia engineering, science and technology scholarship;

(C) Additional objective standards as the board considers necessary:

(i) To promote academic excellence;

(ii) To maintain the financial stability of the fund; and

(iii) To operate the program within the limits of available funds.

(D) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia Prepaid Tuition Trust Act set forth in article thirty, chapter eighteen of this code;

(E) A provision defining the relationship of PROMISE scholarship awards to all other sources of student financial aid to ensure maximum coordination. The provision shall include the following:

(i) Methods to maximize student eligibility for federal student financial aid;

(ii) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and
(iii) Clarification of the relationship between the PROMISE Scholarship Program, tuition savings plans and other state funded student financial aid programs;

(F) A method for awarding scholarships within the limits of available appropriations, including circumstances when program funds are not sufficient to provide awards to all eligible applicants. The board may not utilize any of the following methods:

(i) Making a scholarship award for an amount less than the cost of full tuition for a student enrolled in a state institution of higher education; or

(ii) Eliminating any current recipient from eligibility;

(G) A method for applicants to appeal determinations of eligibility and renewal.

(2) The rule may provide for or require the following at the board’s discretion:

(A) Requiring repayment of the amount of the scholarship, in whole or in part, if a scholarship recipient chooses to work outside the state after graduation: Provided, That the rule may not require a recipient to repay a scholarship, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the PROMISE scholarship award.

(B) Targeting a portion of the scholarship funds to be used for applicants enrolled in an engineering, science, technology or other designated program;

(C) Determining what other sources of funding for higher education are to be deducted from the PROMISE scholarship award; and
(D) Providing additional criteria as determined by the board.

(3) The Legislature finds that an emergency exists and, therefore, the board shall file a rule to implement the provisions of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. The rule is subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

§18C-7-7. West Virginia PROMISE Scholarship Fund created.

(a) The special revenue fund in the state treasury designated and known as the “PROMISE Scholarship Fund” is continued. The fund consists of:

(1) All appropriations to the fund from the West Virginia lottery, video lottery and taxes on amusement devices;

(2) All appropriations by the Legislature for the PROMISE Scholarship Fund;

(3) Any gifts, grants or contributions received for the PROMISE Scholarship Program; and

(4) All interest or other income earned from investment of the fund.

(b) The allocations to the fund are subject to appropriation by the Legislature. Nothing in this article requires any specific level of funding by the Legislature nor guarantees nor entitles any individual to any benefit or grant of funds.

(c) For the fiscal year beginning the first day of July, two thousand six, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code, and such other amounts of public moneys that may be
transferred to the fund by appropriation of the Legislature, shall equal but may not exceed forty million dollars. For each fiscal year thereafter until and including the fiscal year ending the thirtieth day of June, two thousand eleven, it is the intent of the Legislature that this aggregate be an amount two percent greater than the aggregate established by this subsection for the prior fiscal year. For the fiscal year beginning the first day of July, two thousand eleven, and in each fiscal year thereafter, it is the intent of the Legislature that this aggregate not exceed the aggregate established by this subsection for the fiscal year beginning the first day of July, two thousand eleven.

(d) The board may expend the moneys in the fund to implement the provisions of this article.

CHAPTER 80

(H. B. 4406 — By Delegates Perry, Pino, Beach, Williams, Duke, Campbell, Poling and Sumner)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §18A-2-12 of the Code of West Virginia, 1931, as amended, relating to professional evaluations of classroom teachers; limiting the frequency of requiring an evaluation or a professional growth and development plan for certain classroom teachers; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. SCHOOL PERSONNEL.

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

(a) The state board 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 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 Center for Professional Development created in 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 for classroom teachers with five or more years of experience who have not received an unsatisfactory rating, an evaluation shall be conducted or professional growth and development plan required only when the principal determines it to be necessary for a particular classroom teacher, or when a classroom teacher exercises 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 re-teach 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 paperwork 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.
Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the internet.

CHAPTER 81

(Com. Sub. for H. B. 4626 — By Mr. Speaker, Mr. Kiss)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to educator preparation programs generally; adding requirements for the student teaching experience agreement; and providing for an alternate student teaching experience in a nonpublic school setting in lieu of the student teaching experience required in a public school setting.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

(a) The education of professional educators in the state is under the general direction and control of the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education who shall represent the
interests of educator preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools including:

(1) Those programs in all institutions of higher education, including student teaching as provided in this section;

(2) Beginning teacher internship programs;

(3) The granting of West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Any alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section; and

(5) Any continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) The state board, after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards shall include, but not be limited to, the following:

(1) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values,
(2) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior which shall include societal factors and their impact on student behavior; and

(3) Subject to the provisions of section ten of this article, a teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, if he or she:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education;

(C) Possesses the minimum of a bachelor’s degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools, the state board may enter into an agreement with county boards for the use of the public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools and shall include:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers,
including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching;

(4) That the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher; and

(5) A provision requiring any higher education institution with an educator preparation program to document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification.

(e) Beginning the fall, two thousand six – two thousand seven academic term, in lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education:

(1) Complies with the provisions of this section;

(2) Has a state board approved educator preparation program; and

(3) Enters into an agreement pursuant to subdivisions (f) and (g) of this section.
(f) At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require that either:

(1) The student teacher complete at least one half of the clinical experience in a public school; or

(2) The educator preparation program include a requirement that any student performing student teaching in a nonpublic school complete at least:

(A) Two hundred clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution’s state board approved educator preparation program, that provides to prospective teachers information that is equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course shall include instruction on at least the following elements:

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.;
(v) Varied approaches for effective instruction for students who are at-risk;

(g) In addition to the requirements set forth in subsection (f) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall:

(1) Require that the higher education institution with an educator preparation program document that the student teacher’s field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and

(2) Include the minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

(h) The state superintendent may issue certificates to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education.

(1) A certificate to teach may be granted only to any person who is:

(A) A citizen of the United States, except as provided in subdivision (2) of this subsection;

(B) Is of good moral character;
(C) Physically, mentally and emotionally qualified to perform the duties of a teacher; and

(D) At least eighteen years on or before the first day of October of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country, or an alien person who meets the requirements to teach.

(i) In consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, institutions of higher education approved for educator preparation may cooperate with each other, with the center for professional development and with one or more county boards to operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to:

(1) Student teaching;

(2) Beginning teacher internship programs;

(3) Instruction in methodology; and

(4) Seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

The institutions of higher education, the center for professional development and county boards may by mutual agreement budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

(j) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.
(k) All institutions of higher education approved for educator preparation in the one thousand nine hundred sixty-two—sixty-three school year shall continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(l) Notwithstanding any other provision of this section, nor any other provision of rule, law or this code to the contrary, an institution of higher education may enter into an agreement with a nonpublic school:

(1) For the purposes of this section regarding student teaching;

(2) For the spring, two thousand six academic term only;

(3) If the institution is approved for educator preparation by the state board; and

(4) If the institution had entered into the agreement for that academic term prior to the effective date of this section.

(m) As used in this section:

(1) “Nonpublic school” means a private school, parochial school, church school, school operated by a religious order or other nonpublic school that elects to:

(A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to such schools pursuant to this section; and

(C) Comply with the provisions of this section;
(2) “At-risk” means having the potential for academic
failure, including, but not limited to, the risk of dropping out of
school, involvement in delinquent activity or poverty as
indicated by free or reduced lunch status; and

(3) “Exceptional children” has the meaning ascribed
pursuant to section one, article twenty, chapter eighteen of this
code, but does not include gifted students.

CHAPTER 82

(S. B. 783 — By Senators Plymale, Edgell, Dempsey,
Oliverio, Boley, Guills and Sprouse)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §18A-4-2a of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §18A-4-2b, all relating to
defining completion of the National Board for Professional
Teaching Standards certification; establishing state minimum
salary supplement for professional personnel holding certain
advanced certification in speech-language pathology, audiology
or counseling; reimbursement for certain expenses; limitations;
applicability; and state board rule.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2a 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 §18A-4-2b, all to read as follows:
ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

§18A-4-2b. State minimum salary supplement for professional personnel with recognized national certification in speech-language pathology, audiology or counseling.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

(a) The Legislature hereby finds and declares that the rigorous standards and processes for certification by the National Board for Professional Teaching Standards (NBPTS) helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) Two thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the National Board of Professional Teaching Standards for the life of the certification, but in no event more than ten years for any one certification.

(c) The payments:

(1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

(2) Shall be paid in equal monthly installments; and

(3) Shall be considered a part of the state minimum salaries for teachers.

(d) One-half the certification fee shall be paid for reimbursement once to each teacher who enrolls in the program for
the National Board for Professional Teaching Standards certification and one-half the certification fee shall be paid for reimbursement once to each teacher who completes the National Board for Professional Teaching Standards certification. Completion shall be defined as the completion of ten scorable entries, as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of six hundred dollars for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.

(e) The state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to two hundred teachers annually. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (g) of this section.

(f) Subject to the provisions of subsection (e) of this section, funding for reimbursement of the certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications shall be administered by the state department of education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.

(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.
§18A-4-2b. State minimum salary supplement for professional personnel with recognized national certification in speech-language pathology, audiology or counseling.

(a) (1) The Legislature finds that achieving a nationally recognized professional certification in speech-language pathology or audiology involves a rigorous process of demonstrating both knowledge and skills and results in highly trained and capable employees. Individuals who attain the national professional certification by the American Speech-Language-Hearing Association (ASHA) provide needed and essential services to the school students of this state and, consequently, should be encouraged to achieve and maintain the national board certification through reimbursement of expenses and a salary bonus which reflects their additional certification, to be paid in accordance with subsection (b) of this section.

(2) The Legislature further finds and declares that the rigorous standards and processes for advanced certification by either the National Board of Certified Counselors (NBCC) or the West Virginia Board of Examiners in Counseling (WVBEC) helps to promote the quality of counseling in schools. Counselors in the public schools of West Virginia should be encouraged to achieve and maintain the advanced certification through reimbursement of expenses and a salary bonus that reflects their additional certification, to be paid in accordance with subsection (b) of this section.

(3) Therefore, the purpose of this section is to provide a statewide salary supplement for certain professional personnel employed in the public schools who hold a nationally recognized professional certification in speech-language pathology, audiology or counseling, to treat the professional certification equally, to encourage others to attain such a certification and to help school systems with recruitment of these highly qualified professionals.
(b) In addition to any amounts prescribed in the applicable state minimum salary schedule, effective the first day of July, two thousand six, any professional personnel who hold national certification or other credential as provided in this section must be paid an annual salary supplement of two thousand five hundred dollars. The payment is:

(1) To be made in equal monthly installments;

(2) To be considered a part of the state minimum salaries for teachers; and

(3) To continue for the life of the certification, or for ten years for any one certification, whichever first expires.

(c) Effective the first day of July, two thousand six, professional personnel employed as speech-language pathologists, audiologists or counselors are eligible upon enrollment for reimbursement for one-half of the fee for certification in accordance with this section. In addition, these personnel are eligible upon attainment of the certification for reimbursement of the remainder of the application fee plus other expenses actually incurred toward attainment of the certification, not exceeding six hundred dollars, upon approval by the Department of Education. No more than one hundred speech-language pathologists, audiologists and counselors, combined total, are eligible for reimbursement in any one fiscal year.

(d) Notwithstanding subsection (b) of this section, no more than one hundred speech-language pathologists, audiologists and counselor, combined total, shall be paid the annual salary supplement provided for in said subsection during the first year of implementation. The number of speech-language pathologists, audiologists and counselors paid the annual salary supplement provided for in said subsection may not exceed an additional one hundred qualified recipients in each of the subsequent fiscal years. The state board shall promulgate a
legislative rule establishing criteria for selection of the individuals eligible for reimbursement and a salary supplement in accordance with this section. The selection criteria shall prioritize the length of time the certification has been held and the years of experience of the holder in determining eligibility.

(e) The board shall report the rule to the Legislative Oversight Commission on Education Accountability by the January, two thousand seven, legislative interim meeting period and shall report on its progress in developing the rule to the commission during each prior interim meeting period.

(f) Payment of the supplement and reimbursement provided in this section is subject to legislative appropriation; therefore nothing in this section requires any appropriation, or any specific level of appropriation, by the Legislature.

(g) Notwithstanding any other provision of this section or the provisions of section two-a of this article, professional personnel may not be paid a salary supplement pursuant to the provisions of both said sections.
assistant principal, vice principal, administrative head of school or professional personnel designee of school principal or administrative head.

_Be it enacted by the Legislature of West Virginia:_

That §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**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 any infectious disease, and shall immediately notify the proper health officer or medical inspector of the exclusion. Any pupil so excluded shall not be readmitted to the school until the pupil has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher may 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; 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 the 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 those 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 also may 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” includes 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 direc-
tion: 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;

(2) “Teacher” means 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; and

(3) “Principal” means the principal, assistant principal, vice
principal or the administrative head of the school or a profes-
sional personnel designee of the principal or the administrative
head of the school.

(h) Teachers shall exercise other authority and perform
other duties prescribed for them by law or by the rules of the
State Board not inconsistent with the provisions of this chapter
and chapter eighteen of this code.

§18A-5-la. 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 accordance 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 custo-
dian(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 also may 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. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed 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 a dangerous student determination would be considered 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, 20 U.S.C. §1400 et seq.

(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 disseminate 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
(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 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.

(o) For the purpose of this section, “principal” means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

CHAPTER 84

(S. B. 792 — By Senator Oliverio)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 3, 2006.]

AN ACT to repeal 18B-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1-2 of said code; to amend said code by adding there to a new section, designated §18B-1-7; to amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-3C-4 and §18B-3C-8 of said code; to amend said code by adding there to a new section, designated §18B-3C-7; to amend and
reenact §18B-6-1 and §18B-6-la of said code; and to amend and reenact §18B-10-1 of said code, all relating to making Fairmont State Community and Technical College a division of Fairmont State University and changing its name to Pierpont Community and Technical College; clarifying definitions; dissolving certain advisory board; clarifying process for delivery of community and technical college education in certain location; providing exception to process for achieving independent accreditation for community and technical colleges; designating Community and Technical College of Shepherd as Blue Ridge Community and Technical College; establishing the responsibilities of Pierpont Community and Technical College; maintaining a board of advisors for the delivery of community and technical college education at Fairmont State University; eliminating the requirement that the governing board chairs of Shepherd University and the community and technical college of Shepherd, whose name is changed to Blue Ridge Community and Technical College, and Bluefield State College and New River Community and Technical college, serve on each other’s boards of governors; establishing an evaluation process for the relationship between Fairmont State University and Pierpont Community and Technical College; establishing a sunset date of the first day of July, two thousand nine; providing for establishing independent accreditation for certain community and technical colleges under certain circumstances; providing for fee increases for certain institutions under certain conditions; clarifying definitions; making technical corrections; and repealing obsolete provisions.

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

That §18B-2-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1-7; that §18B-1B-6 of said code be amended and reenacted; that §18B-2A-1 of said code be amended and reenacted; that §18B-3C-4 and §18B-3C-8 of said code be amended and reenacted;
that said code be amended by adding thereto a new section, designated §18B-3C-7; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

   1B. Higher Education Policy Commission.
   2A. Institutional Boards of Governors.
   3C. Community and Technical College System.
   6. Advisory Councils.
   10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.
§18B-1-7. Fairmont State Community and Technical College merged.

*§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) Effective the first day of July, two thousand seven, “regional campus” means West Virginia University at Parkersburg;

(b) “Governing boards” or “boards” means the institutional boards of governors created pursuant to section one, article two-a of this chapter;

(c) “Free-standing community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and Eastern West Virginia Community and Technical College.

*CLERK’S NOTE: This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.
College which may not be operated as branches or off-campus locations of any other state institution of higher education;

(d) “Community college” or “community colleges” means community and technical college or colleges as those terms are defined in this section;

(e) “Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, Eastern West Virginia Community and Technical College, New River Community and Technical College, West Virginia University at Parkersburg, The Community and Technical College at West Virginia University Institute of Technology, Blue Ridge Community and Technical College, Marshall Community and Technical College and West Virginia State Community and Technical College;

(f) “Community and technical college education” means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(g) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(h) “Higher education institution” means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) “Higher Education Policy Commission”, “policy commission” or “commission” means the commission created pursuant to section one, article one-b of this chapter;
“Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

“Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

“Chancellor” means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. “Chancellor” means Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

“Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources in the prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

“Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All such programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education
programs” means community and technical college education programs as defined in this subsection;

(o) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(p) “Senior administrator” means the vice chancellor for administration employed in accordance with section two, article four of this chapter;

(q) “State college” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College or West Virginia State University;

(r) “State institution of higher education” means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(s) Until the first day of July, two thousand seven, “regional campus” means West Virginia University at Parkersburg and West Virginia University Institute of Technology;

(t) The advisory board previously appointed for the West Virginia Graduate College is known as the “Board of Visitors” and shall provide guidance to the Marshall University Graduate College;

(u) “Institutional compact” means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section two, article one-a of this chapter;

(v) “Peer institutions”, “peer group” or “peers” means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;
(w) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight, article three-c of this chapter;

(x) "Sponsoring institution" means a state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

(y) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(z) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

(aa) "Council" means the West Virginia Council for Community and Technical College Education created pursuant to article two-b of this chapter; and

(bb) "West Virginia Consortium for Undergraduate Research and Engineering" or "West Virginia CURE" means the collaborative planning group established pursuant to article one-c of this chapter.

§18B-1-7. Fairmont State Community and Technical College merged.

(a) Notwithstanding any other provision of this code to the contrary, on the first day of July, two thousand six, Fairmont State Community and Technical College shall be known as Pierpont Community and Technical College and shall merge and consolidate with Fairmont State University and become a
fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to Fairmont State University.

(1) Fairmont State Community and Technical College ceases to be an individual higher education institution, as defined by subsection (h), section two of this article.

(2) The advisory board previously appointed for Fairmont State Community and Technical College is continued as the advisory board for Pierpont Community and Technical College. The advisory board:

(A) Serves to advise the Fairmont State University Board of Governors and president on issues regarding the delivery of community and technical college education; and

(B) Continues to function pursuant to the provisions of section one, article six of this chapter.

(b) Any reference in this code to Fairmont State Community and Technical College means Pierpont Community and Technical College, a division of Fairmont State University.

(c) In the delivery of community and technical college education and programs, Fairmont State University shall adhere to all provisions set forth in this code and rules promulgated by the council for the delivery of such education and programs, including, but not limited to, council review and approval of academic programs, institutional compacts, master plans, charge-back agreements and tuition and fee rates, including capital fees. The only provision of this code that Fairmont State University is not required to adhere to is the requirement related to independent accreditation of community and technical colleges.
(d) Pierpont Community and Technical College shall continue to exist as an administrative division of Fairmont State University, 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.

(e) During the time period Pierpont Community and Technical College exists as an administrative division of Fairmont State University pursuant to subsection (d) of this section, the council shall determine if the following conditions are being met:

(1) Pierpont Community and Technical College meets or exceeds all of the benchmarks contained in its approved compact required by section two, article one-a of this chapter;

(2) Pierpont Community and Technical College has established and is meeting or exceeding the goals of its approved consortium compact pursuant to section four, article three-c of this chapter;

(3) Pierpont Community and Technical College meets or exceeds the service needs of its consortium planning district according to its approved consortium compact;

(4) Pierpont Community and Technical College meets or exceeds Council goals as defined in the community and technical college performance indicators and institutional compacts established pursuant to section two, article one-a of this chapter and national averages for the delivery of comprehensive community and technical college education in the following areas:

(A) Providing access to the following groups of students in the community and technical college’s consortium planning district:
(i) Traditional students eighteen to twenty-four years of age;

(ii) Nontraditional students twenty-five to forty-four years of age; and

(iii) High school students seeking college credit through early entrance and earn-a-degree-graduate-early (EDGE) courses;

(B) Serving the state’s workforce development goals by:

(i) Increasing the number of graduates with career technical certificates and associate degrees;

(ii) Ensuring that students who earn certificates and degrees are placed in the workforce;

(iii) Providing workforce education and training programs for employers; and

(iv) Maintaining community and technical college student freshman-to-sophomore retention rates and graduation rates that equal or exceed state and national averages;

(5) The costs of operating Pierpont Community and Technical College as an independently accredited community and technical college administratively linked to Fairmont State University exceed the benefits of such an arrangement to the achievement of community and technical college system goals;

(6) A consortia arrangement, centralized processing alternative or other cost-saving measure is not available to offset the costs determined to be excessive pursuant to subdivision (5) of this subsection; and

(7) Fairmont State University and Pierpont Community and Technical College demonstrate that they are required:
(A) By the United States Department of Education to operate separate offices for student financial aid processing; and

(B) By the Higher Learning Commission of the North Central Association of Colleges and Schools to maintain a separate library for each institution.

(f) The council shall report to the Legislative Oversight Commission on Education Accountability concerning its findings and its final recommendations. The report shall be filed by the first day of December, two thousand nine.

(g) If the council determines that the merger of Fairmont State University and Pierpont Community and Technical College has not resulted in enabling the community and technical college to meet the conditions established in this section, the community and technical college shall pursue independent accreditation status. If Pierpont Community and Technical College fails to achieve independent accreditation by the first day of January, two thousand eleven, the council shall choose one of the following options:

(1) Create the administratively linked institution as a free-standing community and technical college under the jurisdiction of its own institutional board of governors established pursuant to section one, article two-a of this chapter; or

(2) Assign the responsibility for obtaining independent accreditation to another state institution of higher education.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-6. Appointment of institutional presidents; evaluation.

*CLERK’S NOTE: This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.
(a) Appointment of institutional presidents. — Appointment of presidents of the state institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the governing board of the institution appoints a president for Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(2) Subject to the approval of the council and to the provisions of article three-c of this chapter, the Governing Board of West Virginia University appoints the president of the regional campus known as West Virginia University at Parkersburg. The president serves at the will and pleasure of the governing board. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided in section one, article six of this chapter.

Until the first day of July, two thousand seven, and subject to the approval of the commission, the Governing Board of West Virginia University appoints the president of the regional campus known as West Virginia University Institute of Technology. The president of the regional campus serves at the will and pleasure of the appointing governing board.

(3) Subject to the approval of the council, the governing board of the community and technical college appoints a president for Eastern West Virginia Community and Technical College, Southern West Virginia Community and Technical College and West Virginia Northern Community and Technical College.
Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each administratively linked community and technical college which shares a physical campus location with the sponsoring institution, including Pierpont Community and Technical College, a division of Fairmont State University, Marshall Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology and West Virginia State Community and Technical College. The president of the administratively linked community and technical college serves at the will and pleasure of the appointing governing board.

Subject to the approval of the council, the governing board of the community and technical college appoints a president for each administratively linked community and technical college which does not share a physical campus location with the sponsoring institution, including New River Community and Technical College and Blue Ridge Community and Technical College.

(b) **Other appointments.** — The institutional president appoints a provost to be the administrative head of the Potomac campus of West Virginia University and, effective the first day of July, two thousand seven, for West Virginia University Institute of Technology.

(c) **Evaluation of presidents.** — The appointing governing board shall conduct written performance evaluations of each institution’s president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not
otherwise employed by a governing board. A part of the
evaluation shall be a determination of the success of the
institution in meeting the requirements of its institutional
compact.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

*§18B-2A-1. Composition of boards; terms and qualifications of
members; vacancies; eligibility for reappointment.

(a) A board of governors is continued at each of the
following institutions: Bluefield State College, Blue Ridge
Community and Technical College, Concord University,
Eastern West Virginia Community and Technical College,
Fairmont State University, Glenville State College, Marshall
University, New River Community and Technical College,
Shepherd University, Southern West Virginia Community and
Technical College, West Liberty State College, West Virginia
Northern Community and Technical College, the West Virginia
School of Osteopathic Medicine, West Virginia State Univer-
sity and West Virginia University.

(b) The institutional board of governors for Marshall
University consists of sixteen persons and the institutional
board of governors for West Virginia University consists of
eighteen persons. Each other board of governors consists of
twelve persons.

(c) Each board of governors includes the following
members:

(1) A full-time member of the faculty with the rank of
instructor or above duly elected by the faculty of the respective
institution;

*CLERK’S NOTE: This section was also amended by H. B. 4690 (Chapter 85), which
passed subsequent to this act.
(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the institutional board of governors at Marshall University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of Marshall Community and Technical College serving as an ex officio, voting member.

(5) For the institutional board of governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairpersons of the following boards serving as ex officio, voting members:

(A) The institutional board of advisors of:

(i) The Community and Technical College at West Virginia University Institute of Technology; and

(ii) West Virginia University at Parkersburg; and

(B) The Board of Visitors of West Virginia University Institute of Technology.

(6) For each institutional board of governors of an institution that does not have an administratively linked community and technical college under its jurisdiction, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.
(7) For each institutional board of governors which has an administratively linked community and technical college under its jurisdiction:

(A) Eight lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the administratively linked community and technical college; and

(B) Of the eight lay members appointed by the Governor, one shall be the superintendent of a county board of education from the area served by the institution.

(d) Of the eight or nine members appointed by the Governor, no more than five may be of the same political party. Of the twelve members appointed by the Governor to the governing boards of Marshall University and West Virginia University, no more than seven may be of the same political party. Of the eight or nine members appointed by the Governor, at least six shall be residents of the state. Of the twelve members appointed by the Governor to the governing boards of Marshall University and West Virginia University, at least eight shall be residents of the state.

(e) The student member serves for a term of one year. Each term begins on the first day of July.

(f) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(g) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.
(h) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term.

(i) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than two consecutive years.

(j) The appointed members of the institutional boards of governors serve staggered terms of four years.

(k) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(1) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors, a member of an institutional board of advisors of any public institution of higher education, an employee of any institution of higher education, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors or the superintendent of a county board of education from being members of the governing boards.
(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of an institutional board of advisors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors from being members of the governing boards.

(1) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(m) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(n) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred
146 by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-4. Community and technical college consortia planning districts.
§18B-3C-7. Blue Ridge Community and Technical College.
§18B-3C-8. Statewide network of independently accredited community and technical colleges.

*§18B-3C-4. Community and technical college consortia planning districts.

1 (a) Unless otherwise designated, the president of each community and technical college facilitates the formation of community and technical college consortia in the state, which includes representatives of community and technical colleges, public vocational-technical education centers, and public baccalaureate institutions offering associate degrees. The community and technical college consortium shall:

8 (1) Complete a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short- and long-term workforce development needs of the district;

12 (2) Coordinate efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decisionmaking;

17 (3) Plan and develop a unified effort between the community and technical colleges and public vocational-technical education to meet the documented workforce development needs of the district through individual and cooperative

*CLERK’S NOTE: This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.
programs, shared facilities, faculty, staff, equipment and other resources and the development and use of distance learning and other education technologies;

(4) Regularly review and revise curricula to ensure that the workforce needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, streamline procedures for designing and implementing customized training programs;

(5) Increase the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of seamless curricula projects in all major career pathways and the West Virginia EDGE, Earn a Degree, Graduate Early Program;

(6) Plan and implement integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

(7) Ensure that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

(8) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating course work in which they already possess competency;

(9) Cooperate with workforce investment boards in establishing one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training and secure employment and employers to locate available workers;
(10) Increase the integration of adult literacy, adult basic education, federal Work Force Investment Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and

(11) Establish a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college consortia planning districts are established and defined as follows:

(1) Northern Panhandle Community and Technical College District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall High School; Cameron High School; John D. Rockefeller Center; and other public vocational technical schools offering post-secondary programs.

(2) North Central West Virginia Community and Technical College District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.
(A) The facilitating institution is Pierpont Community and Technical College, a division of Fairmont State University.

(B) Participating institutions include Pierpont Community and Technical College, a division of Fairmont State University; Glenville State College; Randolph County Vocational-Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberly Technical Center; and other public vocational-technical schools offering post-secondary programs.

(3) Mid-Ohio Valley Community and Technical College District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; West Virginia Northern Community and Technical College; Roane-Jackson Technical Center; Gaston Caperton Center; Wood County Technical Center; and other public vocational-technical schools offering post-secondary programs.

(4) Potomac Highlands Community and Technical College District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public vocational-technical schools offering post-secondary programs.
(5) Shenandoah Valley Community and Technical College District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute; and other public vocational-technical schools offering post-secondary programs.

(6) Advantage Valley Community and Technical College District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution is Marshall Community and Technical College.

(B) Every five years the council shall:

(i) Evaluate the progress of the Advantage Valley Consortia toward achieving the goals and benchmarks of its compact;

(ii) Evaluate the progress of each community and technical college in the district toward achieving the goals and benchmarks of its institutional compact;

(iii) Determine which community and technical college in the district would best serve the needs of the district for the following five-year period if serving as the facilitating institution; and

(iv) Designate the community and technical college selected pursuant to subparagraph (iii) of this paragraph to serve as the facilitating institution for the following five-year period.

(C) Participating institutions include Marshall Community and Technical College; the Community and Technical College
at West Virginia University Institute of Technology; West Virginia State Community and Technical College; Carver Career Center; Garnet Career Center; Ben Franklin Career Center; Putnam County Vocational-Technical-Occupational Center; Cabell County Career-Technical Center; and other public vocational-technical schools offering post-secondary programs.

(7) Southern Mountains Community and Technical College District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is Southern West Virginia Community and Technical College.

(B) Participating institutions include Southern West Virginia Community and Technical College; New River Community and Technical College; Boone County Career and Technical Center; Wyoming County Vocational-Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo County Vocation-Technical Center; Charles Yeager Technical Center; and other public vocational-technical schools offering post-secondary programs.

(8) Southeastern Community and Technical College District includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River Community and Technical College.

(B) Participating institutions include New River Community and Technical College; Southern West Virginia Community and Technical College; the Community and Technical College at West Virginia University Institute of Technology; Bluefield State College; Academy of Careers and Technology;
Fayette Plateau Vocation-Technology Center; Summers County High School; Monroe County Technical Center; Mercer County Technical Center; and other public vocational-technical schools offering post-secondary programs.

(d) In the role of the facilitating institution of the community and technical college district, the college:

(1) Communicates to the council;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article; and

(3) Facilitates development of statement of commitment signed by all participating institutions in the region as to how community and technical college education will be delivered.

(e) Participating institutions are not subordinate to the facilitating institution but will sign the statement of commitment to participate.

(f) The council shall:

(1) Maintain guidelines for community and technical college consortia development;

(2) Set goals for each consortium based upon legislative goals for the delivery of comprehensive community and technical college education; and

(3) Maintain a format for developing and revising a consortium compact outlining plans for achieving stated goals to be submitted to the council annually for approval.
(g) On or before the fifteenth day of November each year each consortium shall submit to the council for approval a compact which outlines plans for obtaining the stated goals. Each compact shall include the implementation of seamless curricula and the West Virginia EDGE, Earn a Degree, Graduate Early Program.

(h) The council annually shall evaluate the progress made in meeting the compact goals for each community and technical college consortia through the development and collection of performance indicator data.

§18B-3C-7. Blue Ridge Community and Technical College.

The Community and Technical College of Shepherd is hereafter named “Blue Ridge Community and Technical College”. Any reference in this code to the Community and Technical College of Shepherd means Blue Ridge Community and Technical College.

§§18B-3C-8. Statewide network of independently accredited community and technical colleges.

(a) There is continued a statewide network of independently accredited community and technical colleges serving every region of the state. This section does not apply to the free-standing community and technical colleges or West Virginia University at Parkersburg.

(b) To be eligible for funds appropriated to develop independently accredited community and technical colleges, a state institution of higher education shall demonstrate the following:

*Clerk’s Note: This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.*
(1) That it has as a part of its institutional compact approved by the council a step-by-step plan with measurable benchmarks for developing an independently accredited community and technical college that meets the essential conditions set forth in section three of this article;

(2) That it is able to offer evidence to the satisfaction of the council that it is making progress toward accomplishing the benchmarks established in its institutional compact for developing an independently accredited community and technical college; and

(3) That it has submitted an expenditure schedule approved by the council which sets forth a proposed plan of expenditures for funds allocated to it from the fund.

(c) The statewide network of independently accredited community and technical colleges is comprised of the free-standing community and technical colleges, West Virginia University at Parkersburg and the following state institutions of higher education:

(1) **New River Community and Technical College.** —

(A) There is continued the multicampus entity known as New River Community and Technical College, administratively linked to Bluefield State College. New River Community and Technical College is headquartered in the Beckley Higher Education Center and incorporates the campuses of Greenbrier Community College Center of New River Community and Technical College and Nicholas Community College Center of New River Community and Technical College. New River Community and Technical College is an independently accredited community and technical college.

(B) Bluefield State College may continue associate degree programs in areas of particular institutional strength which are
closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(C) Bluefield State College may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River Community and Technical College or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

(D) As an independently accredited community and technical college, New River also serves as a higher education center for its region by brokering with other colleges, universities and providers, in-state and out-of-state, both public and private, to ensure the coordinated access of students, employers and other clients to needed programs and services.

(E) New River Community and Technical College participates in the planning and development of a unified effort
involving multiple providers to meet the documented education
and workforce development needs in the region. Nothing in this
subdivision prohibits or limits any existing, or the continuation
of any existing, affiliation between Mountain State University,
West Virginia University Institute of Technology and West
Virginia University. The objective is to assure students and
employers in the area that there is coordination and efficient use
of resources among the separate programs and facilities,
existing and planned, in the Beckley area.

(2) Marshall Community and Technical College. —
Marshall Community and Technical College is an independ-
ently accredited community and technical college. The new
community and technical college is developed on the base of
the component community and technical college of Marshall
university. Subject to the provisions of this section, the
president and the governing board of Marshall university are
responsible, according to a plan approved by the council, for
step-by-step implementation of the new independently accred-
ited community and technical college which adheres to the
essential conditions pursuant to section three of this article.
Subject to the provisions of section twelve of this article, the
community and technical college remains administratively
linked to Marshall University. Marshall University may
continue associate degree programs in areas of particular
institutional strength which are closely articulated to its
baccalaureate programs and missions or which are of a
high-cost nature and can best be provided in direct coordination
with a baccalaureate institution. Any such program shall be
delivered under the authority of the council and through
contract with the community and technical college. The terms
of the contract shall be negotiated between the council and the
governing board of the sponsoring institution. The final contract
is approved by the council. Such a program shall be evaluated
according to the benchmarks and indicators for community and
technical college education developed by the council. If the
council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(3) Blue Ridge Community and Technical College. — Blue Ridge Community and Technical College is an independently accredited community and technical college. Subject to the provisions of section twelve of this article, the community and technical college remains administratively linked to Shepherd University. Shepherd University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(4) West Virginia State Community and Technical College. — West Virginia State Community and Technical College is an independently accredited community and technical college. The new community and technical college is developed on the base of the component community and technical college of West Virginia state college. Subject to the provisions of this section, the president and the Governing Board of West Virginia State College are responsible, according to a plan approved by the council, for step-by-step implementation of the new independ-
ently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college remains administratively linked to West Virginia State University. West Virginia State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(5) The Community and Technical College at West Virginia University Institute of Technology. — The Community and Technical College at West Virginia University Institute of Technology is an independently accredited community and technical college. The new community and technical college is developed on the base of the component community and technical college of West Virginia University Institute of Technology. Subject to the provisions of this section, the president and the governing board of West Virginia University are responsible, according to a plan approved by the council, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the
community and technical college remains administratively linked to West Virginia University Institute of Technology. West Virginia University Institute of Technology may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(d) The president and the board of governors of each sponsoring institution are accountable to the council for ensuring that the community and technical college adheres to the essential conditions pursuant to section three of this article.

ARTICLE 6. ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

§18B-6-1a. Definitions.

*§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.*

(a) There are continued institutional boards of advisors as follows:

*CLERK’S NOTE: This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.*
(1) For each regional campus. The chairperson of the board of advisors of West Virginia University at Parkersburg serves as an ex officio, voting member of the Governing Board of West Virginia University;

(2) For administratively linked community and technical colleges which share a physical location with the sponsoring institution. This category includes Marshall Community and Technical College, West Virginia State Community and Technical College and the Community and Technical College at West Virginia University Institute of Technology. The chairperson of the board of advisors of each administratively linked community and technical college serves as an ex officio, voting member of the sponsoring institution’s board of governors, or, in the case of the Community and Technical College at West Virginia University Institute of Technology, the chairperson of the board of advisors serves as an ex officio voting member of the Governing Board of West Virginia University; and

(3) For Pierpont Community and Technical College. The chairperson of the board of advisors of Pierpont Community and Technical College serves as an ex officio, voting member of the Fairmont State University Board of Governors.

(b) The lay members of the institutional boards of advisors for the regional campuses are appointed by the board of governors.

(c) The lay members of the institutional boards of advisors established for the administratively linked community and technical colleges and Pierpont Community and Technical College are appointed by the West Virginia Council for Community and Technical College Education.

(d) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of
instructor or above duly elected by the faculty of the respective institution; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; a member from the institutional classified employees duly elected by the classified employees of the respective institution; and twelve lay persons appointed pursuant to this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the respective institution and no more than a simple majority may be of the same political party.

(e) The student member serves for a term of one year beginning on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning on the first day of May. The twelve lay members serve terms of four years each beginning on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the remainder of the unexpired term within thirty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy:

(1) All elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term; and

(2) Terms of members begin on the first day of May following election.

(f) Each board of advisors shall hold a regular meeting at least quarterly, commencing in May of each year. Additional meetings may be held upon the call of the chairperson, presi-
dent of the institution or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(g) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year. A member may not serve as chairperson for more than two consecutive years.

(h) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the boards of advisors and the institutions under this section shall be paid from funds allocated to the institutions for that purpose.

(i) Prior to the submission by the president to its governing board, the board of advisors shall review all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(j) Prior to their implementation by the president, the board of advisors shall review all proposals regarding institutionwide
personnel policies. The board of advisors may comment on the proposals in writing.

(k) The board of advisors shall provide advice and assistance to the president and the governing board in areas including, but not limited to, the following:

(1) Establishing closer connections between higher education and business, labor, government and community and economic development organizations to give students greater opportunities to experience the world of work. Examples of such experiences include business and community service internships, apprenticeships and cooperative programs;

(2) Communicating better and serving the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and

(3) Assessing the performance of the institution’s graduates and assisting in job placement.

(l) When a vacancy occurs in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the council. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. For the purposes of the search and screening process only, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process,
the committee shall submit the names of at least three candidates to the appropriate governing board. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the governing board approves one of the candidates submitted. In all cases, the governing board shall make the appointment with the approval of the council or the commission in the case of West Virginia University Institute of Technology. The governing board or the council shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee. This subsection does not apply to Fairmont State University. The president of Fairmont State University continues to be appointed pursuant to the provisions of section six, article one-b of this chapter.

(m) The boards of advisors shall develop a master plan for those administratively linked community and technical colleges which retain boards of advisors. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of these institutional master plans, including periodic updates, resides with the council. The plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;
(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

*§18B-6-la. Definitions.*

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Advisory Council of Classified Employees” or “classified council” means the state advisory organization of classified employees created pursuant to section five of this article.

(b) “Advisory Council of Faculty” or “faculty council” means the state advisory organization of faculty created pursuant to section two of this article.

(c) “Advisory Council of Students” or “student advisory council” means the state advisory organization of students created pursuant to section four of this article.

(d) “Classified employee”, in the singular or plural, means any regular full-time or regular part-time employee of a governing board, the commission, the council or the West Virginia Network for Educational Telecomputing who holds a position that is assigned a particular job title and pay grade in

*Clerk’s Note:* This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.
accordance with the personnel classification system established by law.

(e) “Community and technical college” means Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, West Virginia Northern Community and Technical College, Blue Ridge Community and Technical College, Southern West Virginia Community and Technical College, West Virginia State Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, West Virginia University at Parkersburg and any other community and technical college so designated by the Legislature.

(f) “Council” means the West Virginia Council for Community and Technical College Education created pursuant to section three, article two-b of this chapter.

(g) “Institutional Classified Employee Council” or “staff council” means the advisory group of classified employees formed at a state institution of higher education pursuant to section six of this article.

(h) “Institutional faculty senate”, “faculty senate” or “faculty assembly” means the advisory group of faculty formed at a state institution of higher education pursuant to section three of this article.

(i) “State institution of higher education”, in the singular or plural, means the institutions as defined in section two, article one of this chapter and, additionally, Pierpont Community and Technical College, a division of Fairmont State University, Marshall Community and Technical College, New River Community and Technical College, Potomac State College of West Virginia University, Robert C. Byrd Health Sciences Charleston Division of West Virginia University, Blue Ridge
Community and Technical College, West Virginia State Community and Technical College, West Virginia University at Parkersburg, West Virginia University Institute of Technology, the Community and Technical College at West Virginia University Institute of Technology, the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, the West Virginia Network for Educational Telecomputing and any other institution so designated by the Legislature.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

*§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

*CLERK’S NOTE: This section was also amended by H. B. 4049 (Chapter 79) and H. B. 4690 (Chapter 85), which passed prior to this act.
(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student’s attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the Legislative Oversight Commission on Education Accountability.
(f) The schedule of all tuition and fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(h) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable
and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code defining conditions under which an institution may offer tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government. The fee may not be used to finance litigation against the institution.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;
(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or
council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(1) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three quarters percent for undergraduate resident students for any fiscal year. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established specialized fee which may be proposed by a governing board.

(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.
Subject to the provisions of subdivision (8) of this subsection the governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.

Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:
(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.

(7) The commission and council shall report to the Legislative Oversight commission on Education Accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (5) of this subsection.

(8) Notwithstanding the provisions of subdivisions (1) and (4) of this subsection, tuition and fee increases at state institutions of higher education which are under the jurisdiction of the
commission, including the state institutions of higher education
known as Marshall University and West Virginia University,
are subject to the following conditions:

(A) Institutions may increase tuition and fees for resident,
undergraduate students by no more than an average of seven
and one-half percent per year during any period covering four
consecutive fiscal years, with the first fiscal year of the first
four-fiscal year cycle beginning on the first day of July, two
thousand seven;

(B) The seven and one-half percent average cap does not
apply to an institution for any fiscal year in which the total state
base operating budget appropriations to that institution are less
than the total state base operating budget appropriations in the
fiscal year immediately preceding;

(C) A new capital fee or an increase in an existing capital
fee is excluded from the tuition and fee increase calculation in
this subdivision:

(i) If the new fee or fee increase is approved by an institu-
tional governing board or by a referendum of an institution’s
undergraduate students, or both, on or before the first day of
February, two thousand six; or

(ii) If the following conditions are met:

(I) The new fee or fee increase was approved by an
institutional governing board or by a referendum of an institu-
tion’s undergraduate students, or both, on or before the first day
of July, two thousand six;

(II) The institution for which the capital fee is approved has
been designated a university pursuant to the provisions of
section six, article two-a of this chapter by the effective date of
this section; and
(III) The institutional board of governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of governors;

(D) Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission has the power and the duty to:

(i) Collect such data from any institution under its jurisdiction; and

(ii) Annually by the first day of July, provide a detailed analysis of the institutions’ compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.

CHAPTER 85

(Com. Sub. for H. B. 4690 — By Delegates Perry and Pino)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §18B-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-1C-1 and §18B-1C-2 of said code; to amend said code by adding thereto a new section, designated §18B-1C-3; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-3C-4 and §18B-3C-8 of said code; to amend said code by adding thereto a new section, designated §18B-3C-13; to amend and reenact §18B-3D-2, §18B-
3D-3, §18B-3D-4 and §18B-3D-5 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; and to amend and reenact §18B-10-1 of said code, all relating to higher education generally; higher education governance; making West Virginia University Institute of Technology a fully integrated division of West Virginia University; consolidating administrative and academic units; assigning direction and support of such units to West Virginia University; designating certain board of advisors as board of visitors; providing that chair of West Virginia University Institute of Technology Board of Advisors serves as ex officio, voting member of West Virginia University Board of Governors; establishing legislative findings and intent regarding collaboration in engineering programs between West Virginia University Institute of Technology, Marshall University and West Virginia University; establishing legislative findings and intent; adding and clarifying definitions; providing for appointment of certain institutional presidents and officers; designating Community and Technical College of Shepherd as Blue Ridge Community and Technical College; requiring study and reports on operations of certain community and technical college; providing for continuance of certain state institutions of higher education; creating West Virginia Consortium for Undergraduate Research and Engineering; membership; purpose; requiring development of collaborative engineering strategic plan; requiring reports by certain dates; continuing Workforce Development Initiative Program under West Virginia Council for Community and Technical College Education; providing for appointment of advisory committee members; requiring report to Legislative Oversight Commission on Education Accountability; requiring plan as part of institutional compact; requiring promulgation of legislative rule; providing for continuation of current rule; deleting requirement for certain chairs of boards of governors and advisors to serve on certain boards of advisors and governors; clarifying role of boards of advisors in process to select certain institutional presidents; providing for fee increases for certain
institutions under certain conditions; making technical corrections and repealing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18B-2-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1-2 of said code be amended and reenacted; that §18B-1B-6 of said code be amended and reenacted; that §18B-1C-1 and §18B-1C-2 be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1C-3; that §18B-2A-1 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-3C-4 and §18B-3C-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3C-13; that §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.


1B. Higher Education Policy Commission.

1C. West Virginia University Institute of Technology.

2A. Institutional Boards of Governors.

3. Additional Powers and Duties of Research, Doctoral-granting Public Universities.

3C. Community and Technical College System.

3D. Workforce Development Initiative.

6. Advisory Councils.

10. Fees and Other Money Collected at State Institutions of Higher Education.

ARTICLE 1. GOVERNANCE.

*§18B-1-2. Definitions.

*CLERK’S NOTE: This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.
The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) Effective the first day of July, two thousand seven, “regional campus” means West Virginia University at Parkersburg.

(b) “Governing boards” or “boards” means the institutional boards of governors created pursuant to section one, article two-a of this chapter;

(c) “Freestanding community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and Eastern West Virginia Community and Technical College which may not be operated as branches or off-campus locations of any other state institution of higher education;

(d) “Community college” or “community colleges” means community and technical college or colleges as those terms are defined in this section;

(e) “Community and technical college,” in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, Eastern West Virginia Community and Technical College, New River Community and Technical College, West Virginia University at Parkersburg, The Community and Technical College at West Virginia University Institute of Technology, Blue Ridge Community and Technical College, Fairmont State Community and Technical College, Marshall Community and Technical College and West Virginia State Community and Technical College;
(f) “Community and technical college education” means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(g) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(h) “Higher education institution” means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) “Higher Education Policy Commission,” “policy commission” or “commission” means the commission created pursuant to section one, article one-b of this chapter;

(j) “Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(k) “Chancellor for Community and Technical College Education” means the Chief Executive Officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(l) “Chancellor” means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. “Chancellor” means chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

(m) “Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources in the prior
fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(n) “Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All such programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subsection;

(o) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(p) “Senior administrator” means the vice chancellor for administration employed in accordance with section two, article four of this chapter;

(q) “State college” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College or West Virginia State University;

(r) “State institution of higher education” means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;
(s) Until the first day of July, two thousand seven “Regional campus” means West Virginia University at Parkersburg and West Virginia University Institute of Technology;

(t) The advisory board previously appointed for the West Virginia Graduate College is known as the “Board of Visitors” and shall provide guidance to the Marshall University Graduate College;

(u) “Institutional compact” means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section two, article one-a of this chapter;

(v) “Peer institutions”, “peer group” or “peers” means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(w) “Administratively linked community and technical college” means a community and technical college created pursuant to section eight, article three-c of this chapter;

(x) “Sponsoring institution” means a state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

(y) “Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(z) “Broker” or “brokering” means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state; and
**§18B-1B-6. Appointment of institutional presidents; evaluation.**

(a) *Appointment of institutional presidents.* — Appointment of presidents of the state institutions of higher education shall be made as follows:

1. Subject to the approval of the commission, the governing board of the institution appoints a president for Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

2. Subject to the approval of the council and to the provisions of article three-c of this chapter, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia University at Parkersburg. The president serves at the will and pleasure of the governing board. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided in section one, article six of this chapter.

*CLERK’S NOTE: This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.*
Until the first day of July, two thousand seven and subject
to the approval of the commission, the Governing Board of
West Virginia University appoints the President of the regional
campus known as West Virginia University Institute of
Technology. The president of the regional campus serves at the
will and pleasure of the appointing governing board.

(3) Subject to the approval of the council, the governing
board of the community and technical college appoints a
president for Eastern West Virginia Community and Technical
College, Southern West Virginia Community and Technical
College and West Virginia Northern Community and Technical
College.

(4) Subject to the approval of the council, the governing
board of the sponsoring institution appoints a president for each
administratively linked community and technical college which
shares a physical campus location with the sponsoring institu-
tion, including Fairmont State Community and Technical
College, Marshall Community and Technical College, The
Community and Technical College at West Virginia University
Institute of Technology and West Virginia State Community
and Technical College.

(5) Subject to the approval of the council, the governing
board of the community and technical college appoints a
president for each administratively linked community and
technical college which does not share a physical campus
location with the sponsoring institution, including New River
Community and Technical College and Blue Ridge Community
and Technical College.

(b) Other appointments. — The institutional president
appoints a provost to be the administrative head of the Potomac
campus of West Virginia University and, effective the first day
of July, two thousand seven, for West Virginia University
Institute of Technology.
(c) Evaluation of presidents. — The appointing governing board shall conduct written performance evaluations of each institution’s president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact.

ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§18B-1C-1. Legislative findings and intent.
§18B-1C-2. West Virginia University Institute of Technology; division of West Virginia University.
§18B-1C-3. West Virginia Consortium for Undergraduate Research and Engineering established; short title; membership; purpose; strategic plan; report.

§18B-1C-1. Legislative findings and intent.

1 (a) The Legislature recognizes that:

2 (1) West Virginia University Institute of Technology is a vital part of higher education in West Virginia;

3 (2) The engineering program at West Virginia University Institute of Technology plays a significant role in the continued success of the students at the institution and of the state as a whole;

4 (3) The average salaries of faculty at West Virginia University Institute of Technology are significantly lower than the average salaries of faculty at West Virginia University;
(4) Facilities at West Virginia University Institute of Technology are in greater disrepair and in greater need of overall capital investment than are facilities at West Virginia University; and

(5) Collaboration between the engineering program of West Virginia University Institute of Technology, West Virginia University, Marshall University and other private partners as appropriate would:

(A) Lead to a greater understanding and knowledge of engineering research;

(B) Lead to greater opportunities for students to engage in research; and

(C) Result in greater opportunities for participating students to find gainful employment in future research or to continue graduate level research and study.

(b) It is the intent of the Legislature to encourage collaboration between West Virginia University Institute of Technology, West Virginia University, Marshall University and appropriate private entities to provide significant education opportunities to students.

(c) It is specifically the intent of the Legislature that:

(1) The baccalaureate engineering program offered at the West Virginia University Institute of Technology be and remain a permanent component of its curriculum;

(2) Collaboration in engineering and other appropriate programs occur between West Virginia University Institute of Technology, West Virginia University, Marshall University and appropriate private entities pursuant to section three of this article; and
(3) The West Virginia University Board of Governors develop a plan and take appropriate steps to address faculty average salary levels. In developing the plan, the board may consider the unique mission of the division and the performance expectations for faculty in meeting the goals of the institution. The plan also shall include recommendations for addressing the capital improvement needs at West Virginia University Institute of Technology.

§18B-1C-2. West Virginia University Institute of Technology; division of West Virginia University.

(a) Notwithstanding any other provision of this code to the contrary by the first day of July, two thousand seven, West Virginia University Institute of Technology shall merge and consolidate with West Virginia University and become a fully integrated division of West Virginia University. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia University. The advisory board previously appointed for West Virginia University Institute of Technology shall be known as the board of visitors and shall provide guidance to the division in fulfilling its mission. The chairperson of the board of visitors serves as an ex-officio, voting member of the West Virginia University Board of Governors.

(b) The fully integrated division formerly named West Virginia University Institute of Technology is hereafter named West Virginia University Institute of Technology. The headquarters of West Virginia University Institute of Technology shall remain in Montgomery, West Virginia.

(c) The provisions of this section do not affect the independent accreditation, administrative linkage or continued operation of The Community and Technical College at West Virginia University Institute of Technology under the jurisdiction and authority of the council.
(d) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at West Virginia University Institute of Technology can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(e) West Virginia University Institute of Technology has a strong reputation in engineering and other scientific disciplines. These programs shall be maintained, cultivated and emphasized further as its sustaining mission over the next decade.

(f) By the first day of April, two thousand seven, the West Virginia University Board of Governors shall develop and approve a plan to implement the provisions of this article. Beginning the first day of July, two thousand six, the board of governors may begin implementing appropriate changes in the operations of West Virginia University Institute of Technology to further the purposes of this article.

(g) By the first day of November, two thousand six, and annually thereafter for a period of four years, the West Virginia University Board of Governors shall prepare and submit a report to the commission and Legislative Oversight Commission on Education Accountability on progress being made to implement the provisions of this article.

(h) The West Virginia University Board of Governors, in conjunction with the Board of Advisors of The Community and Technical College at West Virginia University Institute of Technology, shall conduct a study and report to the council by the first day of November, two thousand six. The study includes, but is not limited to, the following issues:

(1) An appropriate governance structure for the community and technical college;
(2) An appropriate name for the community and technical college; and

(3) The most effective and efficient mechanism to ensure that all essential conditions for the delivery of community and technical college education are met, including the most effective and efficient method for the community and technical college to obtain services.

The council shall review the study findings, conclusions and recommendations and report to the Legislative Oversight Commission on Education Accountability by the first day of January, two thousand seven. The report of the council shall include a determination of the need for statutory change, together with drafts of any legislation necessary to effectuate the council’s recommendations. West Virginia University Institute of Technology shall develop or maintain baccalaureate degree programs as a permanent component of its curriculum.

§18B-1C-3. West Virginia Consortium for Undergraduate Research and Engineering established; short title; membership; purpose; strategic plan; report.

(a) There is established the West Virginia Consortium for Undergraduate Research and Engineering. This section may be designated and cited as “West Virginia CURE”.

(b) West Virginia CURE is a collaborative planning group comprised of thirteen members. The Governor shall designate one of the members to be the chairperson. The members are selected as follows:

(1) The provost or a designee from West Virginia University Institute of Technology, Marshall University and West Virginia University;
(2) The director of sponsored programs from West Virginia University Institute of Technology and the vice presidents for research from Marshall University and West Virginia University;

(3) The deans of engineering from West Virginia University Institute of Technology, Marshall University and West Virginia University; and

(4) Four members appointed by the Governor, each of whom has demonstrated an interest in public higher education in West Virginia and each of whom possesses recognized credentials and expertise in one or more of the following fields:

(A) Engineering;

(B) Technology and computer science;

(C) Research development;

(D) Business leadership and management; and

(E) Finance.

At least one of the members appointed by the Governor shall be a representative of the engineering profession from business or industry.

(c) The purposes for which West Virginia CURE is established include, but are not limited to, the following:

(1) Increasing West Virginia’s capacity for high quality engineering instruction and research;

(2) Increasing access throughout the state to high quality instruction and research opportunities in science, technology, engineering, and mathematics; and
(3) Stimulating economic development throughout West Virginia by increasing the number of professional engineers available to business and industry.

(d) **Collaborative Engineering Strategic Plan Required.**

CURE shall develop a collaborative engineering strategic plan to address the needs identified in subsection (c) of this section.

(e) **Collaborative Engineering Strategic Plan Elements.**

(1) The Collaborative Engineering Strategic Plan shall focus on methods to use the complementary strengths of West Virginia University Institute of Technology, Marshall University and West Virginia University.

(A) West Virginia University Institute of Technology provides a student-centered engineering program that provides full-time faculty attention and small classes. This approach prepares students well to enter and succeed in the professional practice of engineering.

(B) Marshall University exhibits a strong commitment to engineering outreach and has developed an undergraduate engineering program that builds upon the institution’s tradition in liberal arts and sciences to provide unique, flexible engineering opportunities that are attractive to a broad range of students.

(C) West Virginia University’s large student enrollment and high quality faculty enables the institution to provide access to a broad range of undergraduate and graduate engineering programs as well as opportunities for research-oriented study at the graduate level.

(2) The strategic plan may address, but is not limited to, consideration of the following elements:
The strategic plan may not contain a recommendation which would result in abolishing an existing program.

(3) The consortium shall:

(A) Prepare an interim report outlining its progress and tentative conclusions for presentation to the Governor and the Legislative Oversight Commission on Education Accountability no later than the first day of December, two thousand six; and

(B) Prepare a final report containing the Collaborative Engineering Strategic Plan, together with recommendations for implementation, for presentation to the Governor and the Legislative Oversight Commission on Education Accountability no later than the first day of July, two thousand seven.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

*§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall...
University, New River Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty State College, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(b) The Institutional Board of Governors for Marshall University consists of sixteen persons, and the Institutional Board of Governors for West Virginia University consists of seventeen persons. Each other board of governors consists of twelve persons.

(c) Each board of governors includes the following members:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution;

(3) A member from the institutional classified employees duly elected by the classified employees of the respective institution; and

(4) For the Institutional Board of Governors at Marshall University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the Institutional Board of Advisors of Marshall Community and Technical College serving as an ex officio, voting member.

(5) For the Institutional Board of Governors at West Virginia University, twelve lay members appointed by the
Governor by and with the advice and consent of the Senate pursuant to this section and, additionally, the chairperson of the Institutional Board of Advisors of The Community and Technical College at West Virginia University Institute of Technology and West Virginia University at Parkersburg.

(6) For each institutional board of governors of an institution that does not have an administratively-linked community and technical college under its jurisdiction, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(7) For each institutional board of governors which has an administratively linked community and technical college under its jurisdiction:

(A) Eight lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the administratively linked community and technical college; and

(B) Of the eight lay members appointed by the Governor, one shall be the superintendent of a county board of education from the area served by the institution.

(d) Of the eight or nine members appointed by the Governor, no more than five may be of the same political party. Of the twelve members appointed by the Governor to the governing boards of Marshall University and West Virginia University, no more than seven may be of the same political party. Of the eight or nine members appointed by the Governor, at least six shall be residents of the state. Of the twelve members appointed by the Governor to the governing boards of Marshall University and West Virginia University, at least eight shall be residents of the state.
(e) The student member serves for a term of one year. Each term begins on the first day of July.

(f) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(g) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(h) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term.

(i) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than two consecutive years.

(j) The appointed members of the institutional boards of governors serve staggered terms of four years.

(k) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(1) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or
(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of an institutional board of advisors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors or the superintendent of a county board of education from being members of the governing boards.

(1) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(m) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty
or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(n) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH, DOCTORAL-GRANTING PUBLIC UNIVERSITIES.

§18B-3-1. Legislative findings, purpose and intent; definitions.

(a) The Legislature finds that an effective and efficient system of doctoral-level education is vital to providing for the economic well-being of the citizens of West Virginia and for accomplishing established state goals and objectives. As the only research and doctoral-granting public universities in the state, Marshall University and West Virginia University are major assets to the citizens of West Virginia and must be an integral part of any plan to strengthen and expand the economy.

(b) The Legislature further finds that these two institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both affordable and accessible and remain accountable to the people of West Virginia for the most efficient and effective use of scarce resources.

(c) The Legislature further finds that Marshall University and West Virginia University, under the direction of their
respective governing boards, have sufficient staff and internal expertise to manage operational governance of their institutions in an efficient and accountable manner and can best fulfill their public missions when their governing boards are given flexibility and autonomy sufficient to meet state goals established in this article and in section one-a, article one of this chapter.

(d) Therefore, the purposes of this article include, but are not limited to, the following:

(1) Enhancing the competitive position of Marshall University and West Virginia University in the current environment for research and development;

(2) Providing the governing boards of these institutions with operational flexibility and autonomy, including tools to promote economic development in West Virginia;

(3) Encouraging the development of research expertise in areas directly beneficial to the state; and

(4) Focusing the attention and resources of the governing boards on state goals and priorities to enhance the competitive position of the state and the economic, social and cultural well-being of its citizens.

(e) The following terms wherever used or referred to in this chapter have the following meaning, unless a different meaning plainly appears from the context:

(1) “State institution of higher education known as Marshall University” means the doctoral-granting research institution and does not include Marshall Community and Technical College; and

(2) “State institution of higher education known as West Virginia University” means the doctoral-granting research institution and does not include any of the following:
(A) Until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology;

(B) The administratively linked institution known as The Community and Technical College at West Virginia University Institute of Technology; and

(C) The regional campus known as West Virginia University at Parkersburg.

(f) The governing boards of Marshall University and West Virginia University each have the power and the obligation to perform functions, tasks and duties as prescribed by law and to exercise their authority and carry out their responsibilities in a manner that is consistent with and not in conflict with the powers and duties assigned by law to the West Virginia council for Community and Technical College Education and the Higher Education Policy Commission.

(g) While the governing boards of Marshall University and West Virginia University, respectively, may choose to delegate powers and duties to the presidents of the state institutions of higher education known as Marshall University and West Virginia University pursuant to subsection (s), section four, article two-a of this chapter, ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West Virginia for meeting the established state goals set forth in this article and section one-a, article one of this chapter. Therefore, it is the intent of the Legislature that grants of operational flexibility and autonomy be made directly to the governing boards and are not grants of operational flexibility and autonomy to the presidents of these institutions.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-4. Community and technical college consortia planning districts.
§ 18B-3C-8. Statewide network of independently accredited community and technical colleges.


§ 18B-3C-4. Community and technical college consortia planning districts.

(a) Unless otherwise designated, the president of each community and technical college facilitates the formation of community and technical college consortia in the state, which includes representatives of community and technical colleges, public vocational-technical education centers, and public baccalaureate institutions offering associate degrees. The community and technical college consortium shall:

1. Complete a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long-term workforce development needs of the district;

2. Coordinate efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision making;

3. Plan and develop a unified effort between the community and technical colleges and public vocational-technical education to meet the documented workforce development needs of the district through individual and cooperative programs, shared facilities, faculty, staff, equipment and other resources and the development and use of distance learning and other education technologies;

4. Regularly review and revise curricula to ensure that the workforce needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, streamline procedures for designing and implementing customized training programs;
(5) Increase the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of seamless curricula projects in all major career pathways and the West Virginia EDGE, “Earn a Degree Graduate Early” program;

(6) Plan and implement integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

(7) Ensure that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

(8) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating course work in which they already possess competency;

(9) Cooperate with workforce investment boards in establishing one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training and secure employment and employers to locate available workers;

(10) Increase the integration of adult literacy, adult basic education, federal Workforce Investment Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and

(11) Establish a single point of contact for employers and potential employers to access education and training programs throughout the district.
(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college consortia planning districts are established and defined as follows:

(1) Northern Panhandle Community and Technical College District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall High School; Cameron High School; John D. Rockefeller Center; and other public vocational technical schools offering post-secondary programs.

(2) North Central West Virginia Community and Technical College District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.

(A) The facilitating institution is Fairmont State Community and Technical College.

(B) Participating institutions include Fairmont State Community and Technical College; Glenville State College; Randolph County Vocational-Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberly Technical
Center; and other public vocational technical schools offering post-secondary programs.

(3) Mid-Ohio Valley Community and Technical College District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; West Virginia Northern Community and Technical College; Roane-Jackson Technical Center; Gaston Caperton Center; Wood County Technical Center; and other public vocational technical schools offering post-secondary programs.

(4) Potomac Highlands Community and Technical College District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public vocational technical schools offering post-secondary programs.

(5) Shenandoah Valley Community and Technical College District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute;
(6) Advantage Valley Community and Technical College District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution is Marshall Community and Technical College.

(B) Every five years the council shall:

(i) Evaluate the progress of the Advantage Valley Consortia toward achieving the goals and benchmarks of its compact;

(ii) Evaluate the progress of each community and technical college in the district toward achieving the goals and benchmarks of its institutional compact;

(iii) Determine which community and technical college in the district would best serve the needs of the district for the following five-year period if serving as the facilitating institution; and

(iv) Designate the community and technical college selected pursuant to subparagraph (iii) of this paragraph to serve as the facilitating institution for the following five-year period.

(C) Participating institutions include Marshall Community and Technical College; The Community and Technical College at West Virginia University Institute of Technology; West Virginia State Community and Technical College; Carver Career Center; Garnet Career Center; Ben Franklin Career Center; Putnam County Vocational-Technical-Occupational Center; Cabell County Career-Technical Center; and other public vocational technical schools offering post-secondary programs.
(7) Southern Mountains Community and Technical College District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is Southern West Virginia Community and Technical College.

(B) Participating institutions include Southern West Virginia Community and Technical College; New River Community and Technical College; Boone County Career and Technical Center; Wyoming County Vocational-Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo County Vocation-Technical Center; Charles Yeager Technical Center; and other public vocational technical schools offering post-secondary programs.

(8) Southeastern Community and Technical College District includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River Community and Technical College.

(B) Participating institutions include New River Community and Technical College; Southern West Virginia Community and Technical College; The Community and Technical College at West Virginia University Institute of Technology; Bluefield State College; Academy of Careers and Technology; Fayette Plateau Vocation-Technology Center; Summers County High School; Monroe County Technical Center; Mercer County Technical Center; and other public vocational technical schools offering post-secondary programs.

(d) In the role of the facilitating institution of the community and technical college district, the college:
(1) Communicates to the council;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article; and

(3) Facilitates development of statement of commitment signed by all participating institutions in the region as to how community and technical college education will be delivered.

(e) Participating institutions are not subordinate to the facilitating institution but will sign the statement of commitment to participate.

(f) The council shall:

(1) Maintain guidelines for community and technical college consortia development;

(2) Set goals for each consortium based upon legislative goals for the delivery of comprehensive community and technical college education; and

(3) Maintain a format for developing and revising a consortium compact outlining plans for achieving stated goals to be submitted to the council annually for approval.

(g) Annually, on or before the fifteenth day of November, each consortium shall submit to the council for approval a compact which outlines plans for obtaining the stated goals. Each compact shall include the implementation of seamless curricula and the West Virginia EDGE, “Earn a Degree Graduate Early” program.

(h) Annually, the council shall evaluate the progress made in meeting the compact goals for each community and technical
college consortia through the development and collection of performance indicator data.

*§18B-3C-8. Statewide network of independently accredited community and technical colleges.*

(a) There is continued a statewide network of independently accredited community and technical colleges serving every region of the state. This section does not apply to the freestanding community and technical colleges or West Virginia University at Parkersburg.

(b) To be eligible for funds appropriated to develop independently accredited community and technical colleges, a state institution of higher education shall demonstrate the following:

(1) That it has as a part of its institutional compact approved by the council a step-by-step plan with measurable benchmarks for developing an independently accredited community and technical college that meets the essential conditions set forth in section three of this article;

(2) That it is able to offer evidence to the satisfaction of the council that it is making progress toward accomplishing the benchmarks established in its institutional compact for developing an independently accredited community and technical college; and

(3) That it has submitted an expenditure schedule approved by the council which sets forth a proposed plan of expenditures for funds allocated to it from the fund.

(c) The statewide network of independently accredited community and technical colleges is comprised of the free-

*CLERK’S NOTE:* This section was also amended by S. B. 792 (Chapter 84), which passed prior to this act.
standing community and technical colleges, West Virginia University at Parkersburg, and the following state institutions of higher education:

(1) New River Community and Technical College. —

(A) There is continued the multicampus entity known as New River Community and Technical College, administratively linked to Bluefield State College. New River Community and Technical College is headquartered in the Beckley Higher Education Center and incorporates the campuses of Greenbrier Community College Center of New River Community and Technical College and Nicholas Community College Center of New River Community and Technical College. New River Community and Technical College is an independently accredited community and technical college.

(B) Bluefield State College may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(C) Bluefield State College may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular
institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River Community and Technical College or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

(D) As an independently accredited community and technical college, New River also serves as a higher education center for its region by brokering with other colleges, universities and providers, in-state and out-of-state, both public and private, to ensure the coordinated access of students, employers and other clients to needed programs and services.

(E) New River Community and Technical College participates in the planning and development of a unified effort involving multiple providers to meet the documented education and workforce development needs in the region. Nothing in this subdivision prohibits or limits any existing, or the continuation of any existing, affiliation between Mountain State University, West Virginia University Institute of Technology and West Virginia University. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(2) Fairmont State Community and Technical College. — Fairmont State Community and Technical College is an independently accredited community and technical college. The community and technical college is developed on the base of the component community and technical college of Fairmont State College. Subject to the provisions of this section, the president and the governing board of Fairmont State College are responsible, according to a plan approved by the council, for step-by-step implementation of the independently accredited
community and technical college which adheres to the essential
conditions pursuant to section three of this article. Subject to
the provisions of section twelve of this article, the community
and technical college will remain administratively linked to
Fairmont State College. Fairmont State College may continue
associate degree programs in areas of particular institutional
strength which are closely articulated to their baccalaureate
programs and missions or which are of a high-cost nature and
can best be provided in direct coordination with a baccalaureate
institution. Any such program shall be delivered under the
authority of the council and through contract with the commu-
nity and technical college. The terms of the contract shall be
negotiated between the council and the governing board of the
sponsoring institution. The final contract is approved by the
council. Such a program shall be evaluated according to the
benchmarks and indicators for community and technical college
education developed by the council. If the council determines
that the program is making insufficient progress toward
accomplishing the benchmarks, the program shall thereafter be
delivered by the community and technical college.

(3) Marshall Community and Technical College. —
Marshall Community and Technical College is an independ-
ently accredited community and technical college. The new
community and technical college is developed on the base of
the component community and technical college of Marshall
University. Subject to the provisions of this section, the
president and the governing board of Marshall University are
responsible, according to a plan approved by the council, for
step-by-step implementation of the new independently accred-
ited community and technical college which adheres to the
essential conditions pursuant to section three of this article.
Subject to the provisions of section twelve of this article, the
community and technical college remains administratively
linked to Marshall University. Marshall University may
continue associate degree programs in areas of particular
institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(4) Blue Ridge Community and Technical College. — Blue Ridge Community and Technical College is an independently accredited community and technical college. Subject to the provisions of section twelve of this article, the community and technical college remains administratively linked to Shepherd University. Shepherd University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the
161 benchmarks, the program shall thereafter be delivered by the
162 community and technical college.

163 (5) **West Virginia State Community and Technical College.** — West Virginia State Community and Technical College is an
164 independently accredited community and technical college. The
165 new community and technical college is developed on the base
166 of the component community and technical college of West
167 Virginia State College. Subject to the provisions of this section,
168 the president and the governing board of West Virginia state
169 College are responsible, according to a plan approved by the
170 council, for step-by-step implementation of the new independ-
171 ently accredited community and technical college which
172 adheres to the essential conditions pursuant to section three of
173 this article. Subject to the provisions of section twelve of this
174 article, the community and technical college remains adminis-
175 tratively linked to West Virginia State University. West
176 Virginia State University may continue associate degree
177 programs in areas of particular institutional strength which are
178 closely articulated to its baccalaureate programs and missions
179 or which are of a high-cost nature and can best be provided in
direct coordination with a baccalaureate institution. Any such
180 program shall be delivered under the authority of the council
181 and through contract with the community and technical college.
182 The terms of the contract shall be negotiated between the
183 council and the governing board of the sponsoring institution.
184 The final contract is approved by the council. Such a program
185 shall be evaluated according to the benchmarks and indicators
186 for community and technical college education developed by
187 the council. If the council determines that the program is
188 making insufficient progress toward accomplishing the
189 benchmarks, the program shall thereafter be delivered by the
190 community and technical college.

193 (6) **The Community and Technical College at West Virginia
194 University Institute of Technology.** — The Community and
Technical College at West Virginia University Institute of Technology is an independently accredited community and technical college. The new community and technical college is developed on the base of the component community and technical college of West Virginia University Institute of Technology. Subject to the provisions of this section, the president and the governing board of West Virginia University are responsible, according to a plan approved by the council, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college remains administratively linked to West Virginia University Institute of Technology. West Virginia University Institute of Technology may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(d) The president and the board of governors of each sponsoring institution are accountable to the council for ensuring that the community and technical college adheres to the essential conditions pursuant to section three of this article.

1 The Community and Technical College of Shepherd is
2 hereafter named “Blue Ridge Community and Technical
3 College”. Any reference in this code to The Community and
4 Technical College of Shepherd means Blue Ridge Community
5 and Technical College.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program
administration; rule required.
§18B-3D-3. Mission of the Workforce Development Initiative Program.
§18B-3D-4. Grant application procedures.
§18B-3D-5. Legislative rules.

§18B-3D-2. Workforce Development Initiative Program con­
(Continued; purpose; program administration; rule
ued; required.)

(a) The Workforce Development Initiative Program is
continued under the supervision of the council. The purpose of
the program is to administer and oversee grants to community
and technical colleges to implement the provisions of this
article in accordance with legislative intent.

(b) It is the responsibility of the council 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 chancellor, under the direction of the council, shall
review and approve the expenditure of all grant funds, including
development of application criteria, the review and selection of
applicants for funding and the annual review and justification
of applicants for grant renewal.
To aid in decision making, the chancellor appoints an advisory committee consisting of the Executive Director of the West Virginia Development Office or designee; 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; the Chair of the West Virginia Workforce Investment Council, the Executive Director of Workforce West Virginia, two members representing business and industry and one member representing labor. The advisory committee shall review all applications for workforce development initiative grants and make recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of fifty thousand dollars of the funds available for grants on an annual basis, for general program administration.

(e) The council shall report to the Legislative Oversight Commission on Education Accountability and 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.

§18B-3D-3. Mission of the Workforce Development Initiative Program.

(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 council.

(b) The mission of any community and technical college accepting a workforce development initiative grant is to:

(1) Become client-focused and develop programs that meet documented employer needs;

(2) Involve and collaborate with employers in the development of programs;

(3) Develop customized training programs that provide for the changing needs of employers and that are offered at flexible times and locations to accommodate employer scheduling;

(4) Develop partnerships with other public and private providers, including small business development centers and
vocational, technical and adult education centers, and, with
business and labor, to fulfill the workforce development needs
of the service area;

(5) 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; and

(6) Assist in the on-going assessment of 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
shall meet the following conditions:

(1) Participate in a community and technical college
consortia planning district as required by article three-c of this
chapter. Consortia representatives participate in the develop-
ment of and approve applications for funding grants under the
provisions of this article and approve the workforce develop-
ment initiative budget;

(2) Develop, as a component of its institutional compact, a
plan to achieve measurable improvements in the quality of the
workforce within its service area over the period covered by the
compact. The plan is 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 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 are deposited into this fund.

(b) To be eligible to receive a workforce development initiative grant, a community and technical college shall 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:

(A) In cases where the community and technical college can demonstrate that it would be a hardship for the private sector partner or partners to provide a dollar-to-dollar match, the match may be reduced to one dollar for each three dollars of state funding.

(B) In cases where the grant award is to be used to modernize equipment, the council may establish a separate match requirement not to exceed one dollar, cash or in-kind, for each state dollar awarded.

(C) 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 if funding for this initiative in the fiscal year exceeds six hundred fifty thousand dollars in which case, one-half the amount exceeding six hundred fifty thousand dollars may be granted using a public sector 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 specified by the council in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

(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 council shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than the first day of September, two thousand six.

Any rule promulgated by the West Virginia Development Office pursuant to previous enactments of this section and in effect on the effective date of the amendment and reenactment of this section in the year two thousand six remains in effect until amended, modified, repealed or replaced by the council.
ARTICLE 6. ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

§18B-6-1a. Definitions.

*§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

(a) There are continued institutional boards of advisors as follows:

1. (1) For each regional campus. The chairperson of the board of advisors of West Virginia University at Parkersburg serves as an ex officio, voting member of the governing board of West Virginia University;

2. (2) For administratively linked community and technical colleges which share a physical location with the sponsoring institution. This category includes Fairmont State Community and Technical College, Marshall Community and Technical College, West Virginia State Community and Technical College and The Community and Technical College at West Virginia University Institute of Technology. The chairperson of the board of advisors of each administratively linked community and technical college serves as an ex officio, voting member of the sponsoring institution’s board of governors, or, in the case of The Community and Technical College at West Virginia University Institute of Technology, the chairperson of the board of advisors serves as an ex officio voting member of the governing board of West Virginia University;

(b) The lay members of the institutional boards of advisors for the regional campuses are appointed by the board of governors.

*CLERK’S NOTE: This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.
(c) The lay members of the institutional boards of advisors established for the administratively linked community and technical colleges are appointed by the West Virginia Council for Community and Technical College Education.

(d) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; a member from the institutional classified employees duly elected by the classified employees of the respective institution; and twelve lay persons appointed pursuant to this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the respective institution and no more than a simple majority may be of the same political party.

(e) The student member serves for a term of one year beginning on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning on the first day of May. The twelve lay members serve terms of four years each beginning on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the remainder of the unexpired term within thirty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy:

1) All elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term; and
(2) Terms of members begin on the first day of May following election.

(f) Each board of advisors shall hold a regular meeting at least quarterly, commencing in May of each year. Additional meetings may be held upon the call of the chairperson, president of the institution or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(g) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year. A member may not serve as chairperson for more than two consecutive years.

(h) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the boards of advisors and the institutions under this section shall be paid from funds allocated to the institutions for that purpose.

(i) Prior to the submission by the president to its governing board, the board of advisors shall review all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal.
governing board shall promptly acknowledge receipt of the
comments and recommendations and shall notify the board of
advisors in writing of any action taken thereon.

(j) Prior to their implementation by the president, the board
of advisors shall review all proposals regarding institution-wide
personnel policies. The board of advisors may comment on the
proposals in writing.

(k) The board of advisors shall provide advice and assis-
tance to the president and the governing board in areas includ-
ing, but not limited to, the following:

1. Establishing closer connections between higher
   education and business, labor, government and community and
   economic development organizations to give students greater
   opportunities to experience the world of work. Examples of
   such experiences include business and community service
   internships, apprenticeships and cooperative programs;

2. Communicating better and serving the current
   workforce and workforce development needs of their service
   area, including the needs of nontraditional students for col-
   lege-level skills upgrading and retraining and the needs of
   employers for specific programs of limited duration; and

3. Assessing the performance of the institution’s graduates
   and assisting in job placement.

(l) When a vacancy occurs in the office of president of the
institution, the board of advisors shall serve as a search and
screening committee for candidates to fill the vacancy under
guidelines established by the council. When serving as a search
and screening committee, the board of advisors and its govern-
ring board are each authorized to appoint up to three additional
persons to serve on the committee as long as the search and
screening process is in effect. The three additional appointees
of the board of advisors shall be faculty members of the
For the purposes of the search and screening process only, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the appropriate governing board. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the governing board approves one of the candidates submitted. In all cases, the governing board shall make the appointment with the approval of the council or the commission in the case of West Virginia University Institute of Technology. The governing board or the council shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

(m) The boards of advisors shall develop a master plan for those administratively linked community and technical colleges which retain boards of advisors. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of these institutional master plans, including periodic updates, resides with the council. The plan shall include, but not be limited to, the following:

1. A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

2. A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;
(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

§18B-6-1a. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Advisory Council of Classified Employees” or “classified council” means the state advisory organization of classified employees created pursuant to section five of this article.

(b) “Advisory Council of Faculty” or “faculty council” means the state advisory organization of faculty created pursuant to section two of this article.

(c) “Advisory Council of Students” or “student advisory council” means the state advisory organization of students created pursuant to section four of this article.

(d) “Classified employee”, in the singular or plural, means any regular full-time or regular part-time employee of a governing board, the commission, the council or the West Virginia Network for Educational Telecomputing who holds a position that is assigned a particular job title and pay grade in

*Clerk's Note: This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.*
accordance with the personnel classification system established by law.

(e) “Community and Technical College” means Eastern West Virginia Community and Technical College, Fairmont State Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, West Virginia Northern Community and Technical College, Blue Ridge Community and Technical College, Southern West Virginia Community and Technical College, West Virginia State Community and Technical College, The Community and Technical College at West Virginia University Institute of Technology, West Virginia University at Parkersburg and any other community and technical college so designated by the Legislature.

(f) “Council” means the West Virginia Council for Community and Technical College Education created pursuant to section three, article two-b of this chapter.

(g) “Institutional Classified Employee Council” or “staff council” means the advisory group of classified employees formed at a state institution of higher education pursuant to section six of this article.

(h) “Institutional Faculty Senate”, “faculty senate” or “faculty assembly” means the advisory group of faculty formed at a state institution of higher education pursuant to section three of this article.

(i) “State institution of higher education”, in the singular or plural, means the institutions as defined in section two, article one of this chapter and, additionally, Fairmont State Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Potomac State Campus of West Virginia University, Robert C. Byrd Health Sciences Charleston Division of West Virginia
50 University, Blue Ridge Community and Technical College,
51 West Virginia State Community and Technical College, West
52 Virginia University at Parkersburg, West Virginia University
53 Institute of Technology, The Community and Technical College
54 at West Virginia University Institute of Technology, the Higher
55 Education Policy Commission, the West Virginia Council for
56 Community and Technical College Education, the West
57 Virginia Network for Educational Telecomputing and any other
58 institution so designated by the Legislature.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.

*§18B-10-1. Enrollment, tuition and other fees at education
institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among the tuition and
5 fees any one or more of the following as defined in section
6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees
13 collected;

*CLERK’S NOTE: This section was also amended by H. B. 4049 (Chapter 79), which
passed prior to this act, and S. B. 792 (Chapter 84), which passed subsequent to this
act.
(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student’s attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the Legislative Oversight Commission on Education Accountability.
(f) The schedule of all tuition and fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(h) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable
and customary charges incurred in accepting credit cards and
other methods of payment.

(3) If a governing board determines that a student’s
finances are affected adversely by a legal work stoppage, it may
allow the student an additional six months to pay the fees for
any academic term. The governing board shall determine on a
case-by-case basis if the finances of a student are affected
adversely.

(4) The commission and council jointly shall propose a rule
in accordance with the provisions of article three-a, chapter
twenty-nine-a of this code, defining conditions under which an
institution may offer tuition and fee deferred payment plans
through the institution or through third parties.

(5) An institution may charge interest or fees for any
defered or installment payment plans.

(i) In addition to the other fees provided in this section,
each governing board may impose, collect and distribute a fee
to be used to finance a nonprofit, student-controlled public
interest research group if the students at the institution demon-
strate support for the increased fee in a manner and method
established by that institution’s elected student government.
The fee may not be used to finance litigation against the
institution.

(j) Institutions shall retain tuition and fee revenues not
pledged for bonded indebtedness or other purposes in accor-
dance with the tuition rule proposed by the commission and
council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and
fees;
(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.
(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(1) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) Subject to the provisions of subdivision (4) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three quarters percent for undergraduate resident students for any fiscal year. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.
(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.

(4) The governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as The Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision.
The commission or council shall consider the degree to which each institution has met the following conditions:

(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.

(7) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (5) of this subsection.
CHAPTER 86

(Com. Sub. for H. B. 4240 — By Delegates Wysong, Tabb and Doyle)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §18B-3C-13 and §18B-3C-14, all relating to higher education; changing the name of the Community and Technical College of Shepherd to Blue Ridge Community and Technical College; making findings; clarifying legislative intent related to certain institutional boards of governors; permitting institutions under a single governing board to be recognized as a single organization within West Virginia’s financial systems; and clarifying certain operations of certain community and technical colleges.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §18B-3C-13 and §18B-3C-14, all to read as follows:

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-14. Operations of certain administratively linked community and technical colleges.


1 Effective the first day of July, two thousand six, the
2 Community and Technical College of Shepherd is named “Blue
§18B-3C-14. Operations of certain administratively linked community and technical colleges.

(a) The provisions of this section apply to the following governing boards created pursuant to section one, article two-a of this chapter:

(1) Fairmont State University Board of Governors, which is responsible for Fairmont State University and Fairmont State Community and Technical College;

(2) The Marshall University Board of Governors, which is responsible for Marshall University and Marshall Community and Technical College;

(3) The West Virginia State University Board of Governors, which is responsible for West Virginia State University and West Virginia State Community and Technical College;

(4) The West Virginia University Board of Governors, which is responsible for West Virginia University Institute of Technology and the Community and Technical College at West Virginia University Institute of Technology.

(b) Legislative findings. —

The Legislature makes the following findings related to operation of the administratively linked community and technical colleges and the relationship between them and their respective governing boards:

(A) The Legislature has adopted a series of legislation, beginning with Enrolled Senate Bill No. 653, passed during the
two thousand regular session, and continuing through Enrolled
Senate Bill No. 448, passed during the two thousand four
regular session, whose purpose is to strengthen the state’s
community and technical colleges.

(B) The primary goal of the Legislature in adopting such
legislation is to create a thriving system of community and
technical colleges that focuses on technical education,
workforce training and lifelong learning for the new economy,
consistent with a series of legislatively commissioned reports
and the findings contained in section one, article two-b of this
chapter.

(C) A necessary precedent to accomplishment of this goal
is to change the way that leaders at all levels of education,
including institutional governing boards, view community and
technical colleges. Specifically, education leaders need to
understand:

(i) That community and technical colleges are different
from traditional four-year colleges in what they seek to
accomplish and how they can accomplish it effectively, just as
the medical schools, for example, are different from engineering schools;

(ii) That community and technical colleges may not be
viewed as add-ons or afterthoughts if the state is to compete
successfully in a new economy; and

(iii) That community and technical college programs may
not be run primarily for the financial benefit of four-year
programs.

(D) At the same time, the Legislature recognizes that
community and technical colleges may achieve administrative
efficiencies if they are linked to the larger four-year institu-
tions and remain under the authority of a single governing
board, especially when two- and four-year programs are
directed from a single location.

(c) Legislative intent. —

(1) State and federal officials have found it difficult to
ascertain the Legislature’s intent as it relates to a number of
operational issues, including accounting, financial aid adminis-
tration, technology, historically black colleges and universities
status and reporting, thus jeopardizing some of the administra-
tive efficiencies that the Legislature has sought to maintain.

(2) Therefore, concerning roles of the institutional govern-
ing boards listed in subsection (a) of this section and the
operation of the community and technical colleges under their
jurisdiction it is the intent of the Legislature that:

(A) The requirement for independent, specialized accredi-
tation of community and technical colleges, contained in
sections three and eight of this article, ensure that institutional
governing boards do not operate community and technical
colleges as add-ons or afterthoughts and that a mechanism for
external evaluation is in place to ensure the integrity of this
process, much as an external organization such as ABET, Inc.,
reviews and accredits applied science, computing, engineering
and technology programs.

(B) The provision contained in section twelve of this
article requiring that each administratively linked institution
enter into a fee-for-service agreement approved by the
appropriate governing board and by the council ensure that
community and technical college programs are not run for the
financial benefit of four-year programs and that external
evaluation of the real cost of community and technical college
education is possible.

(C) The West Virginia State University Board of Gover-
nors ensures that two- and four-year students understand the
long and honorable history West Virginia State University and
West Virginia State Community and Technical College have
enjoyed as a federally designated historically black institution
and work to regain this important federal designation for the
community and technical college.

(d) Notwithstanding any other provision of this code to the
contrary and effective no later than the first day of July, two
thousand six, each governing board identified in subsection (a)
of this section:

(1) May be recognized as a single organization within the
financial systems of the State of West Virginia and the entities
under its jurisdiction designated as subordinate organizations,
if practicable, to facilitate ease of financial processing at the
institution level while ensuring that community and technical
college data is readily segregable at the state level.

(A) Independent financial auditors shall produce a single
audited financial statement for each governing board identified
in subsection (a) of this section, but that financial statement
shall include a breakdown of assets and liabilities and revenues
and expenditures for the community and technical college.

(B) Independent financial auditors shall compile and
present a consolidated audited financial statement to the
council, separate and apart from higher education’s consoli-
dated financial audit, containing information concerning all
community and technical colleges, whether independent or
administratively linked institutions.

(2) Shall operate a single student financial aid office for all
two- and four-year students under its jurisdiction unless the
board expressly determines that another arrangement is clearly
more efficient and effective. The commission shall ensure that
state-level financial aid programs are administered to facilitate
efficiencies at all administratively linked institutions.
(3) Shall use a single set of technology solutions to minimize the complexity of administrative operations for two- and four-year students unless the board expressly determines that another arrangement is clearly more efficient and effective.

(e) In preparing statutorily mandated reports, commission and council staff generally shall segregate community and technical college data so that the Legislature and governing boards can evaluate implementation of the provisions related to community and technical colleges in this chapter. Segregation of community and technical college data from other data may not be construed in a manner that is inconsistent with the general provisions of this section.

CHAPTER 87

(Com. Sub. for S. B. 18 — By Senators Bailey, Dempsey, Sharpe, Minard, Hunter and Love)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §18B-10-7 of the Code of West Virginia, 1931, as amended, relating to granting tuition waivers to the children and spouses of parole and probation officers killed in the line of duty.

Be it enacted by the Legislature of West Virginia:

That §18B-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§18B-10-7. Tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty.

(a) Each state institution of higher education shall permit any person to attend its undergraduate courses and classes if classroom space is available without charging the person any tuition or any fees, if:

(1) The person is the child or spouse of an individual who was:

(A) A law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code;

(B) A correctional officer at a state penal institution;

(C) A parole officer;

(D) A probation officer;

(E) A conservation officer; or

(F) A registered firefighter; and

(2) Killed in the line of duty while:

(A) Employed by the state or any political subdivision of the state; or

(B) A member of a volunteer fire department serving a political subdivision of this state.

(b) The state institution of higher education may require the person to pay:
(1) Special fees, including any laboratory fees, if the fees are required of all other students taking a single or that particular course; and

(2) Parking fees.

(c) The governing boards may promulgate rules:

(1) For determining the availability of classroom space;

(2) As it considers necessary to implement this section; and

(3) Regarding requirements for attendance, which may not exceed such requirements for other persons.

(d) The governing boards may extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.

CHAPTER 88

(H. B. 4603 — By Delegates Campbell and Williams)

[Passed March 7, 2006; in effect from passage.]
[Approved by the Governor on March 17, 2006.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education regarding authorization of degree granting institutions.

Be it enacted by the Legislature of West Virginia:
That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.


§18B-17-3. Authorizing rule of the council for community and technical college education.


(a) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

(b) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

(c) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.

(d) The legislative rule filed in the State Register on the twenty-seventh day of October, two thousand five, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

§18B-17-3. Authorizing rule of the council for community and technical college education.

(a) The legislative rule filed in the State Register on the twenty-ninth day of September, two thousand four, relating to
the West Virginia Council for Community and Technical
College Education (performance indicators rule) is authorized.

(b) The legislative rule filed in the State Register on the
thirteenth day of October, two thousand five, relating to the
West Virginia Council for Community and Technical College
Education (Authorization of Degree Granting Institutions) is
authorized.

CHAPTER 89

(S. B. 788 — By Senators Oliverio, Kessler, Dempsey, Fanning,
Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth and Weeks)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §3-1-46 of the Code of West Virginia,
1931, as amended; to amend and reenact §3-2-5 and §3-2-10 of
said code; to amend and reenact §3-3-8 of said code; to amend
and reenact §3-5-23 of said code; and to amend and reenact §3-8-
10 of said code, all relating generally to elections; establishing
training requirements for county clerks; making amendments to
conform to requirements of the Help America Vote Act; clarify­
ing requirements for voter registration drives; providing penalties
for voter registration violations; clarifying use of excess cam­
paign contribution funds; clarifying processing of absentee
ballots; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-1-46 of the Code of West Virginia, 1931, as amended, be
amended and reenacted; that §3-2-5 and §3-2-10 of said code be
amended and reenacted; that §3-3-8 of said code be amended and reenacted; that §3-5-23 of said code be amended and reenacted; and that §3-8-10 of said code be amended and reenacted, all to read as follows:

Article
2. Registration of Voters.
3. Voting by Absentees.
5. Primary Elections and Nominating Procedures.
8. Regulation and Control of Elections

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training program for election officials.

(a) The Secretary of State in conjunction with the State Election Commission shall produce one or more audio-visual programs which explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting on each voting system in use in the state.

(b) One copy of the appropriate training program shall be distributed to and kept and preserved by the clerk of the county commission of each county. The program shall be shown to all election officials before each election as part of their instructional program. The clerk of the county commission shall conduct an adequate number of sessions to train all election officials shall schedule the regular sessions not less than seven days before each election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.

(c) No person may serve as an election commissioner or poll clerk in any election unless he or she has attended the instructional program required by subsection (a) of this section. If an election official fails to attend the instructional program,
another person shall be appointed in the election official’s place in the same manner as persons are appointed under the provisions of section thirty of this article to replace election officials refusing to serve and the clerk of the county commission shall conduct an additional instructional program within seven days prior to the election for any such person so appointed: Provided, That in cases of emergency when no person who has attended the instructional program for that election is available to fill a vacancy on the election board, the clerk of the county commission may appoint such person as a commissioner or poll clerk notwithstanding that such person has not received the instruction.

(d) The requirements of this section apply to all elections conducted by municipalities, except that the recorder or municipal clerk responsible for the election shall perform the duties of the clerk of the county commission defined in this section. The clerk of the county commission may assist the recorder or municipal clerk in conducting the instructional program.

(e) When the instructional program is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the Secretary of State.

(f) The Secretary of State shall cause the instructional program to be amended, edited or reproduced whenever he or she is of the opinion such revision is necessary in light of changes in the election laws of this state.

(g) No elected official may appear in such program either in person or by visual image or by name.

(h) Every county clerk shall attend a training, to be conducted by the Secretary of State every two years, for the
purpose of reviewing the election official training and receiving
updates on election law matters.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

§3-2-10. Application for registration by mail.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the Secretary of State and shall conform with the requirements of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993 and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver’s license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the Secretary of State to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the mail voter registration application form prescribed by the Federal Election Commission pursuant to 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993, shall be accepted as a valid form of application for registration pursuant to the provisions of this article.
ELECTIONS

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993;

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration unless the political party has determined otherwise;

(4) The applicant’s driver’s license number or if the applicant does not have a driver’s license, then the last four digits of the applicant’s social security number; and

(5) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the following be provided by the applicant, under oath, and any application which does not contain each of the following shall be considered incomplete:

(1) The applicant’s legal name, including the first name, middle or maiden name, if any, and last name;

(2) The month, day and year of the applicant’s birth;

(3) The applicant’s residence address, including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of 42 U. S. C. §1973ff, et seq., the Uniformed and Overseas Citizens Absentee Voting Act, the address at which he or she last resided before leaving the United States or entering
the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and

(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; and

(4) The applicant’s signature, under penalty of perjury, as provided in section thirty-six of this article to the attestation of eligibility to register to vote and to the truth of the information given.

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant’s choice of political party affiliation, if any, or an indication of no affiliation: Provided, That any applicant who does not enter any choice of political party affiliation shall be listed as having no party affiliation on the voting record;

(3) The applicant’s residence mailing address if different than the residence street address;

(4) The last four digits of the applicant’s social security number;

(5) The applicant’s telephone number;
(6) The address at which the applicant was last registered to vote, if any, for the purpose of canceling or transferring the previous registration; and

(7) The applicant’s gender.

(e) The Secretary of State shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form.

(f) Application forms prescribed in this section may refer to various public officials by title or official position, but in no case may the actual name of any officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than the first day of July of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by section five of this article.

(b) To the extent possible, with funds allocated annually for such purpose, the Secretary of State shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration
programs. The Secretary of State shall make a record of all requests by entities or organizations for two hundred or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The Secretary of State shall also require the entity or organization requesting the forms to provide contact information on a form prescribed by the Secretary of State. The Secretary of State may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and, only after completing the information, sign the prescribed applicant’s oath under penalty of perjury as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county commission may correct any entry upon the request of the applicant provided the request is properly documented and the correction is dated and initialed by the clerk.

(e) Completed applications shall be mailed or delivered to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another
county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant’s residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

(1) Attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

(2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state shall be required to present the following forms of identification to the Secretary of State or clerk of the county commission:

(1) In the case of an individual who votes in person, a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter;

(2) In the case of an individual who votes by mail, a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter, submitted with the ballot.

(h) An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g) of this section, may cast a provisional ballot.
(i) Subsection (g) of this section does not apply in the case of a person:

(1) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;

(2) (A) Who registers to vote by mail under 42 U. S. C. §1973gg-4, et seq., and submits with his or her registration either a driver’s license number or at least the last four digits of the individual’s social security number; and (B) with respect to whom the Secretary of State or clerk of the county commission matches the information submitted under paragraph (A) of this subdivision with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

(3) Who is: (A) Entitled to vote by absentee ballot under 42 U. S. C. §1973ff-1, et seq., the Uniformed and Overseas Citizens Absentee Voting Act; (B) provided the right to vote otherwise than in person under 42 U. S. C. §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act; (C) entitled to vote otherwise than in person under any other federal law: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (b), section one, article three of this chapter; paragraph (B), subdivision (2) of said subsection; subdivision (3) of said subsection; or subsection (c) of said section may not have his or her ballot in that election challenged for failure to appear in person or for failure to present identification.

(j) Any person who submits a state mail voter registration application to the clerk of the county commission in the county
in which he or she is currently registered for the purpose of entering a change of address within the county, making a change of party affiliation or recording a change of legal name shall not be required to make his or her first vote in person or to present identification or proof of age.

(k) On and after the first day of July, two thousand six, any person who agrees to mail or to deliver a signed voter registration application to the Secretary of State or the clerk of the county commission and who intentionally interferes with the applicant's effort to register either by destroying the application or by failing to mail or to deliver the application in a timely manner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a jail for not more than one year, or both. For purposes of this subsection, the mailing or delivery of an application is timely if it is mailed or delivered within fifteen days after the applicant signs the application or in accordance with the provisions of article two, chapter three of this code for processing before the closing of the registration records for the pending election, whichever comes first.

(l) On or after the first day of July, two thousand six, any person who intentionally solicits multiple registrations from any one person or who intentionally falsifies a registration application is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-8. Disposition and counting of absent voters’ ballots.

(a) In counties using paper ballots, all absentee ballots shall be processed as follows:
(1) The ballot boxes containing the absentee ballots shall be opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) Absentee ballots shall be delivered to the polls to be opened and counted in accordance with section thirty-three, article one of this chapter, section fifteen, article five of this chapter; and section six, article six of this chapter. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a per se violation of the oath taken by the counting board. In all other counties, counting is to begin immediately after closing of the polls.

(b) In counties using optical scan systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(c) In counties using direct recording elections systems, the absentee ballots shall be counted as follows:

(1) On election day, the ballot boxes containing the paper absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) Each absentee ballot shall be recorded on a direct recording voting terminal designated by the clerk of the county...
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commission as the terminal for absentee tabulations, after being read aloud by a separate team of two representatives of opposite political parties; and

(3) The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

(4) The appropriate election officials shall follow the procedures set out in subsections (a), (b), (d) and (e), section twenty-seven, article four-a of this chapter and subdivisions (3), (4), (5) and (6), subsection (c) of said section.

(d) The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.

(e) Any election official who determines a person has voted an absent voter’s ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In the case, the candidate or candidates, jointly or severally, shall file a declaration with the Secretary of State if the office is to be filled by the voters of more than one county, or with the clerk of the county commission of the county if the office is to be filled by the voters of one county or political subdivision thereof; the declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot
access as a candidate for the office of President or Vice President shall be filed not later than the first day of August preceding the general election. At the time of filing of the declaration each candidate shall pay the filing fee required by law, and if the declaration is not so filed or the filing fee so paid, the certificate shall not be received by the Secretary of State, or clerk of the county commission, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ..................., ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in ................ (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ......................... (here place name of candidate heading list on certificate) for the office of ....................... and others, at the general election to be held on .................., 20.....

Given under my hand and the seal of my office this ............. day of ...................., 20.....

.................................................................

Clerk, County Commission of .....................County.
The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. No signature on a certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to vote for the candidates; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their
names placed on the official ballot as candidates, as if otherwise
nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content
of the nomination certificates to be used for soliciting signa-
tures.

Offices to be filled by the voters of more than one county
shall use separate petition forms for the signatures of qualified
voters for each county.

(e) The Secretary of State, or the clerk of the county
commission, as the case may be, may investigate the validity of
the certificates and the signatures thereon. If, upon investiga-
tion, there is doubt as to the legitimacy and the validity of
certificate, the Secretary of State may ask the Attorney General
of the state, or the clerk of the county commission may ask the
prosecuting attorney of the county, to institute a quo warranto
proceeding against the nominee by certificate to determine his
or her right to the nomination to public office and upon request
being made, the Attorney General or prosecuting attorney shall
institute the quo warranto proceeding. The clerk of the county
commission shall, at the request of the Secretary of State or the
clerk of the circuit court, compare the information from any
certificate to the county voter registration records in order to
assist in determining the validity of any certificates.

(f) In addition to penalties prescribed elsewhere for
violation of this chapter, any person violating the provisions of
this section is guilty of a misdemeanor and, upon conviction,
shall be fined not more than one thousand dollars, or confined
in jail for not more than one year, or both, in the discretion of
the court: Provided, That no criminal penalty may be imposed
upon anyone who signs a nomination certificate and votes in the
primary election held after the date the certificate was signed.
ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-10. Use of certain contributions.

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) Any national committee in accordance with federal requirements;

(C) Any state party executive committee or state party legislative caucus committee, in an amount not to exceed fifteen thousand dollars in a calendar year; or

(D) Any local committee of any political party or any other candidate for public office, in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.
AN ACT to amend and reenact §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, all relating to the testing of electronic voting machines used for early voting in order to allow their use on election day.

Be it enacted by the Legislature of West Virginia:

That §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

§3-4A-26. Test of automatic tabulating equipment.

§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

1 When the clerk of the county commission has completed
2 the preparation of the ballots and vote recording devices as
provided in sections eleven, eleven-a and twelve of this article
and as provided in section twenty-one, article one of this
chapter, and not later than seven days before the day of the
election, he or she shall notify the members of the county
commission and the ballot commissioners that the ballots and
devices, where applicable, are ready for use. Thereupon the
members of the county commission and the ballot commission-
ers shall convene at the office of the clerk or at such other place
wherein the vote recording devices, where applicable, and
ballots are stored, not later than five days before the day of the
election, and shall inspect the devices and the ballots to
determine whether the requirements of this article have been
met. Notice of the place and time of such inspection shall be
published, no less than three days prior thereto, as a Class I-O
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for the publication shall be the county involved. Any candidate
and one representative of each political party on the ballot may
be present during such examination. If the devices, where
applicable, and ballots are found to be in proper order, the
members of the county commission and the ballot commission-
ers shall, where applicable, endorse their approval in the book
in which the clerk entered the numbers of the devices opposite
the numbers of the precincts. The vote recording devices and
the ballots shall then be secured in double lock rooms. The
clerk and the president or president pro tempore of the county
commission shall each have a key. The rooms shall be unlocked
only in their presence and only for the removal of the devices,
where applicable, and the ballots for transportation to the polls.
Upon such removal of the devices and ballots, the clerk and
president or president pro tempore of the county commission
shall certify in writing signed by them that the devices, where
applicable, and packages of ballots were found to be sealed
when removed for transportation to the polls.
Vote recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote recording devices containing a Personal Electronic Ballot (PEB), a Programable Memory Chip and a printed paper trail must comply with the applicable requirements of section twenty-six of this article.

Not later than one day before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

§3-4A-26. Test of automatic tabulating equipment.

(a) One week prior to the start of the count of the votes recorded on ballots or ballot cards or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test is to be given not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.
(b)(1) Vote recording devices used and tested for early voting may also be used on election day upon compliance with all of the following requirements:

(A) That following the close of early voting the Personal Electronic Ballot (PEB) and the Programable Memory Chip is removed and replaced with a Personal Electronic Ballot (PEB) and a Programable Memory Chip prepared for, but unused, during the current election period;

(B) That the printed paper trail used during the early voting period is removed and replaced with a new paper trail; and

(C) That the vote recording device is retested prior to the device being used on election day.

(2) Any Personal Electronic Ballot (PEB), Programable Memory Chip and printed paper trail removed from a vote recording device used for early voting shall be securely stored by the county clerk until such time as it is used to tally the votes on election day in accordance with section twenty-seven of this article.

(c)(1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, punched or marked as to record a predetermined number of valid votes for each candidate or each measure. It includes for each multicandidate office one or more ballot cards which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and applicable law, and it includes for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test
counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by them, the nature of the error, the cause thereof and the type of corrective action taken. The certification is to be recorded in the office of the clerk of the county commission in the miscellaneous record book. Immediately after conclusion of this completed test, a certified duplicate copy of the program deck is to be sent by certified mail to the offices of the State Election Commission, where it is to be preserved and secured for one year, and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The program deck to be used in the election is to immediately be certified by the county commission to be free from error as determined by the test, is to be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys are the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container is to be opened to conduct the test required to be conducted immediately before the start of the official count.

(3) The test is to be repeated immediately before the start of the official count. The test is to also be conducted at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

(4) All results of all of the tests are to be immediately certified by the county commission and filed in the office of the
clerk of the county commission and immediately recorded in the miscellaneous record book. On completion of the count, the program deck, test materials and ballot cards are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock.

(5) The numbers of locks and keys are the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

CHAPTER 91

(Com. Sub. for H. B. 4481 — By Delegates Amores, Morgan, Palumbo and Schadler)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §3-4A-9b of the Code of West Virginia, 1931, as amended, relating to the limited use of precinct ballot-scanning devices for a count of votes following the close of the polls on election night.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.
§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, “precinct ballot-scanning device” means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter’s ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

1. Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

2. Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

3. Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.
(e) The precinct ballot-scanning device may be used for tabulating election results only under the following conditions:

1. The county has at least one precinct ballot-scanning device in each precinct;
2. No print out or tabulation of results is done at the precinct;
3. The “tabulation memory device” may be removed from the ballot-scanning device only after the polls close and the votes may only be counted at the central counting center on the night of the election; and
4. All voters at the precinct are required to use the ballot scanning device as a condition of completing their vote.

(f) If the optical scan ballots from each of the precincts are counted at the central counting center on election night in accordance with section twenty-seven of this article, and the results from that count are the results finally published on election night, then any county meeting each of the requirements in paragraphs (1) through (4) of subsection (e), may turn off the over vote switch on the central counting device since every ballot will have been evaluated for over votes by the precinct scanning device.

(g) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.
AN ACT to amend and reenact §3-4A-19 of the Code of West Virginia, 1931, as amended, relating to the authorization of special messengers appointed by the County Clerk to deliver the ballot box to the central county center.

Be it enacted by the Legislature of West Virginia:

That §3-4A-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§ 3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the
party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels, where applicable by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, supplies, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

(e) Where applicable, each voter shall be instructed how to operate the vote recording device before he or she enters the voting booth.
(f) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, write the word “spoiled” across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.

(g) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for not more than one year, or both.

(h) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.
(i) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked “spoiled” and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(j) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the pollbooks, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two
special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(k) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

CHAPTER 93

(S. B. 632 — By Senators Kessler, Dempsey, Hunter, Caruth, Deem, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, all relating generally to electioneering communications; definitions; excluding candidates for federal office from requirement to disclose electioneering communications; and clarifying effect of election-
eering communications provisions on provision regarding corporate contributions.

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

That §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

§3-8-1a. Definitions.

§3-8-2b. Disclosure of electioneering communications.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

**§3-8-1a. Definitions.**

1 As used in this article, the following terms have the following definitions:

2 (1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

3 (2) “Broadcast, cable, or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

4 (3) “Candidate” means an individual who:

5 (A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

6 (B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

7 (C) Has been named to fill a vacancy on a ballot; or
(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(4) “Candidate’s committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(5) “Clearly identified” means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as “the Governor”, “your Senator” or “the incumbent”, or through an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals”.

(6) “Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation.

(7) “Direct costs of purchasing, producing or disseminating electioneering communications” means:
(A) Costs charged by a vendor, including, but not limited
to, studio rental time, compensation of staff and employees,
costs of video or audio recording media and talent, material and
printing costs and postage; or

(B) The cost of airtime on broadcast, cable or satellite radio
and television stations, the cost of disseminating printed
materials, establishing a telephone bank, studio time, use of
facilities and the charges for a broker to purchase airtime.

(8) “Disclosure date” means either of the following:

(A) The first date during any calendar year on which any
electioneering communication is disseminated after the person
paying for the communication has spent a total of five thousand
dollars or more for the direct costs of purchasing, producing or
disseminating electioneering communications; or

(B) Any other date during that calendar year after any
previous disclosure date on which the person has made addi-
tional expenditures totaling five thousand dollars or more for
the direct costs of purchasing, producing or disseminating
electioneering communications.

(9) “Election” means any primary, general or special
election conducted under the provisions of this code or under
the charter of any municipality at which the voters nominate or
elect candidates for public office. For purposes of this article,
each primary, general, special or local election constitutes a
separate election. This definition is not intended to modify or
abrogate the definition of the term “nomination” as used in this
article.

(10) (A) “Electioneering communication” means any paid
communication made by broadcast, cable or satellite signal,
mass mailing, telephone bank, leaflet, pamphlet, flyer or
outdoor advertising or published in any newspaper, magazine
or other periodical that:
(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(a) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(b) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) "Electioneering communication" does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(a) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(b) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) A communication that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to any provision of this article, other than
section two-b of this article, or the rules of the State Election
Commission or the Secretary of State promulgated pursuant to
such provision: Provided, That independent expenditures
required to be reported pursuant to subsection (b), section two
of this article are not exempt from the reporting requirements
of this section;

(iii) A candidate debate or forum conducted pursuant to
rules adopted by the State Election Commission or the Secre-
tary of State or a communication promoting that debate or
forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization
operating under Section 501(c)(3) of the Internal Revenue Code
of 1986;

(v) A communication made while the Legislature is in
session which, incidental to promoting or opposing a specific
piece of legislation pending before the Legislature, urges the
audience to communicate with a member or members of the
Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organiza-
tion, in existence prior to the date on which the individual
named or depicted became a candidate, made in a newsletter or
other communication distributed only to bona fide members of
that organization;

(vii) A communication made solely for the purpose of
attracting public attention to a product or service offered for
sale by a candidate or by a business owned or operated by a
candidate which does not mention an election, the office sought
by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter’s guide, which
refers to all of the candidates for one or more offices, which
contains no appearance of endorsement for or opposition to the
nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(11) “Financial agent” means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(12) “Fund-raising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(13) “Independent expenditure” means an expenditure made by a person other than a candidate or a candidate’s committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate’s agent. Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(14) “Mass mailing” means a mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period.

(15) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its
members and which uses a majority of its membership dues for purposes other than political purposes. “Membership organiza-

(16) “Name” means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(17) “Person” means an individual, partnership, committee, association and any other organization or group of individuals.

(18) “Political action committee” means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

(19) “Political party” means a political party as defined by section eight, article one, chapter three of this code or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(20) “Political purposes” means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

(21) “Targeted to the relevant electorate” means a commu-

ication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received
by ten thousand or more individuals in the state in the case of
a candidacy for statewide office and five hundred or more
individuals in the district in the case of a candidacy for the
Legislature.

(22) “Telephone bank” means telephone calls that are
targeted to the relevant electorate, other than telephone calls
made by volunteer workers, regardless of whether paid profes-
sionals designed the telephone bank system, developed calling
instructions or trained volunteers.

(23) “Two-year election cycle” means the 24-month period
that begins the day after a general election and ends on the day
of the subsequent general election.

§3-8-2b. Disclosure of electioneering communications.

(a) Every person who has spent a total of five thousand
dollars or more for the direct costs of purchasing, producing or
disseminating electioneering communications during any
calendar year shall, within twenty-four hours of each disclosure
date, file with the Secretary of State a statement which contains:

(1) The name of the person making the expenditure, the
name of any person sharing or exercising direction or control
over the activities of the person making the expenditure and the
name of the custodian of the books and accounts of the person
making the expenditure;

(2) If the person making the expenditure is not an individ-
ual, the principal place of business of the partnership, commit-
tee, association, organization or group which made the expendi-
ture;

(3) The amount of each expenditure of more than one
thousand dollars made for electioneering communications
during the period covered by the statement and the name of the
person to whom the expenditure was made;
(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates referred to or to be referred to therein; and

(5) The names and addresses of any contributors who contributed a total of more than one thousand dollars between the first day of the preceding calendar year and the disclosure date and whose contributions were used to pay for electioneering communications.

(b) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (a) of this section, the statement shall also include:

(1) The month, day and year that the contributions of any single contributor exceeded two hundred fifty dollars;

(2) If the contributor is a political action committee, the name and address the political action committee registered with the State Election Commission;

(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual’s current employer, if any, or, if the individual is self-employed, the name and address of the individual’s business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(c)(1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;
(2) Any individual who makes contributions totaling two hundred fifty dollars or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(d) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate’s committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication: Provided, That if the electioneering communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(e) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the internet.

(f) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(g) The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.
(h) If any person, including, but not limited to, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate’s committee or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate’s party.

(i) This section does not apply to candidates for federal office. This section is not intended to restrict or to expand any limitations on, obligations of or prohibitions against any candidate, committee, agent, contributor or contribution contained in any other provision of this chapter.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the corporation, to any candidate, financial agent, political committee or other person for the payment of any primary or other election expenses whatever. No person may solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation.

(b)(1) The provisions of this section do not prohibit a corporation from:
(A) Directly communicating with its stockholders and executive or administrative personnel and their families on any subject: Provided, That the communication is not by newspapers of general circulation, radio, television or billboard advertising likely to reach the general public.

(B) Conducting nonpartisan registration and get-out-the-vote campaigns aimed at its stockholders and executive or administrative personnel and their families; and

(C) Soliciting, through any officer, agent or person acting on behalf of the corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees.

(2) It is unlawful for:

(A) A separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; (iii) as a condition of employment; or (iv) in any commercial transaction;

(B) Any person soliciting a stockholder or executive or administrative personnel and members of their families for a contribution to a separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;
(D) A corporation or a separate segregated fund established by a corporation: (i) To solicit contributions to the fund from any person other than the corporation’s stockholders and their families and its executive or administrative personnel and their families; or (ii) to contribute any corporate funds;

(E) A corporation or a separate segregated fund established by a corporation to receive contributions to the fund from any person other than the corporation’s stockholders and their immediate families and its executive or administrative personnel and their immediate families;

(F) A corporation to engage in job discrimination or to discriminate in job promotion or transfer because of an employee’s failure to make a contribution to a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of one thousand dollars in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) A corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the corporation to a separate segregated fund for any purpose. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: Provided, That any such corporation shall also permit any group of its employees represented by a
bona fide political action committee to use the real property of
the corporation solely to establish, administer and solicit
contributions to the fund of the political action committee,
subject to the rules of the State Election Commission promul-
gated in accordance with said subsection. No corporation may
use its property, real or personal, facilities, equipment, materi-
als or services for the purpose of influencing any voter or
voters: (i) To vote for a particular candidate or in any particular
manner; or (ii) to influence the result of any election.

(3) For the purposes of this section, the term “executive or
administrative personnel” means individuals employed by a
corporation who are paid on a salary rather than hourly basis
and who have policy-making, managerial, professional or
supervisory responsibilities.

(c) Any person or corporation violating any provision of
this section is guilty of a misdemeanor and, on conviction, shall
be fined not more than ten thousand dollars. No corporation
may reimburse any person the amount of any fine imposed
pursuant to this section.

(d) To ensure uniform administration and application of the
provisions of this section and of those of the Federal Election
Campaign Act Amendments of 1976 relating to corporate
contributions, the State Election Commission shall propose
rules for legislative approval in accordance with the provisions
of article three, chapter twenty-nine-a of this code to implement
the provisions of this section consistent, insofar as practicable,
with the rules and regulations promulgated by the Federal
Election Commission to carry out similar or identical provi-

(e) In addition to the powers and duties set forth in article
one-a of this chapter, the State Election Commission has the
following powers and duties:
(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(f) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(g) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(h) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars, nor more than five thousand dollars, and shall be imprisoned in jail not less than six months nor more than one year.
CHAPTER 94

(Com. Sub. for S. B. 489 — By Senators Chafin and Helmick)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended, relating to the authorization of the State Treasurer to provide remittance processing and e-government services for a political subdivision upon its request.

Be it enacted by the Legislature of West Virginia:

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-6. Receipting of electronic commerce purchases.

(a) The State Treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the State Treasurer’s system for acceptance of payments.

(b) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in
the development of a website and utilization of the Treasurer’s payment gateway. A special revenue account, entitled the Treasurer’s Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer’s Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(c) The State Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected.

(d) Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

(e) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section.

CHAPTER 95

(H. B. 4611—By Mr. Speaker, Mr. Kiss)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §15-5-11 of the Code of West Virginia, 1931, as amended, relating to immunity from civil
liability in certain circumstances; providing immunity from civil liability for death or injury to any person or damage to any property caused by a member of a duly qualified mine rescue team designated by a mine operator performing or engaging in emergency rescue services; and providing that certain emergency programs may be established by the Division of Homeland Security and Emergency Management and not limited to the Office of Emergency Services.

Be it enacted by the Legislature of West Virginia:

That §15-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-11. Immunity and exemption; “duly qualified emergency service worker” defined.

(a) All functions hereunder and all other activities relating to emergency services are hereby declared to be governmental functions. Neither the state nor any political subdivision nor any agency of the state or political subdivision nor, except in cases of willful misconduct, any duly qualified emergency service worker complying with or reasonably attempting to comply with this article or any order, rule, regulation or ordinance promulgated pursuant to this article, shall be liable for the death of or injury to any person or for damage to any property as a result of such activity. This section does not affect the right of any person to receive benefits or compensation to which he or she would otherwise be entitled under this article, chapter twenty-three of this code, any Act of Congress or any other law.

(b) Any requirement for a license to practice any professional, mechanical or other skill does not apply to an authorized
emergency service worker who shall, in the course of performing his or her duties, practice such skill during an emergency.

(c) As used in this section, “duly qualified emergency service worker” means:

(1) Any duly qualified full or part-time paid, volunteer or auxiliary employee of this state, or any other state, territory, possession or the District of Columbia, of the federal government, of any neighboring country or political subdivision thereof or of any agency or organization performing emergency services in this state subject to the order or control of or pursuant to the request of the state or any political subdivision thereof.

(2) Duly qualified instructors and properly supervised students in recognized educational programs where emergency services are taught. A recognized educational program shall include any program in an educational institution existing under the laws of this state and such other educational programs as shall be established by the Division of Homeland Security and Emergency Management or otherwise under this article.

(3) A member of any duly qualified mine rescue team designated by a mine operator pursuant to the provisions of section thirty-five, article one, chapter twenty-two-a of this code who is performing or engaging in emergency rescue services.

(d) A duly qualified emergency service worker performing his or her duty in this state pursuant to any lawful agreement, compact or arrangement for mutual aid and assistance to which the state or a political subdivision is a party shall possess the same powers, duties, immunities and privileges he or she would possess if performing the same duties in his or her own state, province or political subdivision thereof.
AN ACT to amend and reenact §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-18-6a; and to amend and reenact §54-1-2 of said code; and to further amend said code by adding thereto a new section designated §54-1-2a, all relating to limiting the use of eminent domain; creating definitions for certain terms; prohibiting use of eminent domain for economic development and providing for limited exceptions; establishing a procedure for municipal urban renewal authorities to use eminent domain for properties only in blighted areas; requiring notice of public hearing and rights of property owners related to proposed condemnation of property; requiring municipal urban renewal authority to consider other alternatives to condemnation; requiring municipal urban renewal authority to show property is blighted or necessary for the redevelopment plan; requiring municipal urban renewal authority meet additional requirements before proceeding with condemnation of nonblighted property; creating right for property owner to appeal the condemnation; requiring municipal authority to prove all statutory criteria have been met; protecting property owners right to relocation assistance; prohibiting use of eminent domain for economic development that would result in private economic gain; and requiring a good faith offer prior to condemnation.
Be it enacted by the Legislature of West Virginia:

That §16-18-3, §16-18-6 and §16-18-8 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 §16-18-6a, and that §54-1-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §54-1-2a, all to read as follows:

Chapter
   16. Public Health
      54. Eminent Domain

CHAPTER 16. PUBLIC HEALTH

ARTICLE 18. SLUM CLEARANCE.

§16-18-6. Preparation and approval of redevelopment plans.
§16-18-6a. Municipal non-blighted property in slum or blight areas.


The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) “Area of operation” means in the case of a municipality, the area within such municipality and the area within five miles of the territorial boundaries thereof, except that the area of operation of a municipality under this article shall not include any area which lies within the territorial boundaries of another municipality unless a resolution shall have been adopted by the governing body of such other municipality declaring a need therefor; and in the case of a county, the area within the county, except that the area of operation in such case shall not include any area which lies within the territorial boundaries of a municipality unless a resolution shall have been adopted by the
governing body of such municipality declaring a need therefor; and in the case of a regional authority, shall mean the area within the communities for which such regional authority is created: Provided, That a regional authority shall not undertake a redevelopment project within the territorial boundaries of any municipality unless a resolution shall have been adopted by the governing body of such municipality declaring that there is a need for the regional authority to undertake such development project within such municipality. No authority shall operate in any area of operation in which another authority already established is undertaking or carrying out a redevelopment project without the consent, by resolution, of such other authority.

(b) “Authority”, “slum clearance and redevelopment authority” or “urban renewal authority” means a public body, corporate and politic, created by or pursuant to section four of this article or any other public body exercising the powers, rights and duties of such an authority as hereinafter provided.

(c) “Blighted area” means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(d) “Blighted property” means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, age or
obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare.

(e) “Bonds” means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(f) “Community” means any municipality or county in the state.

(g) “Clerk” means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(h) “Federal government” is the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(i) “Governing body” means the council or other legislative body charged with governing the municipality or the county court or other legislative body charged with governing the county.

(j) “Mayor” means the officer having the duties customarily imposed upon the executive head of a municipality.

(k) “Municipality” means any incorporated city, town or village in the state.

(l) “Obligee” means any bondholder, agents or trustees for any bondholders, or lessor demising to the authority property used in connection with a redevelopment project, or any assignee or assignees of such lessor’s interest or any part
thereof, and the federal government when it is a party to any contract with the authority.

(m) “Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other similar representative thereof.

(n) “Public body” means the state or any municipality, county, township, board, commission, authority, district, or any other subdivision or public body of the state.

(o) “Real property” includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(p) “Redeveloper” means any person, partnership, or public or private corporation or agency which shall enter or propose to enter into a redevelopment contract.

(q) “Redevelopment contract” means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan.

(r) “Redevelopment plan” means a plan for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area.

(s) “Redevelopment project” means any work or undertaking:

(1) To acquire pursuant to the limitations contained in subdivision (11), section two, article one, chapter fifty-four slum areas or blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is
necessary or incidental to the proper clearance, development or
redevelopment of such slum or blighted areas or to the preven-
tion of the spread or recurrence of slum conditions or conditions
of blight;

(2) To clear any such areas by demolition or removal of
existing buildings, structures, streets, utilities or other improve-
ments thereon and to install, construct, or reconstruct streets,
utilities, and site improvements essential to the preparation of
sites for uses in accordance with a redevelopment plan;

(3) To sell, lease or otherwise make available land in such
areas for residential, recreational, commercial, industrial or
other use or for public use or to retain such land for public use,
in accordance with a redevelopment plan; and

(4) Preparation of a redevelopment plan, the planning,
survey and other work incident to a redevelopment project and
the preparation of all plans and arrangements for carrying out
a redevelopment project.

(t) “Slum area” means an area in which there is a predomi-
nance of buildings or improvements or which is predominantly
residential in character, and which, by reason of dilapidation,
deterioration, age or obsolescence, inadequate provision for
ventilation, light, air, sanitation, or open spaces, high density of
population and overcrowding, or the existence of conditions
which endanger life or property by fire and other causes, or any
combination of such factors, is conducive to ill health, transmis-
sion of disease, infant mortality, juvenile delinquency and
crime, and is detrimental to the public health, safety, morals or
welfare.

(q) “Unblighted property” means a property that is not a
blighted property.

§16-18-6. Preparation and approval of redevelopment plans.
(a) An authority shall not acquire real property for a redevelopment project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plans, as prescribed in subsection (i) below.

(b) An authority shall not prepare a redevelopment plan for a redevelopment project area unless the governing body of the community in which such area is located has, by resolution, declared such area to be a slum or blighted area in need of redevelopment.

(c) An authority shall not recommend a redevelopment plan to the governing body of the community in which the redevelopment project area is located until a general plan for the development of the community has been prepared.

(d) The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to:

(1) The boundaries of the redevelopment project area, with a map showing the existing uses and conditions of the real property therein;

(2) A land use plan showing proposed uses of the area;

(3) Information showing the standards of population densities, land coverage and building intensities in the area after redevelopment;
(4) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

(5) A site plan of the area; and

(6) A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

(e) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission of the community in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the community as a whole. The planning commission shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the community for approval.

(f) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic,
vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions of blight, and the provision of adequate, safe and sanitary dwelling accommodations.

(g) The recommendation of a redevelopment plan by an authority to the governing body shall be accompanied by the recommendations, if any, of the planning commission concerning the redevelopment plan; a statement of the proposed method and estimated cost of the acquisition and preparation for redevelopment of the redevelopment project area and the estimated proceeds or revenues from its disposal to redevelopers; a statement of the proposed method of financing the redevelopment project; and a statement of a feasible method proposed for the relocation of families to be displaced from the redevelopment project area.

(h) The governing body of the community shall hold a public hearing on any redevelopment plan or substantial modification thereof recommended by the authority, after public notice thereof by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community. Public notice shall also include notice by certified letter, return receipt requested to each property owner of record of all affected properties of the proposed project. The notice shall include:

(1) Notice of the public hearing time, date and location;
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(2) The right to have an inspection by the municipal authority to determine if the property is blighted or unblighted;

(3) The inspection procedures; and

(4) The rights the property owner has pursuant to section six-a of this article relating to unblighted properties in blighted or slum areas.

The last publication shall be at least ten days prior to the date set for the hearing. The notice shall describe the time, date, place and purpose of the hearing and shall also generally identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan. The municipal authority shall consider reasonable alternatives for the redevelopment project that will minimize the use of eminent domain against any properties that are not blighted.

(i) Following such hearing, the governing body may approve a redevelopment plan if it finds that said plan is feasible and in conformity with the general plan for the development of the community as a whole: Provided, That if the redevelopment project area is a blighted area, the governing body must also find that a shortage of housing of sound standards and designs, adequate for family life, exists in the community; the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas under redevelopment; the conditions of blight in the redevelopment project area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals or welfare; and that the development of the blighted area for predominantly residential uses is an integral part of and essential to the program of the community for the elimination of slum areas. A redevelopment plan
which has not been approved by the governing body when recommended by the authority may again be recommended to it with any modifications deemed advisable.

(j) A redevelopment plan may be modified at any time by the authority: Provided, That if modified after the lease or sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper or redevelopers of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body.

§16-18-6a. Municipal non-blighted property in slum or blight areas.

(a) The municipal authority shall have the burden to show that a property is blighted. If the property owner does not allow the authority to conduct and inspection of the property to determine whether it is appropriate to deem the property blighted or unblighted, then it is a rebuttable presumption that the property is blighted.

(b) When any area has been declared to be slum and blighted, pursuant to the provisions of this article, if a private property within that area is found to not be a blighted property, then to condemn the property pursuant to article two, chapter fifty four of the code, the municipal authority must demonstrate, in addition to all other lawful condemnation requirements, that the project or program requiring the clearance of the slum and blighted area:

(1) Cannot proceed without the condemnation of the private property at issue;
(2) That the private property shown not to be blighted cannot be integrated into the proposed project or program once the slum and blighted area surrounding such property is taken and cleared;

(3) That the condemnation of the unblighted property is necessary for the clearance of an area deemed to be slum or blighted;

(4) That other alternatives to the condemnation of the unblighted property are not reasonably practical;

(5) That every reasonable effort has been taken to ensure that the unblighted property and its owners have been given a reasonable opportunity to be included in the redevelopment project or plan without the use of eminent domain;

(6) That no alternative site within the slum and blighted area is available for purchase by negotiation that might substitute as a sight for the unblighted property;

(7) That the redevelopment project or plan could not be restructured to avoid the taking of the unblighted property;

(8) That the redevelopment project or plan could not be carried out without the use of eminent domain; and

(9) That there is specific use for the unblighted property to be taken and a plan to redevelop and convert the unblighted property from its current use to the stated specific use basically exists.

(c) In any case when the municipal authority has decided to pursue condemnation, the property owner shall have the right to seek review in the circuit court within the county wherein the property lies. Prior to authorizing condemnation as provided pursuant to article two, chapter fifty-four of the code, the court
must find that the property is blighted, or if unblighted, that the
authority has met the requirements of subsection (b) of this
section.

(d) All of the rights and remedies contained in article three,
chapter fifty-four of this code concerning relocation assistance
are available to the private property owner whose unblighted
property is being condemned, and if the property to be con-
demned contains a business owned by the property owner, the
property owner is entitled to the amount, if any, which when
added to the acquisition cost of the property acquired by the
condemning authority, equals the reasonable cost of obtaining
a comparable building or property having substantially the same
characteristics of the property sought to be taken.


(a) An authority shall have the right to acquire by the
exercise of the power of eminent domain, pursuant to the
limitations contained in subdivision (11), section two, article
one, chapter fifty-four, any real property which it may deem
necessary for a redevelopment project or for its purposes under
this article after the adoption by it of a resolution declaring that
the acquisition of the real property described therein is neces-
sary for such purposes. An authority may exercise the power of
eminent domain in the manner provided for condemnation
proceedings, in chapter fifty-four of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, or it may
exercise the power of eminent domain in the manner now or
which may be hereafter provided by any other statutory
provisions for the exercise of the power of eminent domain.
Property already devoted to a public use may be acquired in
like manner: Provided, That no real property belonging to the
municipality, the county or the state may be acquired without
its consent.
(b) When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under this article, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

CHAPTER 54. EMINENT DOMAIN

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

§54-1-2a. Notice; good faith purchase.

§54-1-2. Public uses for which private property may be taken or damaged.

(a) The public uses for which private property may be taken or damaged are as follows:

1. For the construction, maintenance and operation of railroad and traction lines (including extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings, wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for the public use;

2. For the construction and maintenance of telegraph, telephone, electric light, heat and power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and service lines), when for public use;

3. For constructing, maintaining and operating pipelines, plants, systems and storage facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas, and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise, (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), and for underground storage areas.
and facilities, and the operation and maintenance thereof, for
the injection, storage and removal of natural gas in subterranean
oil and/or gas bearing stratum, which, as shown by previous
exploration of the stratum sought to be condemned and within
the limits of the reservoir proposed to be utilized for such
purposes, has ceased to produce or has been proved to be
nonproductive of oil and/or gas in substantial quantities, when
for public use, the extent of the area to be acquired for such
purpose to be determined by the court on the basis of reason-
able need therefor. Nothing in this subsection shall be construed
to interfere with the power of the state and its political subdivi-
sions to enact and enforce ordinances and regulations deemed
necessary to protect the lives and property of citizens from the
effects of explosions of oil or gas;

(4) For constructing, maintaining and operating, water
plants and systems, including lines for transporting water by
any corporate body politic, or private corporation, for supplying
water to the inhabitants of any city, town, village or commu-
nity, for public use, including lands for pump stations, reser-
voirs, cisterns, storage dams, and other means of storing,
purifying and transporting water, and the right to take and
damage lands which may be flooded by the impounded waters,
and to appropriate any spring, stream and the surrounding
property necessary to protect, preserve and maintain the purity
of any such spring, stream, reservoir, cistern and water im-
pounded by means of any storage dam;

(5) For the purpose of constructing, maintaining and
operating sewer systems, lines and sewage disposal plants, to
collect, transport and dispose of sewage. When in the interest
of the public welfare and the preservation of the public health,
the construction of a sewer line to serve a single building or
institution shall be deemed a public use, and, for such purpose,
the right of eminent domain, if within a municipal corporation,
may be exercised in the name of a municipal corporation, and
53 if not within a municipal corporation, in the name of the county
54 commission of the county in which the property is located;

55 (6) For the reasonable use by an incorporated company
56 engaged in a public enterprise of which the state or any county
57 or municipality is the sole or a part owner;

58 (7) For courthouses and municipal buildings, parks, public
59 playgrounds, the location of public monuments, and all other
60 public buildings;

61 (8) For cemeteries, and the extension and enlargement of
62 existing cemeteries: Provided, That no lands shall be taken for
63 cemetery purposes which lie within four hundred feet of a
64 dwelling house, unless to extend the boundaries of an existing
65 cemetery, and then only in such manner that the limits of the
66 existing cemetery shall not be extended nearer than four
67 hundred feet of any dwelling house distant four hundred feet or
68 more from such cemetery, or nearer than it was to any dwelling
69 house which is within four hundred feet thereof;

70 (9) For public schools, public libraries and public hospitals;

71 (10) For the construction and operation of booms (including
72 approaches, landings and ways necessary for such objects),
73 when for a public use;

74 (11) By the State of West Virginia for any and every other
75 public use, object and purpose not herein specifically men-
76 tioned, but in no event may “public use”, for the purposes of
77 this subdivision, be construed to mean the exercise of eminent
78 domain primarily for private economic development.

79 For purposes of this subdivision, no private property may
80 be taken by the State of West Virginia or its political subdivi-
81 sions without the owner’s consent when the primary purpose of
82 the taking is economic development that will ultimately result
in ownership or control of the property transferring to another private entity, other than one having the power of eminent domain, whether by purchase agreement, long-term lease agreement or any other mechanism whereby ownership or control is effectively transferred: Provided, That a municipal urban renewal authority may exercise a right of eminent domain as to property only within an area designated a slum area or blighted area under the provisions of article eighteen, chapter sixteen of this code.

By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the purview, and subject to the provisions of chapter one of this code.

(12) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: Provided, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: Provided, however, That in addition to all other requisites by federal or state constitutions, statute or common law required for the taking of private property for public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to private property for public use as in this subsection hereinafore provided, is that the Public Service Commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for
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117 the public convenience and necessity, and that the Public
118 Service Commission of this state shall not extend a certificate
119 of convenience and necessity or make such finding of public
120 convenience and necessity unless, in addition to the other facts
121 required to support such findings, it shall have been established
122 by the applicant therefor that the patents and other similar rights
123 under which the applicant proposes to construct, maintain or
124 operate such pipeline, plants, systems and storage facilities
125 shall be and shall remain equally available, insofar as said
126 subsequent applicant may determine such availability, upon fair
127 and reasonable terms, to other bona fide applicants seeking a
128 certificate of convenience and necessity and finding of fact for
129 any other pipeline in West Virginia; for the purpose of making
130 the findings hereinbefore set forth the Public Service Commis-
131 sion shall have and exercise jurisdiction, and that the aforesaid
132 findings in this proviso above set forth shall be subject to
133 judicial review as in other Public Service Commission proceed-
134 ings.

135 It is the intention of the Legislature in amending this
136 section by the addition of subdivision (12) to extend the right of
137 eminent domain to coal pipelines for public use; to provide for
138 regulation of such coal pipelines by the Public Service Com-
139 mission of this state or the Interstate Commerce Commission of
140 the United States of America, or both; to assure that such rights
141 shall be extended only to public utilities or common carriers as
142 distinguished from private carriers or contract carriers; to make
143 patents covering the same equally available to others on fair and
144 reasonable terms; and to prevent monopolistic use of coal
145 pipelines by any users thereof which would result in any
146 appreciable economic detriment to others similarly situated by
147 reasons of any such monopoly.

§54-1-2a. Notice; good faith purchase.

1 Prior to initiation of any condemnation proceeding pursuant
2 to slum and blight, the applicant must make a reasonable
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3 attempt to notify all parties subject to a petition for condemna-
4 tion provided in section two of this article, and attempt to enter
5 into negotiations for purchase of the property with the owners.
6 The applicant shall make an offer in good faith for the purchase
7 of the property subject to the condemnation prior to initiation
8 of the condemnation proceeding.

CHAPTER 97

(Com. Sub. for S. B. 767 — By Senators Bowman, Hunter and Minard)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §21A-2-6 of the Code of West
Virginia, 1931, as amended, relating to the powers and duties of
the Commissioner of the Bureau of Employment Programs; and
authorizing the commissioner to promulgate rules authorizing
state agencies to revoke the business license of an employing unit
in default on unemployment compensation payments.

Be it enacted by the Legislature of West Virginia:

That §21A-2-6 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT
PROGRAMS.


1 The commissioner is the executive and administrative head
2 of the bureau and has the power and duty to:
(1) Exercise general supervision for the governance of the bureau and propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations, departmental hearings and propose rules for promulgation;

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

(4) Prescribe the qualifications of, appoint, remove and fix the compensation of the officers and employees of the bureau, subject to the provisions of section ten, article four of this chapter, relating to the board of review;

(5) Organize and administer the bureau so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States Department of Labor and comply with any requirements that the United States Department of Labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation and a statement of the recipient’s rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all bureau proceedings, record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;
(9) Sign and execute in the name of the state, by the "Bureau of Employment Programs", any contract or agreement with the federal government, its agencies, other states, their subdivisions or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

(11) Make the original determination of right in claims for benefits;

(12) Make recommendations and an annual report to the Governor concerning the condition, operation and functioning of the bureau;

(13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and promote the efficiency of the service;

(15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau;

(17) (A) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, under which agencies of this state shall revoke or not 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 commissioner 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 Unemployment Compensation Division of the bureau and remains in compliance with its obligations under the repayment agreement.

(B) The rules shall provide that, before revoking, 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 bureau 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 bureau, 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 revocation or refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter.

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates or other authority to conduct trades, professions or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the Department of Environmental Protection’s surface mining reclamation regulations promulgated under the provisions of article three, chapter twenty-two of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. 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 Bureau of Employment Programs to be exempt from the provisions of the rules;

(18) 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; and

(19) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

CHAPTER 98

(Com. Sub. for H. B. 2328 — By Delegate Amores)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §6-9A-11 of the Code of West Virginia, 1931, as amended, relating to advisory opinions of the West Virginia Ethics Commission Committee generally and providing that reliance on a written advisory opinion is an absolute defense in certain actions.

Be it enacted by the Legislature of West Virginia:

That §6-9A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-11. Request for advisory opinion; maintaining confiden-
(t)
1 (a) Any governing body or member thereof subject to the
2 provisions of this article may seek advice and information from
3 the executive director of the West Virginia Ethics Commission
4 or request in writing an advisory opinion from the West
5 Virginia Ethics Commission Committee on Open Governmental
6 Meetings as to whether an action or proposed action violates the
7 provisions of this article. The executive director may render
8 oral advice and information upon request. The committee shall
9 respond in writing and in an expeditious manner to a request for
10 an advisory opinion. The opinion is binding on the parties
11 requesting the opinion.

12 (b) Any governing body or member thereof that seeks an
13 advisory opinion and acts in good faith reliance on the opinion
14 has an absolute defense to any civil suit or criminal prosecution
15 for any action taken in good faith reliance on the opinion unless
16 the committee was willfully and intentionally misinformed as
17 to the facts by the body or its representative.

18 (c) A governing body or member thereof that acts in good
19 faith reliance on a written advisory opinion sought by another
20 person or governing body has an absolute defense to any civil
21 suit or criminal prosecution for any action taken based upon a
22 written opinion of the West Virginia ethics commission
23 committee, as long as underlying facts and circumstances
24 surrounding the action were the same or substantially the same
25 as those being addressed by the written opinion.

26 (d) The committee and commission may take appropriate
27 action to protect from disclosure information which is properly
28 shielded by an exception provided in section four of this article.
AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating to confidentiality of circuit court records involving guardianship of minors.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

(a) The circuit court or family court of the county in which the minor resides, or if the minor is a nonresident of the state, the county in which the minor has an estate, may appoint as the minor's guardian a suitable person. The father or mother shall receive priority. However, in every case, the competency and fitness of the proposed guardian and the welfare and best interests of the minor shall be given precedence by the court when appointing the guardian.

(b) Within five days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the
court. The court shall hear the petition for the appointment of a guardian within ten days after the petition is filed.

(c) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

1. The minor reaches the age of eighteen and executes a release stating that the guardian estate was properly administered and that the minor has received the assets of the estate from the guardian;

2. The guardian or the minor dies;

3. The guardian petitions the court to resign and the court enters an order approving the resignation; or

4. A petition is filed by the guardian, the minor, an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian.

(d) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor: Provided, That another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(e) Records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding or presiding over the proceeding, absent a court order permitting examination of such records.
AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to continuation of hazardous waste management fee.

Be it enacted by the Legislature of West Virginia:

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.


(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section five of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures shall be considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for defraying the cost of administering this
article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on the first day of July, two thousand three, and for the next two fiscal years, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The fee will be set by rule promulgated by the secretary in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated shall raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed seven hundred thousand dollars per year.

(c) The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund, which is hereby established. Moneys of the fund, together with any interest or other return earned thereon, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand four, expenditures are authorized from collections rather than
pursuant to an appropriation by the Legislature. Amounts
collected which are found from time to time to exceed the funds
needed for purposes set forth in this article may be transferred
to other accounts by appropriation of the Legislature.

(d) The fee provided for in subsection (b) of this section
and the fund established in subsection (c) of this section shall
terminate on the thirtieth day of June, two thousand eight. The
division shall, by the thirty-first day of December of each year,
report to the Joint Committee on Government and Finance
regarding moneys collected into the Hazardous Waste Manage-
ment Fee Fund and expenditures by the agency, including any
federal matching moneys received, and providing an accounting
on the collection of the fee by type of permit activity, funds
being expended and current and future projected balances of the
fund.

CHAPTER 101

(S. B. 773 — By Senators Kessler, Dempsey, Fanning, Hunter,
Minard, White, Barnes, Caruth, Deem, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §16-2D-1, §16-2D-5, §16-2D-6 and
§16-2D-9 of the Code of West Virginia, 1931, as amended, all
relating to certificate of need standards; establishing standards for
and guidance to the Health Care Authority in making amendments
and modifications to certificate of need standards; setting forth
factors for consideration in amending or modifying certificate of
need standards and rules; identifying sources for consideration in
amending or modifying certificate of need standards and method-
ologies; providing that applications for a certificate of need may
be made subject to criteria contained in certificate of need
standards; providing that decisions may be made by the Health
Care Authority on applications for certificate of need standards
based upon a review conducted in accordance with certificate of
need standards; and clarifying the certificate of need standards are
not subject to legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

That §16-2D-1, §16-2D-5, §16-2D-6 and §16-2D-9 of the Code
of West Virginia, 1931, as amended, be amended and reenacted, all
to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-1. Legislative findings.

§16-2D-5. Powers and duties of state agency.

§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-9. Agency to render final decision; issue certificate of need; write findings;
specify capital expenditure maximum.

§16-2D-1. Legislative findings.

1 It is declared to be the public policy of this state:

2 (1) That the offering or development of all new institutional
3 health services shall be accomplished in a manner which is
4 orderly, economical and consistent with the effective develop-
5 ment of necessary and adequate means of providing for the
6 institutional health services of the people of this state and to
7 avoid unnecessary duplication of institutional health services,
8 and to contain or reduce increases in the cost of delivering
9 institutional health services.

10 (2) That the general welfare and protection of the lives,
11 health and property of the people of this state require that the
12 type, level and quality of care, the feasibility of providing such
13 care and other criteria as provided for in this article, including
§16-2D-5. Powers and duties of state agency.

(a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards. The state agency shall review the state health plan, including the certificate of need standards and make any necessary amendments and modifications. The state agency shall also review the cost effectiveness of the certificate of need program. The state agency may form task forces to assist it in addressing these issues. The task forces shall be composed of representatives of consumers, business, providers, payers and state agencies.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency’s responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of the services.
(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the Certificate of Need Program Fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a of this article and subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to
the effective date of this section shall incur an obligation for a
capital expenditure within twelve months of the date of
issuance of the certificate of need. No extensions shall be
granted beyond the twelve-month period. The state agency shall
establish a task force or utilize an existing task force to study
the need for additional nursing facility beds in this state. The
study shall include a review of the current moratorium on the
development of nursing facility beds; the exemption for the
conversion of acute care beds to skilled nursing facility beds;
the development of a methodology to assess the need for
additional nursing facility beds; and certification of new beds
both by Medicare and Medicaid. The task force shall be
composed of representatives of consumers, business, providers,
payers and government agencies.

(h) No additional intermediate care facility for the mentally
retarded (ICF/MR) beds shall be granted a certificate of need,
except that prohibition does not apply to ICF/MR beds ap-
proved under the Kanawha County circuit court order of the
third day of August, one thousand nine hundred eighty-nine,
civil action number MISC-81-585 issued in the case of E. H. v.

(i) Notwithstanding the provisions of subsection (g) of this
section and, further notwithstanding the provisions of subsec-
tion (b), section three of this article, an existing acute care
hospital may apply to the Health Care Authority for a certificate
of need to convert acute care beds to skilled nursing beds:
Provided, That the proposed skilled nursing beds are Medicare
certified only: Provided, however, That any hospital which
converts acute care beds to Medicare-certified only skilled
nursing beds shall not bill for any Medicaid reimbursement for
any converted beds. In converting beds, the hospital shall
convert a minimum of one acute care bed into one Medicare-
certified only skilled nursing bed. The Health Care Authority
may require a hospital to convert up to and including three
acute care beds for each Medicare-certified only skilled nursing bed: Provided further, That a hospital designated or provisionally designated by the state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified freestanding nursing facility and the hospital may bill for Medicaid reimbursement for the converted beds: And provided further, That if the hospital rejects the designation as a rural primary care hospital then the hospital may not bill for Medicaid reimbursement. The Health Care Authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital’s acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the Medicare-certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.
(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient’s county of residence. Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified only may be developed pursuant to this subsection. The state health plan is not applicable to projects submitted under this subsection. The Health Care Authority shall adopt rules to implement this subsection which shall include a requirement that:

(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(C) The unit developed by the retirement life care center meets all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrates a need for the project;

(E) The retirement center offers personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrates both short- and long-term financial feasibility.
(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the offering or development of a new institutional health service, when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The state agency may also order a moratorium on the offering or development of a health service, notwithstanding the provisions of subdivision (5), subsection (b), section three of this article, when it determines that the proliferation of the service may cause an adverse impact on the cost of health care or the health status of the public. A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section six of this article.

(l) (1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.
(2) When amending and modifying the certificate of need standards, the state agency shall identify relevant criteria contained in section six of this article or rules adopted pursuant to section eight of this article, and apply those relevant criteria to the proposed new institutional health service in a manner that promotes the public policy goals and legislative findings contained in section one of this article. In doing so, the state agency may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the state agency’s own developed expertise in health planning, data accumulated by the state agency or other local, state or federal agency or organization, and any other source deemed relevant to the certificate of need standards proposed for amendment or modification.

(3) All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the Governor. Within thirty days of receiving the proposed amendments or modifications, the Governor shall either approve or disapprove all or part of the amendments and modifications and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the Governor may be revised and resubmitted.

(4) The certificate of need standards adopted pursuant to this section which are applicable to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code. The state agency shall follow the provisions set forth in this subsection for giving notice to the public of its actions, holding hearings or receiving comments on the certificate of
need standards. The certificate of need standards in effect on
the twenty-ninth day of November, two thousand five, and all
prior versions promulgated and adopted in accordance with the
provisions of this section, are and have been in full force and
effect from each of their respective dates of approval by the
Governor.

(m) The state agency may exempt from or expedite rate
review, certificate of need, and annual assessment requirements
and issue grants and loans to financially vulnerable health care
facilities located in underserved areas that the state agency and
the Office of Community and Rural Health Services determine
are collaborating with other providers in the service area to
provide cost effective health care services.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsection (f), section nine of this
article, in making its determination as to whether a certificate
of need shall be issued, the state agency shall, at a minimum,
consider all of the following criteria that are applicable:
Provided, That the criteria set forth in subsection (f) of this
section apply to all hospitals, nursing homes and health care
facilities when ventilator services are to be provided for any
nursing facility bed:

(1) The relationship of the health services being reviewed
to the state health plan;

(2) The relationship of services reviewed to the long-range
development plan of the person providing or proposing the
services;

(3) The need that the population served or to be served by
the services has for the services proposed to be offered or
expanded, and the extent to which all residents of the area, and
in particular low income persons, racial and ethnic minorities,
women, handicapped persons, other medically underserved population and the elderly, are likely to have access to those services;

(4) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated;

(5) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service;

(6) The relationship of the services proposed to the existing health care system of the area in which the services are proposed to be provided;

(7) In the case of health services proposed to be provided, the availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan and other applicable plans;

(8) The appropriate and nondiscriminatory utilization of existing and available health care providers;

(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(10) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;
(11) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population and the elderly, to obtain needed health care;

(12) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision; and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(13) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(14) In the case of health services proposed to be provided, if the services are to be available in a limited number of facilities, the extent to which the schools in the area for health professions will have access to the services for training purposes;

(15) In the case of health services proposed to be provided, the extent to which the proposed services will be accessible to all the residents of the area to be served by the services;

(16) In accordance with section five of this article, the factors influencing the effect of competition on the supply of the health services being reviewed;
(17) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section five of this article, and serve to promote quality assurance and cost effectiveness;

(18) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(19) In the case of existing services or facilities, the quality of care provided by the services or facilities in the past;

(20) In the case where an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand or modernize a health care facility, acquire major medical equipment or add services, the need for that construction, expansion, modernization, acquisition of equipment or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The state agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels;

(21) The special circumstances of health care facilities with respect to the need for conserving energy;

(22) The contribution of the proposed service in meeting the health-related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant’s services in comparison to the...
percentage of the population in the applicant’s service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by a house staff and admission by personal physician;

(23) The existence of a mechanism for soliciting consumer input into the health care facility’s decision-making process.

(b) The state agency may include additional criteria which it prescribes by rules adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(d) An application for a certificate of need may not be made subject to any criterion not contained in this article, in rules adopted pursuant to section eight of this article or in the certificate of need standards approved pursuant to section five of this article.
(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. No facility may, by providing ventilator services, provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(g) In the case where application is made by any person or entity to provide personal care services which are to be billed
for Medicaid reimbursement, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of the cost of current Medicaid services. No person or entity may provide personal care services to be billed for Medicaid reimbursement without demonstrating that the provision of the personal care service will result in no additional fiscal burden to the state: Provided, That a certificate of need is not required for a person providing specialized foster care personal care services to one individual and those services are delivered in the provider’s home. The state agency shall also consider the total fiscal liability to the state for all applications which have been submitted.

§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

(a) Only the state agency, or the appropriate administrative or judicial review body, may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews or determine that certificate of need reviews are not required.

(b) A certificate of need may only be issued if the proposed new institutional health service is:

(1) Found to be needed; and

(2) Except in emergency circumstances that pose a threat to public health, consistent with the state health plan.

(c) The state agency shall render a final decision on every application for a certificate of need or application for exemption in the form of an approval, a denial or an approval with conditions. Any decision of the state agency with respect to a certificate of need, or exemption, shall be based solely on:

(1) The review of the state agency conducted in accordance with procedures and criteria in this article, in rules adopted
pursuant to section eight of this article and in the certificate of
need standards approved pursuant to section five of this article;
and

(2) The record established in administrative proceedings
held with respect to the certificate of need or exemption.

(d) Approval with conditions does not give the state agency
authority to mandate new institutional health services not
proposed by the health care facility or health maintenance
organization. Issuance of a certificate of need or exemption may
not be made subject to any condition unless the condition
directly relates to criteria in this article, in rules adopted
pursuant to section eight of this article or in the certificate of
need standards approved pursuant to section five of this article.
Conditions may be imposed upon the operations of the health
care facility or health maintenance organization for no longer
than a three-year period. Compliance with such conditions may
be enforced through the mechanisms detailed in section thirteen
of this article.

(e)(1) For each proposed new institutional health service
it approves, the state agency shall, in addition to the written
findings required in subsection (e), section six of this article,
make a written finding, which shall take into account the
current accessibility of the facility as a whole, on the extent to
which the new institutional health service will meet the criteria
in subdivisions (3), (11) and (22), subsection (a), section six of
this article, regarding the needs of medically underserved
population, except in the following cases:

(A) Where the proposed new institutional health service is
one described in subsection (f) of this section to eliminate or
prevent certain imminent safety hazards or to comply with
certain licensure or accreditation standards; or
(B) Where the new institutional health service is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.

(2) If the state agency disapproves a proposed new institutional health service for failure to meet the needs of medically underserved populations, it shall so state in a written finding.

(f) (1) Notwithstanding review criteria in section six of this article, an application for a certificate of need shall be approved, if the state agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:

(A) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes, rules or regulations;

(B) To comply with state licensure standards; or

(C) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(2) An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in subparagraph (A), subdivision (1), subsection (f) of this section, or to comply with the standards described in either subparagraph (B) or (C), subdivision (1), subsection (f) of this section.
(g) The state agency shall send its decision along with written findings to the person proposing the new institutional health service or exemption and shall make it available to others upon request.

(h) In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service.

(i) The state agency shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The state agency shall prescribe the method used to determine capital expenditure maximums and shall adopt rules pursuant to section eight of this article for the review of approved new institutional health services for which the capital expenditure maximum is exceeded or is expected to be exceeded.

(j) If the state agency fails to make a decision within the time period specified for the review, the applicant may, within one year following the expiration of such period, bring an action, at the election of the applicant, in either the circuit court of Kanawha County, or with the judge thereof in vacation, or in the circuit court of the county in which the applicant or any one of the applicants resides or does business, or with the judge thereof in vacation to require the state agency to approve or disapprove the application. An application for a proposed new institutional health service or exemption may not be approved or denied by the circuit court solely because the state agency failed to reach a decision.
CHAPTER 102

(S. B. 772 — By Senator Prezioso)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5Q-4, relating to subrogation rights of the Department of Health and Human Resources on behalf of the James “Tiger” Morton Catastrophic Illness Commission from personal insurance or other sources; legal assignment of rights; setting forth effect of subrogation; allowing action for compensatory damages; notice to the Department of Health and Human Resources of intent to enter judgment, award or settlement; giving the Department of Health and Human Resources right to assert interest through assignment; and providing for attorney fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5Q-4, to read as follows:

ARTICLE 5Q. THE JAMES “TIGER” MORTON CATASTROPHIC ILLNESS FUND.

§16-5Q-4. Assignment of rights; right of subrogation by the James “Tiger” Morton Catastrophic Illness Commission to the rights of recipients of medical assistance; rules as to effect of subrogation.
(a) (1) Submission of an application to the Catastrophic Illness Commission for medical assistance is, as a matter of law, an assignment of the right of the applicant, or legal representative thereof, to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of medical services paid for by the Catastrophic Illness Commission’s Medical Assistance Program.

(2) At the time the application is made, the Catastrophic Illness Commission shall include a statement along with such application that explains that the applicant has assigned all such rights to the Catastrophic Illness Commission, and the legal implications of making such assignment as provided in this section.

(3) If medical assistance is paid or will be paid by the Catastrophic Illness Commission to a provider of medical care on behalf of a recipient of medical assistance because of a “catastrophic illness”, as defined by this article, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the Department of Health and Human Resources, on behalf of the Catastrophic Illness Commission, shall have the right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he has been reimbursed by the other person. The Department of Health and Human Resources shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the catastrophic illness for which the recipient has received damages.

(4) When an action or claim is brought by a medical assistance recipient, or by someone on his or her behalf, against a third party who may be liable for the catastrophic illness or death of a medical assistance recipient, any settlement, judg-
ment or award obtained is subject to the claim of the Depart-
ment of Health and Human Resources, on behalf of the
Catastrophic Illness Commission for reimbursement of an
amount sufficient to reimburse the Department of Health and
Human Resources the full amount of benefits paid on behalf of
the recipient under the Catastrophic Illness Commission's
Medical Assistance Program for the catastrophic illness of the
medical assistance recipient. The claim of the Department of
Health and Human Resources on behalf of the Catastrophic
Illness Commission, assigned by such recipient shall not exceed
the amount of medical expenses for the catastrophic illness of
the recipient paid by the Department of Health and Human
Resources on behalf of the recipient. The right of subrogation
created in this section includes all portions of the cause of
action, by either settlement, compromise, judgment or award,
notwithstanding any settlement allocation or apportionment that
purports to dispose of portions of the cause of action not subject
to the subrogation. Any settlement, compromise, judgement or
award that excludes or limits the cost of actual medical services
or care shall not preclude the Department of Health and Human
Resources from enforcing its rights under this section. The
Secretary of the Department of Health and Human Resources
may compromise, settle and execute a release of any such claim
in whole or in part.

(b) (1) Nothing in this section shall be construed so as to
prevent the recipient of medical assistance from maintaining an
action for injuries received by him against any other person and
from including therein, as part of the compensatory damages
sought to be recovered, the amount or amounts of his or her
medical expenses, even though such person received medical
assistance in the payment of such medical expenses in whole or
in part.

(2) If the action be tried by a jury, the jury shall not be
informed as to the interest of the Department of Health and
Human Resources on behalf of the Catastrophic Illness
Commission, if any, and such fact shall not be disclosed to the
jury at any time. The trial judge shall, upon the entry of
judgment on the verdict, direct that an amount equal to the
amount of medical assistance given by the commission be
withheld and paid over to the Department of Health and Human
Resources on behalf of the commission. Irrespective of whether
the case be terminated by judgment or by settlement without
trial, from the amount required to be paid to the Department of
Health and Human Resources on behalf of the Catastrophic
Illness Commission, there shall be deducted the attorney fees
attributable to such amount in accordance with and in propor-
tion to the fee arrangement made between the recipient and his
or her attorney of record so that the Department of Health and
Human Resources shall bear the pro rata portion of such
attorney fees. Nothing in this section shall preclude any person
who has received medical assistance from settling any cause of
action which he or she may have against another person and
delivering to the Department of Health and Human Resources
from the proceeds of such settlement the sums received by him
or her from the commission or paid by the commission for his
or her medical assistance. If such other person is aware of or
has been informed of the interest of the Department of Health
and Human Resources on behalf of the commission in the
matter, it shall be the duty of the person to whose benefit the
release inures to withhold so much of the settlement as may be
necessary to reimburse the Department of Health and Human
Resources, to the extent of its interest in the settlement. No
judgment, award of or settlement in any action or claim by a
medical assistance recipient or his representative to recover
damages for a catastrophic illness or death, in which the
Department of Health and Human Resources on behalf of the
commission has an interest, shall be satisfied without first
giving the Department of Health and Human Resources notice
and reasonable opportunity to establish its interest. The
Department of Health and Human Resources shall have sixty
days from the receipt of such written notice to advise the
recipient or his or her representative in writing of its desire to
establish its interest through the assignment. If no such written
intent is received within the sixty-day period, then the recipient
may proceed and in the event of full recovery forward to the
Department of Health and Human Resources the portion of the
recovery proceeds less the Department of Health and Human
Resources’s share of attorney’s fees and costs expended in the
matter. In the event of less than full recovery the recipient and
the Department of Health and Human Resources shall agree as
to the amount to be paid to it for its claim. If there is no
recovery, the Department of Health and Human Resources shall
under no circumstances be liable for any costs or attorney fees
expended in the matter. If, after being notified in writing of a
subrogation claim and possible liability of the recipient,
guardian, attorney or personal representative for failure to
subrogate the Department of Health and Human Resources, a
recipient, his or her guardian, attorney or personal representa-
tive disposes of the funds representing the judgment, settlement
or award without the written approval of the Department of
Health and Human Resources, that person shall be liable to the
Department of Health and Human Resources for any amount
that, as a result of the disposition of the funds, is not recover-
able by the Department of Health and Human Resources. In the
event that a controversy arises concerning the subrogation
claims by the Department of Health and Human Resources, an
attorney shall interplead, pursuant to Rule 22 of the Rules of
Civil Procedure, the portion of the recipient’s settlement that
will satisfy the Department of Health and Human Resources
exclusive of attorney fees and costs regardless of any contrac-
tual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the Department
of Health and Human Resources or the Catastrophic Illness
Commission to institute a class action or multiple plaintiff
action against any manufacturer, distributor or vendor of any
product to recover medical care expenditures paid for by the
Catastrophic Illness Commission’s Medical Assistance
Program.
CHAPTER 103

(H. B. 4383 — By Delegates Leach, Craig, Morgan and Stephens)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §16-29F-1 of the Code of West Virginia, 1931, as amended, relating to continuing the pilot program offered through a Community Access Program to coordinate health care provider reimbursements indefinitely as determined by the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

That §16-29F-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.

§16-29F-1. Uninsured and underinsured health coverage assistance; pilot program.

1 (a) The United States Department of Health and Human Services has established a federal grant program to encourage innovative integrated health care delivery systems to serve uninsured and underinsured persons with greater efficiency and improved quality of care and to further maximize reimbursements to health care providers which provide these services.

2 The “Community Access Program” grants as authorized in the federal register: February 4, 2000 (volume 65, number 24), allow for the establishment of local programs to reorganize and reintegrate local health care delivery systems. This section
authorizes, on a trial basis, the establishment of pilot programs in the state which receive a grant under the community access program to coordinate health care provider reimbursements, to allow an opportunity for innovations in payment for health care services to be tested and, if successful, to be permanently implemented.

(b) An entity receiving a community access program grant may initiate a program that comports to the federal grant requirements and meets the requirements of this section. The pilot program may enroll persons to participate in this pilot program who currently do not have insurance and whose income does not exceed two hundred fifty percent of the federal poverty level. The pilot program may coordinate payments from enrollees and businesses employing enrollees to be utilized to capture available federal moneys to assist in providing reimbursements to enrollee’s health care providers. The pilot program shall coordinate reimbursements limited to areas not covered by other federal reimbursement programs such as the children’s health insurance agency within the Department of Administration and the Federal Medicaid Program. In no instance may the pilot program allow health care reimbursements to enrollees and to health care providers that limit or otherwise impede the eligibility of the enrollee or the health care provider to be eligible for these or other federal health care cost reimbursement programs.

(c) Notwithstanding the provisions of chapter thirty-three of this code to the contrary, any grant program created and authorized pursuant to this section is not to be considered as providing insurance or as offering insurance services. Community access pilot programs are specifically excluded from the definitions of “insurance” and “insurer” as defined in article one, chapter thirty-three of this code, and except as provided in this section, these programs are not subject to regulation by the insurance commissioner, nor are they unauthorized insurers
pursuant to section four, article forty-four of chapter thirty-three of this code.

(d) The community access pilot program is authorized to enter into agreements with health care providers to coordinate and otherwise provide services to enrollees. These agreements must be contingent on the health care provider agreeing to accept payment from the community access pilot program based on available funding to the program for the health care services being provided. If the health care provider decides to no longer accept the community access pilot program’s enrollee’s reimbursement, the health care provider must provide, at a minimum, thirty days’ notice of discontinuance of providing services and further acceptance of enrollee’s payments.

(e) The community access pilot program must provide enrollees and the participating employer with a minimum of thirty days’ notice of discontinuance or reduction of enrollee benefits.

(f) The community access pilot program must submit quarterly reports to the Legislative Oversight Commission of Health and Human Resources accountability as established in article twenty-nine-e of this chapter and to the insurance commissioner. The report shall include at a minimum, analysis of the financial status, the number of health care provider reimbursements, enrollee services utilized and other information as requested by the commission and the insurance commissioner.

(g) The authorization for the existence of a pilot program as established pursuant to this section expires on the thirtieth day of June, two thousand seven, unless the insurance commissioner continues the authorization for such periods as he or she determines.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5U-1, §16-5U-2 and §16-5U-3, all relating to the “Arthritis Prevention Education Act”; establishing an arthritis prevention and treatment education program; requiring the Bureau for Public Health to establish strategies to promote and maintain an arthritis prevention education program; and establishing an interagency council on arthritis.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5U-1, §16-5U-2 and §16-5U-3, all to read as follows:

ARTICLE 5U. ARTHRITIS PREVENTION EDUCATION ACT.

§16-5U-1. Short title.
§16-5U-3. Interagency council on arthritis.

§16-5U-1. Short title.

1 This article may be known and cited as the “West Virginia Arthritis Prevention Education Act.”

(a) The Bureau for Public Health shall establish strategies to promote and maintain an arthritis prevention education program in order to raise public awareness, to educate consumers and to educate and train health professionals, teachers and human service providers, to include the following components:

(1) The bureau shall develop strategies for raising public awareness of the causes and nature of arthritis, personal risk factors, the value of prevention and early detection and options for diagnosing and treating the disease that include, but are not limited to, the following:

(A) Community forums;

(B) Health information and risk factor assessment at public events;

(C) Targeting at-risk populations;

(D) Providing reliable information to policymakers; and

(E) Distributing information through county health departments, schools, area agencies on aging, employer wellness programs, physicians, hospitals, health maintenance organizations, women’s groups, nonprofit organizations, community-based organizations and departmental offices;

(2) The bureau shall develop strategies for educating consumers about risk factors, diet and exercise, diagnostic procedures and their indications for use, risks and benefits of drug therapies currently approved by the United States Food and Drug Administration, environmental safety and injury prevention and the availability of self-help diagnostic, treatment and rehabilitation services;

(3) The bureau may develop strategies for educating physicians and health professionals and training community
service providers on the most up-to-date, accurate scientific and medical information on arthritis prevention, diagnosis and treatment, therapeutic decision-making, including guidelines for detecting and treating the disease in special populations, risks and benefits of medications and research advances;

(4) The bureau may conduct a needs assessment to identify:

(A) Research being conducted within the state;

(B) Available up-to-date technical assistance and educational materials and programs nationwide;

(C) The level of public and professional awareness about arthritis;

(D) The needs of arthritis patients, their families and caregivers;

(E) The needs of health care providers, including physicians, nurses, managed care organizations and other health care providers;

(F) The services available to the arthritis patient;

(G) The existence of arthritis treatment programs;

(H) The existence of arthritis support groups;

(I) The existence of rehabilitation services; and

(5) The bureau may replicate and use successful arthritis programs and enter into contracts and purchase materials or services from organizations with appropriate expertise and knowledge of arthritis.

(b) Based on the needs assessment conducted pursuant to this section, the bureau may develop and maintain a resource
guide to include arthritis-related services. This guide shall include a description of diagnostic testing procedures, appropriate indications for their use, drug therapies currently approved by the United States Food and Drug Administration, and a cautionary statement about the current status of arthritis research, prevention and treatment. The statement shall also indicate that the bureau does not license, certify, or in any way approve arthritis programs or centers in the state.

(c) The bureau may promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

(d) Nothing in this article may be construed or interpreted to mean that arthritis treatment or arthritis education are required to be provided by the bureau or the council created in section three of this article. Nothing contained in this article may be construed to mandate funding for arthritis education or any of the programs contained in this article or to require any appropriation by the Legislature.

§16-5U-3. Interagency council on arthritis.

(a) There is hereby established the interagency council on arthritis. The Director of Public Health shall chair the council. The council shall have representatives from appropriate state departments and agencies including, but not limited to, the entities with responsibility for aging, health care reform implementation, education and public welfare.

(b) The council shall:

(1) Coordinate arthritis programs conducted by or through the Bureau for Public Health;

(2) Establish a mechanism for sharing information on arthritis among all officials and employees involved in carrying out arthritis-related programs;
(3) Review and coordinate the most promising areas of education, prevention and treatment concerning arthritis;

(4) Assist the Bureau for Public Health and other offices in developing and coordinating plans for education and health promotion on arthritis;

(5) Establish mechanisms to use the results of research concerning arthritis in the development of relevant policies and programs; and

(6) Prepare a report that describes educational initiatives on arthritis and transmit the report to the Legislature and the Governor and make the report available to the public.

(c) The council shall establish and coordinate the advisory panel on arthritis which will provide nongovernmental input regarding the program. Membership shall include, but is not limited to, persons with arthritis, public health educators, arthritis experts, providers of arthritis health care, persons knowledgeable in health promotion and education and representatives of national arthritis organizations or their state and regional affiliates.

CHAPTER 105

(Com. Sub. for H. B. 4488 — By Delegates Perdue, Hatfield, Brown, Webster, Wakim, Doyle, Longstreth, Marshall, Moore and Hrutkay)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-42-1, §16-42-2,
§16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6 and §16-42-7, all relating to a study of the behavioral health system of West Virginia; creating a commission of public and private citizens; creating an advisory board; setting forth findings and the purpose; setting forth the requirements of the study; requiring the commission to submit periodic and final reports; requiring the Department of Health and Human Resources to submit periodic reports; providing for compensation of commission and advisory board members; and including a date certain for the conclusion of the commission’s work.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6 and §16-42-7, all to read as follows:

ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.

§16-42-1. Legislative findings.

§16-42-2. Purpose.


§16-42-4. Study.


§16-42-1. Legislative findings.

1 The Legislature finds as follows:

2 (1) That the behavioral health system in West Virginia is rapidly moving toward a state of crisis as a result of overcrowding of the beds in state facilities and prisons, and inadequate community support services to prevent these problems;

3 (2) That untreated and inadequately treated behavioral illness and substance abuse and ongoing domestic violence
have placed a significant impediment upon West Virginia 
businesses and have placed heavy fiscal pressures on many 
West Virginia government and non-profit agencies;

(3) That these untreated problems and lack of services are 
directly linked to increases in fatalities, penal incarcerations, 
suicides, utilization of public assistance, homelessness, 
increased school dropout rates, teenage pregnancy, excessive 
employee absenteeism, underemployment, unemployment, 
higher workers' compensation costs and many other health, 
criminal justice, social and personal problems which cost our 
state millions of dollars each year; and

(4) That the health and economic well-being of the state 
and its citizens requires the development of the Comprehensive 
Behavioral Health Commission to conduct a comprehensive 
study and review of the behavioral health care system of West 
Virginia and the total public and private dollars actually being 
spent on prevention, treatment, education and other services 
related to mental illness, substance abuse and domestic violence 
in West Virginia.

§16-42-2. Purpose.

This article is enacted to provide a framework within which 
the departments and divisions of state government, working 
collaboratively with the applicable individuals and organiza-
tions in the private sector that provide or are in need of behav-
ioral health services, can study the current system of behavioral 
health services offered within West Virginia, the financing of 
those services, and proposed changes to both. It is the purpose 
of the Legislature to encourage the long-term, well-planned 
development of a comprehensive and cost-effective system of 
care.

(a) There is created within the Department of Health and Human Resources the Comprehensive Behavioral Health Commission to study the current behavioral health system, including substance abuse and domestic violence when those conditions have an effect upon or are impacted by the system.

(b) The commission consists of a representative of the circuit and family court system, as appointed by the Chief Justice of the West Virginia Supreme Court of Appeals, a representative of the Commissioner of the Division of Corrections, the Commissioner of the Bureau of Senior Services, the Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau for Behavioral Health and Health Facilities, the Commissioner of the Bureau for Children and Families; the Executive Director of the West Virginia Chapter of the National Alliance on Mental Illness; the Chancellor for Higher Education and one physician with a specialty in psychiatry appointed by the Governor from a list provided by the West Virginia Medical Association. Each ex officio member may appoint a designee. One member of the House of Delegates, appointed by the Speaker and one member of the Senate, appointed by the President, serve as non-voting members. The Governor shall appoint a chairperson.

(c) The commission shall meet at times and places as it finds necessary and shall be staffed by the Bureau for Behavioral Health and Health Facilities and the Health Care Authority.

(d) An advisory board shall be created to serve in a consulting role to the commission members. The advisory board members shall be appointed by the Governor as follows:

(1) One member from a list provided by the West Virginia Chapter of the National Association of Social Workers;

(2) One member from a list provided by the West Virginia Hospital Association;
(3) One member who is a psychologist from a list provided by the West Virginia Psychological Association;

(4) One citizen member from a list of two nominees from each medical school;

(5) One member from a list of five nominees provided by the Primary Care Association;

(6) One member from a list provided by the West Virginia Behavioral Healthcare Providers Association;

(7) One member from a list provided by the West Virginia Child Care Association; and

(8) One member from a list provided by the Council of Churches.

(e) Each member of the Commission and advisory board is entitled to receive compensation and expense reimbursement 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 commission member may not receive compensation for travel days that are not on the same day as the official meeting or official duties.

§16-42-4. Study.

The commission shall study the current status of prevention, treatment, education, related services and appropriate workforce development for behavioral health, including substance abuse and domestic violence when those conditions have an effect upon the system. Each item studied shall be reported for children, adults and seniors. The report shall include recommendations on system changes needed to meet the needs of those served by the system and a determination of
the total public and private dollars spent for each item listed in
this section. The commission may coordinate its activities with
those of the Department of Health and Human Resources and
its consultants. The commission may appoint subcommittees
and workgroups composed of consumers, providers and
representative groups as it deems necessary to perform its
duties and responsibilities pursuant to this article.


The commission shall submit a preliminary report of its
progress in its study to the Governor and the Legislature by the
first day of January, two thousand seven and a final report
including its recommendations by the first day of January, two
thousand eight. The Department of Health and Human Re-
sources shall submit a report to the Governor and the Legisla-
ture by the first day of July, two thousand eight regarding
implementation of the recommendations of the commission.
The department shall report no less than quarterly to the
Legislative Oversight Commission on Health and Human
Resources Accountability.


Pursuant to the provisions of article two-d of this chapter,
the West Virginia Health Care Authority shall provide the
commission with information needed to complete the study
required in this article. The staff of the authority shall work
jointly with the staff of the Bureau for Behavioral Health and
Health Facilities in providing services to the commission. The
commission shall make recommendations in its final report
relating to the certificate of need standards.


The commission ceases to exist on the thirty-first day of
January, two thousand nine, or after the submission of the
commission’s final report, whichever occurs first.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-6d; to amend and reenact §9-2-9 of said code; to amend said code by adding thereto a new article, designated §16-2J-1, §16-2J-2, §16-2J-3, §16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9; to amend said code by adding thereto a new article, designated §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, and §16-29H-5; and to amend said code by adding thereto a new article, designated §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11, all relating to health care programs, authorizing an expansion of the children’s health insurance program; providing criteria for the expansion; providing limitations based on funding availability; providing for a Medicaid management reporting system; providing for quarterly financial reports from the Medicaid claims management system to the Legislative Oversight Commission on Health and Human Resources Accountability; requiring specific utilization data from the Medicaid claims management system; creating a pilot program authorizing participating health care clinics and private medical practitioners to provide primary and preventive health services for a prepaid fee; declaring legislative intent; authorizing approval of participants based on guidelines by the Health Care Authority and the Insurance Commissioner; requiring licensure by the Health Care Authority; and making various other related changes.
Authority; authorizing the Insurance Commissioner to approve fees, marketing materials and forms and to certify financial soundness; authorizing study of the program by the Health Care Authority; providing for legislative rules; mandating a Health Care Authority report to the Legislative Oversight Commission on Health and Human Resources Accountability; setting grounds for revocation, suspension and failure to renew licenses; setting forth goals for health care reform; providing for an Interagency Health Council; providing for membership on the council; requiring council develop appropriate incentives, initiatives and assessments; providing for council to evaluate and recommend alternative reimbursement mechanisms; providing for council to establish an advisory committee; providing for council to measure and report on specific benchmarks; providing for council to make recommendations to the Legislative Oversight Commission on Health and Human Resources Accountability regarding the strategies to be used to meet the state’s goals; requiring council to hold public hearings for the purpose of receiving relevant input; authorizing individual limited health benefits insurance plans; including preventive and primary care services; requiring approval of plans by Insurance Commissioner; providing eligibility requirements; setting forth statutory or regulatory provisions that do not apply to such plans; providing underwriting standards; continuing use of existing reimbursement rates; establishing criteria for filing and approval of premium rates; requiring certification of creditable coverage; authorizing Insurance Commissioner to promulgate emergency rules; mandating disclaimer on policies; exempting plans from premium taxes; providing for severability; providing rule of construction; and creating penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-6d; that §9-2-9 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §16-2J-1, §16-2J-2, §16-2J-3,
§16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9; that said code be amended by adding thereto a new article, designated §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5; and that said code be amended by adding thereto a new article, designated §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11, 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.


33. Insurance.

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 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6d. Modified benefit plan implementation.

1 (a) Upon approval by the Centers for Medicare and Medicaid Services, the board shall implement a program for uninsured children of families with income between two hundred and three hundred percent of the federal poverty level.

2 (b) The benefit plans offered pursuant to this section shall include services determined to be appropriate for children, but may vary from those currently offered by the board.

3 (c) The board shall structure the benefit plans for this expansion to include premiums, co-insurance or co-pays and deductibles. The board shall develop the cost sharing features
in such a manner as to keep the program fiscally stable without creating a barrier to enrollment. Such features may include different cost-sharing features within this group based upon the percentage of the federal poverty level.

(d) Children covered by an employer sponsored health insurance plan during the previous twelve month period are not eligible for coverage under this expansion, unless that coverage is lost due to the parent’s loss of employment.

(e) Provider reimbursement schedules shall be no lower than the reimbursement provided for the same services under the plans offered in article sixteen of this chapter.

(f) All provisions of this article are applicable to this expansion unless expressly addressed in this section.

(g) Nothing in this section may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided pursuant to this section, except for the state appropriation used to match the federal financial participation funds. In the event that federal funds are no longer authorized for participation by individuals eligible at income levels above two hundred percent, the board shall take immediate steps to terminate the expansion provided for in this section and notify all enrollees of such termination. In the event federal appropriations decrease for the programs created pursuant to Title XXI of the Social Security Act of 1997, the board is directed to make those decreases in this expansion program before making changes to the programs created for those children whose family income is less than two hundred percent of the federal poverty level.

(h) The board is directed to report no less than quarterly to the Legislative Oversight Commission on Health and Human Resources Accountability on the development, implementation and progress of the expansion authorized in this section.
CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9. Secretary to develop medicaid monitoring and case management.

(a) The secretary of the department of health and human resources shall:

1. Develop a managed care system to monitor the services provided by the medicaid program to individual clients;

2. Develop an independent referral service, including the review of individual cases for abuses of the program; and

3. Develop a schedule for implementation of the managed care and independent referral system. The managed care system shall focus on, but not be limited to, the behavioral health and mental health services.

(b) In addition thereto, and in accordance with applicable federal medicaid laws, the secretary shall prepare recommendations, to be submitted to the joint committee on government and finance. In developing recommendations the secretary shall consider as options the following:

1. Review of medicaid services which are optional under federal medicaid law and identification of services to be retained, reduced or eliminated;

2. The elimination, reduction or phase-out of: (i) Services which are not generally available to West Virginia citizens not covered under the state’s medicaid program; or (ii) services which are not generally covered under group policies of insurance made available to employees of employers within the state;
(3) The elimination or reduction of services, or reduction of provider reimbursement rates, for identified services of marginal utility;

(4) Higher reimbursement rates for primary and preventive care;

(5) Changes in fee structure, which may include a system of prospective payments, and may include establishment of global fees for identified services or diagnoses including maternity care;

(6) Utilization caps for certain health care procedures;

(7) Restriction of coverage for cosmetic procedures;

(8) Identification of excessive use of certain health care procedures by individuals and a policy to restrict excessive use;

(9) Identification of services which reduce the need for more costly options for necessary care and retention or expansion of those programs;

(10) Identification of services for which preauthorization is a requirement for medicaid reimbursement;

(11) Recommendations relating to the development of a demonstration project on long-term care, which demonstration project may be limited to patients with alzheimer’s disease;

(12) A policy concerning the department’s procedures for compliance, monitoring and inspection; and

(13) Such other options as may be developed.

(c) The secretary shall utilize in-state health care facilities for inpatient treatment when such facilities are available. Prior authorization, consistent with applicable federal law, shall be required for out-of-state inpatient treatment.
(d) The secretary shall report to the joint committee on government and finance on the development and implementation of medicaid programs that provide incentives to working persons. The secretary shall consider: Subsidies for low income working persons; individual or small employer buy-ins to the state medicaid fund; prospective payment systems for primary care physicians in underserved areas; and a system to improve monitoring of collections, expenditures, service delivery and utilization.

(e) The secretary shall report quarterly to the joint committee on government and finance regarding provider and facility compliance with federal and state medicaid laws, including, but not limited to, the following: The number of inspections conducted during the previous quarter; description of programs, services and facilities reviewed; findings; and recommendations for corrections.

(f) The secretary shall, upon federal certification of the claims management system, ensure that the claims management system processing medicaid claims provides:

1. (1) Detailed quarterly financial reports to the Legislative Oversight Commission on Health and Human Resources Accountability;

2. (2) A management reporting system no later than the first day of July, two thousand six; and

3. (3) Specific utilization data by provider, member eligibility groups and service no later than the first day of October, two thousand six.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2J. PREVENTIVE CARE PILOT PROGRAM.

§16-2J-1. Legislative findings and statement of purpose.
§16-2J-2. Definitions.
§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.
§16-2J-4. License for preventive care pilot program.
§16-2J-5. Insurance Commissioner approval of fees, marketing materials and forms and certification of financial condition; statement of services.
§16-2J-6. Rule-making authority.
§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.
§16-2J-8. Guidelines for evaluation of the pilot program; report to Legislative Oversight Commission on Health and Human Resources Accountability.
§16-2J-9. Grounds for refusal to renew; revocation and suspension of pilot program license; penalties; termination of suspension, reissue and renewal of license.

§16-2J-1. Legislative findings and statement of purpose.

(a) The Legislature finds that a program that would allow health clinics and private medical practitioners to provide primary and preventive health services for a prepaid fee would enable more West Virginians to gain access to affordable health care and to establish a medical home for purposes of receiving primary and preventative healthcare services. By establishing a pilot project for clinic-based health care, the Legislature intends to enable state health and insurance officials to study this method of delivering health services, to encourage all West Virginians to establish a medical home and to determine the success, continued need and feasibility of expanding such a program and allowing similar programs to operate on a statewide basis.

(b) In carrying out this pilot program, it is the intent of the Legislature to eliminate legal, statutory and regulatory barriers to the establishment of pilot programs providing preventive and primary care services for a prepaid fee; to encourage residents of this State to establish and use a medical home; to expand preventive and primary care services for the uninsured; and to exempt health providers participating in the pilot program from
regulation as an insurer, the operation of insurance laws of the
state and all other laws inconsistent with the purposes of this
article.

§16-2J-2. Definitions.

For the purposes of this article, the following definitions
apply:

(1) “Dependent” has the same meaning set forth in subsec-
tion (d), section one-a, article sixteen, chapter thirty-three of
this code;

(2) “Family” means a subscriber and his or her dependents;

(3) “Medical home” means a team approach to providing
health care and care management. Whether involving a primary
care provider, specialist or sub-specialist, care management
includes the development of a plan of care, the determination of
the outcomes desired, facilitation and navigation of the health
care system, provision of follow-up and support for achieving
the identified outcomes. The medical home maintains a
centralized, comprehensive record of all health related services
to provide continuity of care;

(4) “Participating provider” means a provider under this
article that has been granted a license under this article to
operate as part of the pilot program;

(5) “Primary care” means basic or general health care
which emphasizes the point when the patient first seeks
assistance from the medical care system and the care of the
simpler and more common illnesses;

(6) “Provider” has the same meaning as “ambulatory health
care facility” set forth in subsection (b), section two, article
two-d of this chapter or “private office practice” as set forth in
subsection (a)(1), section four of said article;
(7) “Qualifying event” means loss of coverage due to: (i) Emancipation and resultant loss of coverage under a parent or guardian’s plan; (ii) divorce and loss of coverage under the former spouse’s plan; (iii) termination of employment and resultant loss of coverage under an employer group plan: Provided, That any rights of coverage under a COBRA continuation plan as that term is defined in section three-m, article sixteen, chapter thirty-three of this code, shall not be considered coverage under an employer group health plan; (iv) involuntary termination of coverage under a group health benefit plan except for termination due to nonpayment of premiums or fraud by the insured; or (v) exhaustion of COBRA benefits;

(8) “Subscriber” means any individual who subscribes to a prepaid program approved and operated in accordance with the provisions of this article, including an employee of any employer that has purchased a group enrollment on behalf of its employees.
diversity in practice organization, geographical diversity and other criteria it deems appropriate. The Health Care Authority also shall give consideration to providers located in rural areas or serving a high percentage or large numbers of uninsured.

(c) In furtherance of the objectives of this article, the Health Care Authority is authorized to accept any and all gifts, grants and matching funds whether in the form of money or services: Provided, That no gifts, grants and matching funds shall be provided to the Health Care Authority by the State of West Virginia to further the objectives of this article.

§16-2J-4. License for preventive care pilot program.

(a) No provider may participate in the pilot program without first obtaining a preventive care pilot program license from the Health Care Authority.

(b) The Health Care Authority shall determine the eligibility of providers to obtain licenses on the basis of applications filed by providers on forms developed by the Health Care Authority.

(c) Upon approval of the application, the participating provider shall be granted a license to market and sell prepaid health services under such terms as may be established in guidelines developed by the Health Care Authority and the Insurance Commissioner.

§16-2J-5. Insurance Commissioner approval of fees, marketing materials and forms and certification of financial condition; statement of services.

(a) The Insurance Commissioner shall develop guidelines for all forms, marketing materials and fees proposed by program applicants and participating providers under the same criteria generally applicable to accident and sickness insurance policies.
(b) All fees, marketing materials and forms proposed to be used by any program applicant or participating provider are subject to prior approval of the Insurance Commissioner, which the Insurance Commissioner shall communicate to the Health Care Authority. Fees may not be excessive, inadequate, or unfairly discriminatory.

(c) The Insurance Commissioner must certify whether a program applicant or, upon the request of the Health Care Authority, an already participating provider is in a sound financial condition and capable of operating in a manner that is not hazardous to its prospective subscribers or the people of West Virginia.

(d) Every subscriber is entitled to evidence of program membership that shall contain a clear, concise and complete statement of the services provided by the participating provider and the benefits, if any, to which the subscriber is entitled; any exclusions or limitations on the service, kind of service, benefits, or kind of benefits, to be provided, including any copayments; and where and in what manner information is available as to how a service may be obtained.

(e) Fees paid to participating providers are not subject to premium taxes and surcharges imposed on insurance companies.

(f) Notwithstanding the provisions of chapter thirty-three of this code to the contrary, participation by providers in the preventive care clinic-based pilot program created and authorized pursuant to this article is not to be considered as providing insurance or as offering insurance services. Such providers and services are specifically excluded from the definitions of "insurer" and "insurance" as defined in article one, chapter thirty-three of this code, and are not subject to regulation by the Insurance Commissioner except to the extent set forth in this article, nor are participating providers unauthorized insurers
§16-2J-6. Rule-making authority.

The Health Care Authority and the Insurance Commissioner shall promulgate joint rules as necessary to implement the provisions of this article, including emergency rules, promulgated pursuant to, chapter twenty-nine-a of this code.

§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.

In addition to the provisions of this article and any guidelines established by the Health Care Authority and Insurance Commissioner, the plans offered pursuant to this article shall be subject to the following:

(1) Each participating provider and site must offer a minimum set of preventive and primary care services as established by the Health Care Authority.

(2) No participating provider may offer: (i) an individual plan to any individual who currently has a health benefit plan or who was covered by a health benefit plan within the preceding twelve months unless said coverage was lost due to a qualifying event; (ii) a family plan to any family that includes an adult to be covered who currently has a health benefit plan or who was covered by a health benefit plan within the preceding twelve months unless said coverage was lost due to a qualifying event; or (iii) an employee group plan to any employer that currently has a group health benefit plan or had a group health benefit plan covering its employees within the preceding twelve months.

(3) The Health Care Authority and the Insurance Commissioner may, by legislative rule, permit participation by an
employer with a comprehensive high deductible plan if such employer is able to demonstrate that such participation will not negatively impact the coverage currently offered by such employer.

(4) A participating provider must provide subscribers and, where applicable, subscribers’ employers with a minimum of thirty days’ notice of discontinuance or reduction of subscriber benefits.

§16-2J-8. Guidelines for evaluation of the pilot program; report to Legislative Oversight Commission on Health and Human Resources Accountability.

(a) The Health Care Authority shall establish by guidelines criteria to evaluate the pilot program and may require participating providers to submit such data and other information related to the pilot program as may be required by the Health Care Authority: Provided, That all personal income tax returns filed pursuant to this article shall be treated as confidential pursuant to the provisions of section five-d, article ten, chapter 11 of this code. For purposes of this article, this information shall be exempt from disclosure under the freedom of information act in article one, chapter twenty-nine-b of this code.

(b) No later than the first day of December, two thousand seven and annually thereafter during the operation of the pilot program, the Health Care Authority must submit a report to the Legislative Oversight Commission of Health and Human Resources Accountability as established in article twenty-nine-e of this chapter on progress made by the pilot project including suggested legislation, necessary changes to the pilot program and suggested expansion of the pilot program.

§16-2J-9. Grounds for refusal to renew; revocation and suspension of pilot program license; penalties; termination of suspension, reissuance and renewal of license.
(a) The Health Care Authority may after notice and hearing refuse to renew, or may revoke or suspend the license of a participating provider, in addition to other grounds therefor in this article, if the participating provider:

1. Violates any provision of this article;
2. Fails to comply with any lawful rule or order of the Health Care Authority;
3. Is operating in an illegal, improper or unjust manner;
4. Is found by the Insurance Commissioner to be in an unsound condition or in such condition as to render its further operation in West Virginia hazardous to its subscribers or to the people of West Virginia;
5. Compels subscribers under its contract to accept less service than due them or to bring suit against it to secure full service when it has no substantial defense;
6. Refuses to be examined or to produce its accounts, records and files for examination by the insurance commissioner when requested to do so pursuant to section five of this article;
7. Fails to pay any final judgment rendered against it in West Virginia within thirty days after the judgment became final or time for appeal expired, whichever is later;
8. Fails to pay when due to the state of West Virginia any taxes, fees, charges or penalties.

(b) In addition to or in lieu of refusing to renew, revoking or suspending the license of a participating provider in any case, the Health Care Authority may, by order, require the participating provider to pay to the state of West Virginia a
penalty in a sum not exceeding five thousand dollars for each violation. Upon the failure of the provider to pay such penalty within thirty days after notice thereof, the Health Care Authority shall revoke or suspend the license of such participating provider.

(c) When any license has been revoked or suspended or renewal thereof refused, the Health Care Authority may reissue, terminate the suspension of or renew such license when it is determined that the conditions causing such revocation, suspension or refusal to renew have ceased to exist and are unlikely to recur.

ARTICLE 29H. INTERAGENCY HEALTH COUNCIL.

§16-29H-1. Purpose and scope.
§16-29H-2. Legislative findings and goals.
§16-29H-3. Interagency council created; duties.
§16-29H-4. Benchmarks and schedule.
§16-29H-5. Public notice and hearings.

§16-29H-1. Purpose and scope.

The purpose of this article is to establish the standards and criteria for evaluating the unmet health care needs within this state, to evaluate methods to meet those needs and to set forth recommendations related to services provided and services needed, access issues, and related financing proposals.

§16-29H-2. Legislative findings and goals.

(a) The Legislature finds that the general welfare and well-being of the citizens of the state is greatly affected by their health status. The Legislature further finds that many of the citizens have unmet health care needs, which impairs their ability to lead full and productive lives. The Legislature further finds that the current health care system is sufficiently funded to meet those needs, but is not currently structured to ade-
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(a) The Legislature finds that West Virginia healthcare programs adequately and uniformly meet the state-wide needs of the population. The Legislature further finds that reforms to the health care delivery system, including the reimbursement structure, may address the inequities in access, the inequities in funding and result in a modified system that meets the needs of the state and its citizens.

(b) In consideration of the need for health care reform, the Legislature adopts the following goals:

(1) Access. West Virginia policy will reflect that access to health care is a public good. West Virginia shall develop strategies for having an integrated health care system that will attempt to provide all West Virginians, regardless of their age, employment, economic status, or their town of residency, access to affordable, high quality health care that is financed in a fair and equitable manner.

(A) In order to develop an integrated health care delivery system, the state shall consider promoting local or regional collaborative efforts among provider groups that are designed to use available resources in a more equitable and efficient fashion.

(B) To improve access to health care, the state shall consider methods to expand benefits over time after meeting appropriate benchmarks set forth in section four of this article. A process will be developed to define the benefits, taking into consideration scientific evidence, available funds and the values and priorities of West Virginia citizens.

(2) It is of critical importance that health care costs are brought under control. Likewise, it is essential that cost containment initiatives address both the financing of health care and the delivery and quality of health services offered in West Virginia. To ensure financial sustainability of any proposed plan, the state is committed to the extent possible to slow the
rate of growth of health care costs by the year two thousand ten. Strategies for containing costs may include consideration of:

(A) A budgeting process for hospitals and other health care providers as determined by the council established pursuant to this article;

(B) Increased consumer access to health care price and quality information;

(C) Promotion of self-care and healthy lifestyles;

(D) Enhanced prescription drug initiatives;

(E) Funding of chronic care initiatives;

(F) Investments in health information technology;

(G) Alignment of health care professional reimbursement with best practices and outcomes rather than utilization; and

(H) Development of a long-term strategy for integrating the health care delivery system as well as a strategy for integrating health care policy, planning, and regulation within government.

(3) Quality. West Virginia’s health delivery system should model continuous improvement of health care quality and safety. The tools and resources necessary to make informed use of all health care services should be available to all West Virginians. The state should look to incentives to health care professionals and facilities to provide the best and most appropriate care to West Virginians. The state’s role in improving quality and safety should be through coordination of health care policy, planning and regulation.

(4) Equitable Financing. The health care system in West Virginia should be funded fairly and equitably. All residents should have access to health care and all participating residents should contribute to its cost.
(c) No private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this article.

§16-29H-3. Interagency council created; duties.

(a) There is hereby created the “Interagency Health Council” consisting of the chairperson of the Health Care Authority, the Insurance Commissioner, the secretary of the Department for Health and Human Resources, the director of the Public Employees Insurance Agency, and the director of the Children’s Health Insurance Program, and such other government agency persons as may be deemed necessary by the council. Each ex-officio member of the council may appoint a designee. The council shall be chaired jointly by the chairperson of the Health Care Authority and the Insurance Commissioner until the Governor appoints another chairperson or co-chairpersons. The council shall:

(1) Identify and report emerging trends and behaviors among various participants in the health care system;

(2) Develop incentives to contain costs and methods to assess the effectiveness of cost-containment efforts;

(3) Develop quality of care initiatives;

(4) Direct the studies required to accomplish the goals of this section;

(5) Assess the feasibility of a publicly financed reinsurance program for all health plans doing business in West Virginia;

(6) Recommend alternative reimbursement mechanisms for health services that encourage cost effectiveness, improve the quality of care, increase efficiency, reward primary care practices that prevent chronic illnesses, avoid preventable hospitalizations, and reduce long-term costs to the system;
(7) Assess whether any federal programs including, but not limited to, Medicaid and the Children’s Health Insurance Program could be used to expand services if it is determined to be the most cost effective means available;

(8) Receive reports and analysis from the West Virginia Health Information Network established in article twenty-nine-g, chapter sixteen of this code and ensure that this information is integrated into health planning;

(9) Collaborate with any entity charged with responsibility for the development of a behavioral health plan to ensure a fully integrated system including both physical and mental health;

(10) Receive input and make recommendations, generally, to the Senate and House committees on Health and Finance, and the Joint Committee on Government and Finance regarding the long-term development of policies and programs designed to ensure that West Virginia is moving towards an integrated system of care that provides all citizens of West Virginia access to affordable, high quality health care that is financed in a fair and equitable manner.

(b) The council shall establish committees and subcommittees to assist in their work.

(c) The council shall propose demonstration or pilot projects designed to contain health care costs and improve the delivery and quality of health care including, but not limited to, a demonstration project to establish a regional system with providers and hospitals working cooperatively to provide and coordinate health care for all residents of the region.

(d) The council shall establish an advisory committee to study a payment and regulatory system that provides incentives to improve patient safety and quality while controlling the rate of growth of health care expenditures below current projected
growth rates. The study shall include consideration of such items as hospital services, budgeting processes, efficient and economic operations, performance standards, utilization and inflation benchmarks, estimated cost shifts, uncompensated care, government payors, and the impact of the state health plan. The council shall review the work of the advisory committee and report its findings and recommendations to the Legislature prior to the first day of January, two thousand eight.

(e) The council shall report to the Joint Committee on Government and Finance on an annual basis the estimated cost shift to the private sector created by the federal and state government payors. Government payors include, but are not limited to, the Bureau for Medical Services, the Children’s Health Insurance Program, Workers’ Compensation and the Public Employees Insurance Agency.

(f) The council may request analysis from appropriate state agencies as needed. The agencies shall report this information at such times as determined necessary to fulfill the council’s oversight responsibilities.

§16-29H-4. Benchmarks and schedule.

(a) On or before the first day of January, two thousand seven and each year thereafter, the council shall recommend to the Legislative Commission on Health and Human Resources Accountability those strategies that could move the state toward the goals established in this article.

(b) Prior to making recommendations the council shall find that the appropriate benchmarks for the strategy being recommended have been met:

(1) Financing necessary to support the recommendations is cost-neutral or less expensive with respect to the health care system and will not require more money than is projected to be
spent in the existing system by West Virginia employers and individuals through taxes, premiums, and out-of-pocket expenses;

(2) Administrative bureaucracy and costs will decrease as a percentage of total health care spending;

(3) Quality of care will be improved; and

(4) The future costs of health care will be less than the current growth rate, or the resources will be allocated in a manner that is more efficient and cost-effective, based on progress in implementing the following cost containment measures:

(A) Payment system to hospitals;

(B) Increased consumer access to health care price and quality information;

(C) Promotion of self-care and healthy lifestyles;

(D) Enhanced prescription drug initiatives developed in cooperation with the pharmaceutical advocate;

(E) Funding of chronic care initiatives;

(F) Investments in health information technology;

(G) Alignment of health care professional reimbursement with best practices and outcomes rather than utilization; and

(H) The creation of additional federally qualified health centers (FQHC) or FQHC look-alikes if data supports this effort and the federal government so approves.

(c) Recommendations to the Legislature shall include an assessment of the cost savings or the reallocation of resources,
increased access, improvements in quality and delivery, administrative simplification, fairness and equity in financing, continuity of coverage, and financial sustainability.

§16-29H-5. Public notice and hearings.

(a) In recognition of the importance of public engagement, the council shall have four public hearings prior to the first day of January, two thousand seven to solicit input from citizens, employers, hospitals, health care professionals, insurers, other stakeholders, and interested parties about health care.

(b) The council shall report no less than quarterly to the Legislative Commission on Health and Human Resource Accountability and the Joint Committee on Government and Finance on their activities and recommendations in health care reform to date.

CHAPTER 33. INSURANCE.

ARTICLE 15D. INDIVIDUAL LIMITED HEALTH BENEFITS PLANS.

§33-15D-1. Declaration of legislative intent.

The Legislature recognizes that health insurance is priced beyond the reach of many citizens who could benefit from a
basic health plan. One of the ways affordable premiums can be obtained is by some combination of limiting benefits and increasing copays or deductibles. In order to provide greater access to such affordable plans, the Legislature has determined that authorization of the sale of insurance policies with limited benefits that would include physician, inpatient and outpatient care, with an emphasis on preventive and primary care, will serve to bring insurance coverage to many of those West Virginians without any insurance coverage. It is, therefore, the intent of the Legislature to introduce flexibility in the design of health insurance plans to allow insurers to offer basic benefits, including preventive and primary care services, at affordable prices. This article may be known as the Affordable Health Insurance Act.

§33-15D-2. Individual limited health benefits plans; approval by commissioner; eligibility of individuals.

(a) As used in this article, “individual plan” means any plan approved by the commissioner as an “individual limited health benefits plan” in accordance with this article. Each such plan constitutes a “particular type of accident and sickness insurance coverage” for the purposes of subsection (a), section two-e, article fifteen of this chapter.

(b) Notwithstanding any other provision of this code, including provisions mandating the inclusion of certain benefits in individual health insurance plans, upon filing with and approval by the commissioner as an individual plan, any insurer, including a health maintenance organization or health service corporation, may offer the plan and rates associated with the plan to individuals subject to the conditions of this article.

(c) Any plan approved as an individual plan may, notwithstanding any other provisions of this chapter and subject to any
other limitations on eligibility in this article or that may be contained in rules proposed by the commissioner for approval of the Legislature in accordance with article three, chapter twenty-nine-a of this code, only be offered to an adult between the ages of eighteen and sixty-four, inclusive, who:

(1) Has not had a health benefit plan covering him or her for at least the prior twelve consecutive months: Provided, That such a plan may not be offered to an employee of an employer that offers a health benefits plan to its employees unless that employee does not qualify for coverage under such employer plan; or

(2) Has lost coverage due to a qualifying event. A qualifying event shall include loss of coverage due to: (i) Emancipation and resultant loss of coverage under a parent’s or guardian’s plan; (ii) divorce and loss of coverage under the former spouse’s plan; (iii) termination of employment and resultant loss of coverage under an employer group plan except for loss of employment for gross misconduct; or (iv) involuntary termination of coverage under a group health benefit plan except for termination due to nonpayment of premiums or fraud by the insured.

(d) Every individual plan offered pursuant to this article may limit eligibility on the basis of health status and an individual who has been treated for a health condition in the prior twelve months may have that condition excluded from coverage for the first twelve months of the policy term.

§33-15D-3. Applicability of certain provisions; commissioner’s authority to forbear from applying certain provisions.

(a) Only the following provisions of article fifteen of this chapter apply to insurers offering individual plans pursuant to this article: Sections two-a, two-b, two-d, two-e, three, four,
Provided, That the provisions of subsection (a), section two-b, article fifteen of this chapter do not apply to such plans if the Secretary of the United States Department of Health and Human Services finds that the state is implementing an acceptable alternative mechanism in accordance with the provisions of 42 U. S. C. §300gg-44.

(b) Notwithstanding any other provision of this code, the provisions of article twenty-eight of this chapter and legislative rules regulating individual accident and sickness policies, including the rule contained in series 12, title 114 of the West Virginia Code of State Rules, do not apply to individual plans issued pursuant to this article unless and to the extent specifically incorporated in rules promulgated pursuant to the authority conferred by section seven of this article.

(c) The commissioner may forbear from applying any other statutory or regulatory requirements to an insurer offering an individual plan approved pursuant to this article, including any requirements in articles twenty-four and twenty-five-a, provided that the commissioner first determines that such forbearance serves the principles set forth in section one of this article.

§33-15D-4. Underwriting standards for individual plans.

Insurers shall underwrite individual plans in a comparable manner as they underwrite other individual health insurance plans governed by this chapter.

§33-15D-5. Reimbursement rates for individual plans.

Insurers shall reimburse providers pursuant to reimbursement rates previously negotiated with the providers.

§33-15D-6. Filing and approval of rates.

(a) Premium rate charges for any individual plans shall:
(1) Be reasonable in relation to the benefits available under the policy; and

(2) Notwithstanding the provisions of section one, article sixteen-b of this chapter, be filed with the commissioner for a waiting period of thirty days before the charges become effective. At the expiration of thirty days the premium rate charges filed are deemed approved unless prior thereto the charges have been affirmatively approved or disapproved by the commissioner.

(b) The commissioner shall disapprove premium rates that are not in compliance with the requirements of any rule promulgated pursuant to section seven of this article. The commissioner shall send written notice of the disapproval to the insurer. The commissioner may approve the premium rates before the thirty-day period expires by giving written notice of approval.


An insurer offering individual plans pursuant to the provisions of this article shall provide certification of creditable coverage in the same manner as provided in section three-m, article sixteen of this chapter.


The commissioner shall promulgate emergency and legislative rules under the provisions of article three, chapter twenty-nine-a of this code on or before the first day of September, two thousand six, to prescribe requirements regarding ratemaking, which may include rules establishing loss ratio standards for individual plans; to place further limitations on the eligibility of individuals; to determine what medical treatments, procedures and related health services benefits must be included in such individual plans; and to provide for any
other matters deemed necessary to further the intent of this article. In determining what medical treatments, procedures and related health services benefits must be included in such plans, the commissioner shall consider their effectiveness in improving the health status of individuals, their impact on maintaining and improving health and on reducing the unnecessary consumption of health care services and their impact on the affordability of health care coverage.


Each individual plan issued pursuant to this article shall include the following disclaimer printed in boldface type and located in a prominent portion of each policy, subscriber contract and certificate of coverage: “THIS LIMITED INDIVIDUAL HEALTH BENEFITS PLAN DOES NOT PROVIDE COMPREHENSIVE MEDICAL COVERAGE. IT IS A BASIC OR LIMITED BENEFITS POLICY AND CONTAINS SPECIFIC DOLLAR LIMITS THAT WILL BE PAID FOR MEDICAL SERVICES WHICH MAY NOT BE EXCEEDED. IF THE COST OF SERVICES EXCEEDS THOSE LIMITS, THE BENEFICIARY AND NOT THE INSURER IS RESPONSIBLE FOR PAYMENT OF THE EXCESS AMOUNTS”.

§33-15D-10. Exemption from premium taxes.

Products authorized under this article are exempt from the premium taxes and surcharges assessed under article three of this chapter.


(a) If any provision of this act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the act and application of such provision to other persons or circumstances shall not be affected thereby.
(b) To the extent that provisions of this article differ from those contained elsewhere in this chapter, the provisions of this article control.

CHAPTER 107

(Com. Sub. for S. B. 170 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 9, 2006; in effect ninety days from passage.] [Approved by the Governor on March 22, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all relating to the establishment of the West Virginia Health Information Network; establishing purpose of the network; setting up a board of directors; establishing membership of the board; terms of office of the board; permitting promulgation of legislative rules; establishing the powers and duties of the network; setting up a special revenue account; immunity from liability; property rights; dispute resolution; and confidentiality and privacy of records.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all to read as follows:

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.
§16-29G-1. Purpose.
§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.
§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.
§16-29G-5. Immunity from suit; limitation of liability.
§16-29G-6. Property rights.
§16-29G-7. Legislative rule-making authority; resolution of disputes.
§16-29G-8. Privacy; protection of information.

§16-29G-1. Purpose.

(a) The purpose of this article is to create the West Virginia Health Information Network under the oversight of the Health Care Authority to promote the design, implementation, operation and maintenance of a fully interoperable statewide network to facilitate public and private use of health care information in the state.

(b) It is intended that the network be a public-private partnership for the benefit of all of the citizens of this state.

(c) The network is envisioned to support and facilitate the following types of electronic transactions or activities:

(1) Automatic drug-drug interaction and allergy alerts;

(2) Automatic preventive medicine alerts;

(3) Electronic access to the results of laboratory, X ray, or other diagnostic examinations;

(4) Disease management;

(5) Disease surveillance and reporting;

(6) Educational offerings for health care providers;
(7) Health alert system and other applications related to homeland security;

(8) Links to evidence-based medical practice;

(9) Links to patient educational materials;

(10) Medical record information transfer to other providers with the patient’s consent;

(11) Physician order entry;

(12) Prescription drug tracking;

(13) Registries for vital statistics, cancer, case management, immunizations and other public health registries;

(14) Secured electronic consultations between providers and patients;

(15) A single-source insurance credentialing system for health care providers;

(16) Electronic health care claims submission and processing; and

(17) Any other electronic transactions or activities as determined by legislative rules promulgated pursuant to this article.

(d) The network shall ensure the privacy of patient health care information.

§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.

(a) The network is created under the Health Care Authority for administrative, personnel and technical support purposes.
The network shall be managed and operated by a board of directors. The board of directors is an independent, self-sustaining board with the powers specified in this article.

(b) The board is part-time. Each member shall devote the time necessary to carry out the duties and obligations of members on the board.

(c) Members appointed by the Governor may pursue and engage in another business or occupation or gainful employment that is not in conflict with his or her duties as a member of the board.

(d) The board shall meet at such times as the chair may decide. Eight members of the board are a quorum for the purposes of the transaction of business and for the performance of any duty.

(e) A majority vote of the members present is required for any final determination by the board. Voting by proxy is not allowed.

(f) The Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The board shall consist of seventeen members, designated as follows:

(1) The Dean of the West Virginia University School of Medicine or his or her designee;

(2) The Dean of the Marshall University John C. Edwards School of Medicine or his or her designee;

(3) The President of the West Virginia School of Osteopathic Medicine or his or her designee;
(4) The Secretary of the Department of Health and Human Resources or his or her designee;

(5) The President of the West Virginia Board of Pharmacy or his or her designee;

(6) The Director of the Public Employees Insurance Agency or his or her designee;

(7) The Chief Technology Officer of the Office of Technology or his or her designee;

(8) The Chair of the Health Care Authority or his or her designee;

(9) The President of the West Virginia Hospital Association or his or her designee;

(10) The President of the West Virginia State Medical Association or his or her designee;

(11) The Chief Executive Officer of the West Virginia Health Care Association or his or her designee;

(12) The Executive Director of the West Virginia Primary Care Association or his or her designee; and

(13) Five public members that serve at the will and pleasure of the Governor and are appointed by the Governor with advice and consent of the Senate as follows:

(i) One member with legal expertise in matters concerning the privacy and security of health care information;

(ii) Two physicians actively engaged in the practice of medicine in the state;
(iii) One member engaged in the business of health insurance who is employed by a company that has its headquar-
ters in West Virginia; and

(iv) The chief executive officer of a West Virginia corpora-
tion working with West Virginia health care providers, insurers, businesses and government to facilitate the use of information technology to improve the quality, efficiency and safety of health care for West Virginians.

(h) The Governor shall appoint one of the board members to serve as chair of the board at the Governor’s will and pleasure. The board shall annually select one of its members to serve as vice chair. The Chair of the Health Care Authority shall serve as the secretary-treasurer of the board.

(i) The public members of the board shall serve a term of four years and may serve two consecutive terms. At the end of a term, a member of the board shall continue to serve until a successor is appointed. Those members designated in subdivi-
sions (1) through (12), inclusive, subsection (g) of this section shall serve on the board only while holding the position that entitle them to membership on the board.

(j) The board may propose the adoption or amendment of rules to the Health Care Authority to carry out the objectives of this article.

(k) The board may appoint committees or subcommittees to investigate and make recommendations to the full board. Members of such committees or subcommittees need not be members of the board.

(l) Each member of the board and the board’s committees and subcommittees 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 consis-
tent with guidelines of the Travel Management Office of the
Department of Administration.


The network shall have the following duties:

(1) To develop a community-based health information
network to facilitate communication of patient clinical and
financial information designed to:

(A) Promote more efficient and effective communication
among multiple health care providers, including, but not limited
to, hospitals, physicians, payers, employers, pharmacies,
laboratories and other health care entities;

(B) Create efficiencies in health care costs by eliminating
redundancy in data capture and storage and reducing adminis-
trative, billing and data collection costs;

(C) Create the ability to monitor community health status;

and

(D) Provide reliable information to health care consumers
and purchasers regarding the quality and cost-effectiveness of
health care, health plans and health care providers;

(2) To develop or design other initiatives in furtherance of
the network’s purpose;

(3) To report and make recommendations to the Health
Care Authority.

The network is granted all other incidental powers,
including, but not limited to, the following:

(A) Make and enter into all contracts and agreements and
execute all instruments necessary or incidental to the perfor-
mance of its duties and the execution of its powers, subject to
the availability of funds: Provided, That the provisions of
article three, chapter five-a of this code do not apply to the
agreements and contracts executed under the provisions of this
article;

(B) Acquire by gift or purchase, hold or dispose of real and
personal property in the exercise of its powers and performance
of its duties as set forth in this article;

(C) Receive and dispense funds appropriated for its use by
the Legislature or other funding sources or solicit, apply for and
receive any funds, property or services from any person,
governmental agency or organization to carry out its statutory
duties;

(D) Represent the state with respect to national health
information network initiatives;

(E) Perform any and all other activities in furtherance of its
purpose or as directed by the Health Care Authority.

§16-29G-4. Creation of the West Virginia Health Information
Network account; authorization of Health Care
Authority to expend funds to support the network.

(a) All moneys collected shall be deposited in a special
revenue account in the State Treasury known as the West
Virginia Health Information Network Account. Expenditures
from the fund shall be for the purposes set forth in this article
and are not authorized from collections but are to be made only
in accordance with appropriation by the Legislature and in
accordance with the provisions of article three, chapter twelve
of this code and upon fulfillment of the provisions of article
two, chapter eleven-b of this code: Provided, That for the fiscal
year ending the thirtieth day of June, two thousand seven,
expenditures are authorized from collections rather than
pursuant to appropriations by the Legislature.
(b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care Authority’s provision of administrative, personnel, technical and other forms of support to the network is necessary to support the activities of the Health Care Authority board and constitutes a legitimate, lawful purpose of the Health Care Authority board. Therefore, the Health Care Authority is hereby authorized to expend funds from its Health Care Cost Review Fund, established under section eight, article twenty-nine-b of this chapter, to support the network’s administrative, personnel and technical needs and any other network activities the Health Care Authority deems necessary.

§16-29G-5. Immunity from suit; limitation of liability.

The network is not a health care provider and is not subject to claims under article seven-b, chapter fifty-five of this code. No person who participates or subscribes to the services or information provided by the network is liable in any action for damages or costs of any nature, in law or equity, which result solely from that person’s use or failure to use network information or data that was imputed or retrieved in accordance with the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act, state confidentiality laws and the rules of the network as approved by the Health Care Authority. In addition, no person is subject to antitrust or unfair competition liability based on membership or participation in the network, which provides an essential governmental function for the public health and safety and enjoys state action immunity.

§16-29G-6. Property rights.

(a) All persons providing information and data to the network shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accor-
dance with the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act, state confidentiality laws and the rules proposed by the Health Care Authority.

(b) All processes or software developed, designed or purchased by the network shall remain its property subject to use by participants or subscribers in accordance with the rules or regulations proposed by the Health Care Authority.

§16-29G-7. Legislative rule-making authority; resolution of disputes.

(a) The Health Care Authority is hereby authorized to propose rules under and pursuant to article twenty-nine-b of this chapter to carry out the objectives of this article.

(b) To resolve disputes under this article or the rules proposed herein among participants, subscribers or the public, the Health Care Authority is hereby authorized to conduct hearings and render decisions under and pursuant to section twelve, article twenty-nine-b of this chapter.

§16-29G-8. Privacy; protection of information.

(a) The Health Care Authority shall ensure that patient specific protected health information be disclosed only in accordance with the patient’s authorization or best interest to those having a need to know, in compliance with state confidentiality laws and the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act.

(b) The health information, data and records of the network shall be exempt from disclosure under the provisions of chapter twenty-nine-b of this code.
AN ACT to amend and reenact §2-2-1 of the Code of West Virginia, 1931, as amended, relating to renaming the day after Thanksgiving Day as Lincoln’s Day.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1. (a) The following days are legal holidays:

2. (1) The first day of January is “New Year’s Day”;

3. (2) The third Monday of January is “Martin Luther King’s Birthday”;

4. (3) The third Monday of February is “Presidents’ Day”;

5. (4) The last Monday in May is “Memorial Day”;

6. (5) The twentieth day of June is “West Virginia Day”;
(6) The fourth day of July is “Independence Day”;

(7) The first Monday of September is “Labor Day”;

(8) The second Monday of October is “Columbus Day”;

(9) The eleventh day of November is “Veterans’ Day”;

(10) The fourth Thursday of November is “Thanksgiving Day”;

(11) The day after Thanksgiving Day is “Lincoln’s Day”;

(12) The twenty-fifth day of December is “Christmas Day”;

(13) Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;

(14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and

(15) Any day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.

(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: Provided, That this subsection (b) shall not apply to subdivisions (13), (14) and (15), subsection (a) of this section.
(c) Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

(d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(f) With regard to the courts of this state, the computation of periods of time, the specific dates or days when an act, event, default or omission is required or allowed to occur and the relationship of those time periods and dates to Saturdays, Sundays, legal holidays, or days designated as weather or other
emergency days pursuant to section two of this article are
governed by rules promulgated by the Supreme Court of
Appeals.

(g) The provisions of this section do not increase or
diminish the legal school holidays provided in section two,
article five, chapter eighteen-a of this code.

CHAPTER 109

(Com. Sub. for H. B. 4008 — By Delegates Cann, Beane and Ennis)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2006.]

AN ACT to amend and reenact §16-15-1 and §16-15-3a of the Code
of West Virginia, 1931, as amended; and to amend said code by
adding thereto a new section, designated §16-15-3b, all relating
to authorizing mergers to form regional housing authorities;
providing definitions; authorizing subsequent joining of local and
regional housing authorities; authorizing housing authorities to
initiate merger by joint resolution; providing that contents of joint
resolution include transfer of assets and liabilities, membership of
authority and adoption of a plan of merger; and conferring on the
regional housing authority the powers and duties of authorities it
succeeds.

Be it enacted by the Legislature of West Virginia:

That §16-15-1 and §16-15-3a 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 §16-15-3b, all
to read as follows:

The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

1. “Affiliate” means any corporation, entity, partnership, venture, syndicate or arrangement in which a housing authority participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates as herein defined.

2. “Affordable housing” means dwelling units that may be rented or purchased, as the case may be, by persons of eligible income, as defined herein.

3. “Annual sinking fund payment” means the amount of money specified in the resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular calendar year for the retirement of term bonds at maturity after such calendar year, but shall not include any amount payable by reason only of the maturity of a bond.

4. “Area of operation” means the geographical area within which a housing authority owns or operates housing developments or administers other housing programs including any city, county or combination thereof in which it was operating on the effective date of this article.

5. “Arrangement” means a legal relationship with another party that may include, but not be limited to, a general or limited partnership; joint venture; syndicate or syndication;
corporation; limited liability cooperative, corporation or partnership; an unincorporated association; a cooperative; a consortium; and all other structures, organizations, and forms of legal relationships with third parties.

(6) “Authority” or “housing authority” means a corporate body organized in accordance with the provisions of this article for the purposes, with the powers, and subject to the restrictions hereinafter set forth. Where the context requires or permits, this term shall be deemed to include regional housing authorities and/or controlled affiliates of a housing authority.

(7) “Bond” or “bonds” means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(8) “City” means and includes any political subdivision of this state, whether incorporated or unincorporated, known as a city, municipality, town or village. With respect to the provisions of other sections of this article and their application to housing authorities of counties, the term “city” shall be construed as referring to a county unless a different meaning clearly appears from the context.

(9) “Clerk” means the clerk or recorder of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on the clerk or recorder.

(10) “Commissioner” means one of the members of the governing board of a housing authority appointed in accordance with the provisions of this article.

(11) “Community facilities” means lands, buildings and equipment, real and personal property suitable for recreational, or social assembly, for educational, health, or welfare purposes and other necessary activities for the use and benefit of the occupants of housing developments and the public.
“Controlled affiliate” means any affiliate of a housing authority: (i) In which commissioners, officers, employees and agents of the authority constitute a majority of the governing body; or (ii) in which the authority holds a majority of the ownership interests.

“Council” means the chief legislative body of the city.

“County” means and includes any political subdivision of this state known as a county.

“Development” or “housing development” means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description, which a housing authority may own or operate or in which it may hold an interest under the provisions of this article, all land upon which such dwellings, appurtenances, and facilities are situate; all work and activities undertaken by a housing authority or others relating to the creation of such property; all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments and all rights and obligations arising thereunder, establishing or confirming ownership, title, or right of use or possession in or to any such property by a housing authority, all as more particularly described and authorized in this article.

“Farmers of low or moderate income” means persons or families who at the time of their admission to occupancy in a dwelling of the authority: (A) Live under unsafe and unsanitary housing conditions; (B) derive their principal income from operating or working upon a farm; and (C) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing.
(17) “Governing body” means, in the case of a city, the council of the city, and in the case of a county, the county commission.

(18) “Government” means the state and federal governments and any subdivisions, authority or instrumentality, corporate or otherwise, of either of them.

(19) “Guest” means any person, not a resident of the development, who is present within the development, or within a dwelling in a development, as an invitee of or otherwise with the express or implied consent of a resident of the development or dwelling.

(20) “Hold an interest” means ownership or control of, or participation in an arrangement with respect to, a development by a housing authority or any affiliate thereof.

(21) “Low-cost housing” shall include any housing accommodations which are or are to be rented at not in excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(22) “Mayor” means the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise: Provided, That the term “mayor” may also be the chief elected officer of the municipality regardless of whether or not the corporate charter provides for a city manager appointed by the city council who is the chief executive officer.

(23) “Noncontrolled affiliate” means affiliate in which a housing authority participates, but does not constitute a
majority of the governing body nor have a majority ownership interest.

(24) “Obligee of the authority” or “obligee” means any bondholder, trustee or trustees for any bondholders, or lessor demising to an authority property used in connection with a housing development, or any assignee or assignees of the lessor’s interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(25) “Person” means a family and, where the context so requires, a household.

(26) “Persons of eligible income” means individuals or families as defined by a public housing authority within the applicable local, state and federal funding guidelines.

(27) “Public agency” means and includes: (i) Any county; city; village; township; any school, drainage, tax, improvement or other district; any department, division, or political subdivision of this state or another state; any housing authority, housing finance authority, or housing trust of this state or another state; and any other agency, bureau, office, authority, or instrumentality of this state or another state; (ii) any board, agency, commission, division or other instrumentality of a city or county; and (iii) any board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit of any of them.

(28) “Regional housing authority” means a housing authority formed by two or more cities, counties or housing authorities pursuant to the authority provided in sections three-a and three-b of this article.

(29) “Resident” means a person residing in a development of a housing authority, with the consent of such authority, according to its policies, rules and procedures.
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(30) “Slum clearance” means the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

(31) “State” means the State of West Virginia and its duly constituted government.

§16-15-3a. Regional housing authorities.

(a) Any two or more cities or counties, or any combination thereof, may, by resolution of their separate governing bodies, establish a regional housing authority, by adopting a joint resolution declaring that there is a need for a regional housing authority to provide decent, safe and sanitary housing that is affordable to persons of low and moderate income residing in a multijurisdictional area and that this need would be more efficiently served by the establishment of a regional housing authority: Provided, That any authority in existence prior to the effective date of this article that is providing services outside of the city or county boundaries will continue to have jurisdiction in the areas where the authority is providing services on the effective date of this article.

(b) Upon adoption of a resolution by two or more cities or counties, or a combination thereof, a regional housing authority shall be established and, except as otherwise provided in this article, the regional housing authority shall have perpetual existence, unless dissolved in accordance with law. Each regional housing authority established pursuant to this section, shall adopt a name for all legal and operating purposes.

(c) A certified copy of the resolutions establishing a regional housing authority shall serve as conclusive evidence that the authority has been properly established, is authorized to transact business, and exercise its powers under this article.
(d) After a regional housing authority has been established, any additional city, county or housing authority may elect to participate as a member of the regional housing authority, upon adoption of a resolution to that effect: Provided, That a majority of the existing commissioners of the regional housing authority and all participating political subdivisions, by action of their respective governing bodies, shall consent to the additional member or members.

(e) Any city or county may withdraw from participation in the regional housing authority by resolution of its governing body. Any withdrawal from participation shall be subject to the following conditions:

(1) The regional housing authority has no bonds, notes, or other obligations outstanding, or adequate provision for payment of bonds, notes, or other obligations, by escrow or otherwise, has been made. Past performance without breach or default of an obligation secured only by one or more developments or the income thereof shall be deemed to be “adequate provision”;

(2) The withdrawing city or county shall make adequate provision for the performance of all of its outstanding obligations and responsibilities as a participant in the regional housing authority;

(3) The withdrawing city or county shall give six months written notice to the regional housing authority and all other cities and counties participating therein; or

(4) The commissioner or commissioners appointed by the withdrawing city or county shall be deemed to have resigned as of the date upon which the withdrawal is effective. Vacancies on the board of commissioners created by withdrawal of a city or county shall be filled in such manner as the cities and counties remaining as participants shall agree.
Notwithstanding the withdrawal of any participating city or county, the legal title to and operating responsibility for any development located outside the area of operation of the regional housing authority remaining after such withdrawal has occurred shall continue to be vested in the regional housing authority, unless a different arrangement is made.

(f) If only one city or county remains as a participant in any regional housing authority, the regional housing authority shall become the housing authority of the remaining city or county at the discretion of its governing body, or the regional housing authority shall be dissolved and its assets and liabilities transferred to another existing housing authority or to a city or county or other public agency.

§16-15-3b. Consolidated housing authorities.

(a) Two or more cities or counties may, by joint resolution of their governing bodies, merge their housing authorities to establish a regional housing authority: Provided, That each city or county considering the merger shall hold a public hearing in its area of operation prior to adopting the joint resolution.

(b) The joint resolution must provide for:

(1) The transfer of assets and liabilities and the performance of all outstanding obligations and responsibilities;

(2) The membership, terms and manner of appointment of commissioners of the regional housing authority; and

(3) The preparation, adoption and implementation of a plan of merger.

(c) Consolidations by merger pursuant to this section are subject to all of the provisions of article eleven, chapter thirty-one-e of this code except where inconsistent with the provisions of this article and except as to those provisions of article eleven, chapter thirty-one-e which have no practical application.
(d) A regional housing authority established pursuant to this section acquires and succeeds to all rights, obligations, duties and privileges of the housing authorities of which it is a successor, and will be considered for all purposes a regional housing authority established pursuant to section three-a of this article and subject to all applicable provisions of this article.

CHAPTER 110

(Com. Sub. for H. B. 4456 — By Delegates Stemple, Poling, Varner and Pethel)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §20-2-20 of the Code of West Virginia, 1931, as amended, relating to beaver trapping; removing limitations on numbers and location of traps; allowing disturbance of structures constructed by beavers when trapping; and removing certain duties for persons who unintentionally trap or kill beavers.

Be it enacted by the Legislature of West Virginia:

That §20-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.


A person may not have in his possession an untagged beaver hide, or part thereof, within the period beginning thirty days after the end of the open season and ending with the first day of the next succeeding open season for beavers.
CHAPTER 111

(Com. Sub. for H. B. 4272 — By Mr. Speaker, Mr. Kiss, and Delegates Beane, Amores, Michael, Mahan and Beach)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §20-2-42v of the Code of West Virginia, 1931, as amended, relating to clarifying the language regarding requirements for a Class BG stamp.

Be it enacted by the Legislature of West Virginia:

That §20-2-42v of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42v. Class BG resident big game stamp.

1 A Class BG stamp is a resident big game stamp and entitles the Class A licensee to hunt deer during the deer archery and muzzleloader seasons, and bear, wild turkey and wild boar during the respective seasons, except as prohibited by rules of the Director or Natural Resources Commission: Provided, That the licensee possesses all other required permits and/or stamps.
2 The fee for the stamp is ten dollars. The stamp, issued in a form prescribed by the director, shall be in addition to a Class A license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.
AN ACT to amend and reenact §20-2-46e of the Code of West Virginia, 1931, as amended, relating to allowing an individual, who is at least sixteen years of age, to be in the vehicle to assist the Class Q permittee.

Be it enacted by the Legislature of West Virginia:

That §20-2-46e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

1 (a) A Class Q permit is a special statewide hunting permit entitling the permittee to hunt all legal species of game during the designated hunting seasons from a motor vehicle in accordance with the provisions of this section.

5 (b) A permit form shall be furnished by the director to an applicant who meets the following requirements:

7 (1) He or she is permanently disabled in the lower extremities; and
(2) He or she holds a valid resident or nonresident statewide hunting license, a senior citizens license or is otherwise exempt from the license requirement.

(c) A licensed physician must certify the applicant’s permanent disability by completing the permit form. When completed, the permit form constitutes a Class Q permit. The Class Q permit and a completed license application shall be submitted to the division, which will issue a wallet sized card to the permittee. The card and all other documents and identification required to be carried by this article shall be in the permittee’s possession when hunting.

(d) A Class Q permit entitles the holder to hunt from a motor vehicle and, notwithstanding the provisions of subdivision (9), section five of this article, to possess a loaded firearm in a motor vehicle, but only under the following circumstances:

   (1) The motor vehicle is stationary;

   (2) The engine of the motor vehicle is not operating;

   (3) The permittee and one individual, who is at least sixteen years of age, to assist the permittee are the only occupants of the vehicle;

   (4) The individual assisting the permittee may not hunt with a firearm, bow or cross-bow while assisting the permittee;

   (5) The vehicle is not parked on the right-of-way of any public road or highway; and

   (6) The permittee observes all other pertinent laws and regulations.

(e) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter
AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-15-4c of said code; to amend and reenact §33-16-3g of said code; to amend and reenact §33-24-7b of said code; to amend and reenact §33-25-8a of said code; and to amend and reenact §33-25A-8a of said code, all relating to insurance coverage for mammograms, pap smears and human papilloma virus testing; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, healthcare corporations and health maintenance organizations, and requiring insurance policies and medical benefit plans to include certain coverages when medically appropriate and consistent with relevant national guidelines.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-15-4c of said code be amended and reenacted; that §33-16-3g of said code be amended and
reenacted; that §33-24-7b of said code be amended and reenacted; that §33-25-8a of said code be amended and reenacted; and that §33-25A-8a 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.

33. Insurance.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

  (a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance
plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules for the administration of these plans, subject to the limitations contained in this article. Those plans shall include:

1. Coverages and benefits for X-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age eighteen or over;

2. Annual checkups for prostate cancer in men age fifty and over;

3. For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That no plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician considers discharge medically inappropriate;
(4) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (3) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(5) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, “serious mental illness” means an illness included in the American psychiatric association’s diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, “serious mental illness” also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate actuarially that its total anticipated costs for the treatment of mental illness for any plan will exceed or have exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever cost containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan.
(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes: (1) All employees of the State of West Virginia; (2) all teaching and professional employees of state public institutions of higher education and county boards of education; (3) all nonteaching employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education; or (4) any other categorization which would ensure the stability of the overall program.
\textsection5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided for shall include coverages and benefits for X-ray and laboratory services in connection with mammogram and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age fifty and over. Such benefits shall include, but not be limited to, the following:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force.

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent
with the current guidelines from the United States Preventative Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen and over;

(3) A test for the human papilloma virus (HPV) for women age eighteen or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over; and

(4) A checkup for prostate cancer annually for men age fifty or over.

(c) The group life and accidental death insurance herein provided for shall be in the amount of ten thousand dollars for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to five thousand dollars upon such employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of article three, chapter five-a of this code, relating to the division of purchases of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired: Provided, That the director shall negotiate and contract directly with health care providers and other entities, organizations and vendors in order to secure competitive premiums, prices and
other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder’s fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies’ contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies: Provided, however, That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.
(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children’s immunization services from birth through age sixteen years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, haemophilus influenza-b and whooping cough. Additional immunizations may be required by the Commissioner of the Bureau of Public Health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration, be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
§33-15-4c. Third party reimbursement for mammography, pap smear or human papilloma virus testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for any of the following when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

1. Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force.

2. A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen or over; or

3. A test for the human papilloma virus (HPV), for women age eighteen or over when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over.

(b) A policy, provision, contract, plan or agreement may apply to mammograms, pap smears or human papilloma virus testing.
(HPV) test the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3g. Third party reimbursement for mammography, pap smear or human papilloma virus testing.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for any of the following when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force.

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen or over; and

(3) A test for the human papilloma virus (HPV) for women age eighteen or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over.

A policy, provision, contract, plan or agreement may apply to mammograms, pap smears or human papilloma virus (HPV) test the same deductibles, coinsurance and other limitations as apply to other covered services.
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7b. Third party reimbursement for mammography, pap smear or human papilloma virus testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for any of the following when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen or over; or

(3) A test for the human papilloma virus (HPV), when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen or over.

(b) A policy, provision, contract, plan or agreement may apply to mammograms, pap smears or human papilloma virus (HPV) test the same deductibles, coinsurance and other limitations as apply to other covered services.
§33-25-8a. Third party reimbursement for mammography or pap smear or human papilloma virus testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for any of the following when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force;

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen or over; and

(3) A test for the human papilloma virus (HPV) for women age eighteen or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over.

(b) A policy, provision, contract, plan or agreement may apply to mammograms, pap smears or human papilloma virus (HPV) test the same deductibles, coinsurance and other limitations as apply to other covered services.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8a. Third party reimbursement for mammography, pap smear or human papilloma virus testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for any of the following when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

(1) Mammograms when medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists.

(2) A pap smear, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, for women age eighteen or over; or

(3) A test for the human papilloma virus (HPV) for women age eighteen or over, when medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists for women age eighteen and over.

(b) A policy, provision, contract, plan or agreement may apply to mammograms, pap smears or human papilloma virus (HPV) test the same deductibles, coinsurance and other limitations as apply to other covered services.
AN ACT to amend and reenact §33-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-20-12 of said code; to amend and reenact §33-24-4 of said code; to amend and reenact §33-25-10 of said code; and to amend and reenact §33-25D-18 of said code, all relating to examinations of insurance and health care entities; increasing the time in which insurers, rating organizations and certain health care entities may respond to examination reports from the Insurance Commissioner; clarifying that the Insurance Fraud Prevention Act applies to certain health care entities; and increasing the minimum period in which examinations of certain health care entities must be conducted by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §33-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-20-12 of said code be amended and reenacted; that §33-24-4 of said code be amended and reenacted; that §33-25-10 of said code be amended and reenacted; and that §33-25D-18 of said code be amended and reenacted, all to read as follows:

Article

2. Insurance Commissioner.


24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1. (a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

1. (1) “Commissioner” means the Commissioner of Insurance of this state;

2. (2) “Company” or “insurance company” means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer regardless of the type of coverage written, benefits provided or guarantees made by each;
(3) “Department” means the Department of Insurance of this state; and

(4) “Examiners” means the Commissioner of Insurance or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner’s deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the Department of Insurance.

(c) The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company’s state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners’ Financial Regulation Standards and Accreditation Program; or
(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined, at the times as he or she considers necessary, the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes, the commissioner or his or her examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to the examination.
(h) In addition to conducting an examination, the commissioner or his or her examiners may, as the commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the State of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment provided by this section as the commissioner considers necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property,
assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner’s jurisdiction. Any proceedings for suspension, revocation, refusal or nonrenewal of any license or authority shall be conducted pursuant to section eleven of this article;

(4) The commissioner or his or her examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six of this article;

(5) When making an examination, analysis or review under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, professionals or specialists with training or experience in reinsurance, investments or information systems or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination, analysis or review or, in the commissioner’s discretion, paid from the Commissioner’s Examination Revolving Fund. The commissioner may recover costs paid from the Commissioner’s Examination Revolving Fund pursuant to this subdivision from the company upon which the examination, analysis or review is conducted unless the subject of the examination, analysis or review is an individual described in subdivision (2), subsection (q) of this section;
(6) Nothing contained in this section may be construed to limit the commissioner’s authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his or her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review whether or not a written report of the examination has at that time either been made, served or filed in the commissioner’s office;

(7) Nothing contained in this section may be construed to limit the commissioner’s authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, consider appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts;

(2) No later than sixty days following completion of the examination the examiner in charge shall file with the commis-
sioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subdivision (2) of this subsection; or

(C) Calling for an investigatory hearing with no less than twenty days’ notice to the company for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the commissioner’s consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final administrative decision and may be appealed pursuant to
section fourteen of this article and shall be served upon the
company by certified mail, together with a copy of the adopted
examination report. Within thirty days of the issuance of the
adopted report the company shall file affidavits executed by
each of its directors stating under oath that they have received
a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be
subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the
commissioner or the commissioner’s authorized representative
shall be conducted as a nonadversarial, confidential investiga-
tory proceeding as necessary for the resolution of any inconsis-
tencies, discrepancies or disputed issues apparent upon the face
of the filed examination report or raised by or as a result of the
commissioner’s review of relevant workpapers or by the written
submission or rebuttal of the company. Within twenty days of
the conclusion of any hearing, the commissioner shall enter an
order pursuant to paragraph (A), subdivision (3), subsection (j)
of this section;

(2) The commissioner may not appoint an examiner as an
authorized representative to conduct the hearing. The hearing
shall proceed expeditiously with discovery by the company
limited to the examiner’s workpapers which tend to substantiate
any assertions set forth in any written submission or rebuttal.
The commissioner or the commissioner’s representative may
issue subpoenas for the attendance of any witnesses or the
production of any documents considered relevant to the
investigation whether under the control of the commissioner,
the company or other persons. The documents produced shall
be included in the record and testimony taken by the commis-
sioner or the commissioner’s representative shall be under oath
and preserved for the record. Nothing contained in this section
shall require the commissioner to disclose any information or
records which would indicate or show the existence or content
of any investigation or activity of a criminal justice agency;

(3) The hearing shall proceed with the commissioner or the
commissioner’s representative posing questions to the persons
subpoenaed. Thereafter, the company and the department may
present testimony relevant to the investigation. Cross-examina-
tion may be conducted only by the commissioner or the
commissioner’s representative. The company and the commis-
sioner shall be permitted to make closing statements and may
be represented by counsel of their choice.

(1) Adoption of the examination report shall be subject to
the following requirements:

(1) Upon the adoption of the examination report under
paragraph (A), subdivision (3), subsection (j) of this section, the
commissioner may continue to hold the content of the examina-
tion report as private and confidential information for a period
of ninety days except to the extent provided in subdivision (6),
subsection (i) of this section. Thereafter, the commissioner may
open the report for public inspection so long as no court of
competent jurisdiction has stayed its publication;

(2) Nothing contained in this section may prevent or be
construed as prohibiting the commissioner from disclosing the
content of an examination report, preliminary examination
report or results or any matter relating thereto or the results of
any analysis or review to the insurance department of this or
any other state or country or to law-enforcement officials of this
or any other state or agency of the federal government at any
time, so long as the agency or office receiving the report or
matters relating thereto agrees in writing to hold it confidential
and in a manner consistent with this section;

(3) In the event the commissioner determines that regula-
tory action is appropriate as a result of any examination,
(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted in accordance with section nineteen of this article. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained.

(m) The commissioner may require any examiner to furnish a bond in such amount as commissioner may determine to be appropriate and the bond shall be approved, filed and premium paid, with suitable proof submitted to the commissioner, prior to commencement of employment by the commissioner. No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner’s residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or
(4) A settlor or beneficiary of a “blind trust” into which any otherwise impermissible holdings have been placed;

(5) Notwithstanding the requirements of this subsection, the commissioner may retain, from time to time, on an individual basis qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Other individuals who are not employees of the Department of Insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner or as otherwise provided by law. As used in this section, the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the Department of Insurance, the conduct of the examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the Department of Insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.

(o) (1) All property and casualty insurers subject to the provisions of this section shall annually pay to the commis-
sioner on or before the first day of July, one thousand nine
hundred ninety-one, and every first day of July thereafter an
examination assessment fee of up to five thousand dollars. Four
hundred fifty dollars of this fee shall be paid to the Treasurer of
the state to the credit of a special revolving fund to be known as
the Commissioner’s Examination Revolving Fund which is
herewith established; up to four thousand two hundred dollars
shall be paid to the Treasurer of the state to the credit of the
Unfair Claims Settlement Practice Trust Fund established in
section four-b, article eleven of this chapter and three hundred
fifty dollars shall be paid to the Treasurer of the state. If the
trust fund has moneys in excess of one million dollars, the
examination assessment fee shall be eight hundred dollars and
the five thousand dollar fee shall only be reinstated at whatever
amount the commissioner deems necessary to maintain the
fund, if the fund value goes below one million dollars. The
commissioner may at his or her discretion, upon notice to the
insurers subject to this subsection, increase this examination
assessment fee or levy an additional examination assessment
fee of two hundred fifty dollars. In no event may the total
examination assessment fee, including any additional examina-
tion assessment fee levied, exceed five thousand two hundred
fifty dollars per insurer in any calendar year.

(2) All insurers other than property and casualty insurers
subject to the provisions of this section shall annually pay to the
commissioner on or before the first day of July, one thousand
nine hundred ninety-one, and every first day of July thereafter
an examination assessment fee of eight hundred dollars. Four
hundred fifty dollars of this fee shall be paid to the Treasurer of
the state to the credit the Commissioner’s Examination Revolv-
ing Fund and three hundred fifty dollars shall be paid to the
Treasurer of the state. The commissioner may at his or her
discretion, upon notice to the insurers subject to this subsection,
increase this examination assessment fee or levy an additional
examination assessment fee of two hundred fifty dollars. In no
event may the total examination assessment fee, including any additional examination assessment fee levied, exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the Treasurer of the state to be credited to the commissioner’s Examination Revolving Fund. Any funds expended or obligated by the commissioner from the Commissioner’s Examination Revolving Fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner’s deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the Department of Insurance who have been appointed by the commissioner to conduct or participate in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state to:

(1) Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the Commissioner’s Examination Revolving Fund
for their work, travel and living expenses as previously
provided in this section. The commissioner may recover costs
paid from the Commissioner’s Examination Revolving Fund
pursuant to this subdivision from the person upon whom the
examination, analysis or review is conducted.

(r) The commissioner and his or her examiners shall be
entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be
imposed against the commissioner or his or her examiners for
any statements made or conduct performed in good faith while
 carrying out the provisions of this section;

(2) No cause of action shall arise, nor shall any liability be
 imposed, against any person for the act of communicating or
delivering information or data to the commissioner or his or her
 examiners pursuant to an examination, analysis or review made
under this section if the act of communication or delivery was
performed in good faith and without fraudulent intent or the
intent to deceive;

(3) The commissioner or any examiner shall be entitled to
an award of attorney’s fees and costs if he or she is the prevail-
ing party in a civil cause of action for libel, slander or any other
relevant tort arising out of activities in carrying out the provi-
sions of this section and the party bringing the action was not
substantially justified in doing so. For purposes of this section,
a proceeding is “substantially justified” if it had a reasonable
basis in law or fact at the time that it was initiated;

(4) This subsection does not abrogate or modify in any way
any constitutional immunity or common law or statutory
privilege or immunity heretofore enjoyed by any person
identified in subdivision (1) of this subsection.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.
§33-20-12. Examinations.

(a) The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed under the provisions of section six of this article and he or she may, as often as he or she may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section ten of this article and of each group, association or other organization referred to in section eleven of this article. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, managers, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the organization, group or association examined not less than thirty days prior to filing same in his or her office. If such organization, group or association so requests in writing, within such thirty-day period, the commissioner shall consider the objections, if any, to such report as proposed and shall not file such report until such modifications, if any, have been made therein as the commissioner deems proper. The report when so filed shall be admissible in any action or proceeding brought by the commissioner against the organization, group or association examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner may withhold the report of any such examination for such time as he or she may deem proper.

(b) In lieu of any such examination the commissioner may accept the report of an examination made by the insurance
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated, of the following articles of this chapter: Article two (Insurance Commissioner); article four (general provisions), except that section sixteen of said article may not be applicable thereto; section twenty, article five (borrowing by insurers); section thirty-four, article six (fee for form, rate and rule filing); article six-c (guaranteed loss ratios as applied to individual sickness and accident insurance policies); article seven (assets and liabilities); article eight-a (use of clearing corporations and federal reserve book-entry system); article eleven (unfair trade practices); article twelve (insurance producers and solicitors), except that the agent’s license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue; limitation of coverage; election; denial of coverage; network plans); section two-d, article fifteen (exceptions to guaranteed renewability); section two-e, article fifteen (discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section
fourteen, article fifteen (policies discriminating among health
care providers); section sixteen, article fifteen (policies not to
exclude insured’s children from coverage; required services;
coordination with other insurance); section eighteen, article
fifteen (equal treatment of state agency); section nineteen,
article fifteen (coordination of benefits with medicaid); article
fifteen-a (West Virginia Long-Term Care Insurance Act);
article fifteen-c (diabetes insurance); section three, article
sixteen (required policy provisions); section three-a, article
sixteen (same - mental health); section three-d, article sixteen
(medicare supplement insurance); section three-f, article sixteen
(required policy provisions - treatment of temporomandibular
joint disorder and craniomandibular disorder); section three-j,
article sixteen (hospital benefits for mothers and newborns);
section three-k, article sixteen (limitations on preexisting
condition exclusions for health benefit plans); section three-l,
article sixteen (renewability and modification of health benefit
plans); section three-m, article sixteen (creditable coverage);
section three-n, article sixteen (eligibility for enrollment);
section eleven, article sixteen (group policies not to exclude
insured’s children from coverage; required services; coordina-
tion with other insurance); section thirteen, article sixteen
(equal treatment of state agency); section fourteen, article
sixteen (coordination of benefits with medicaid); section
sixteen, article sixteen (insurance for diabetics); article sixteen-
a (group health insurance conversion); article sixteen-c (group
health insurance conversion); article sixteen-d (marketing and rate practices for small
employer accident and sickness insurance policies); article
twenty-six-a (West Virginia Life and Health Insurance Guar-
anty Association Act), after the first day of October, one
thousand nine hundred ninety-one; article twenty-seven
(insurance holding company systems); article twenty-eight
(individual accident and sickness insurance minimum stan-
dards); article thirty-three (annual audited financial report);
article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (Insurance Fraud Prevention Act) and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-10. Examination of corporation; report of examination; objections to report; access to books, records, etc.; removal of records, etc., from state.

(a) The commissioner or his or her accredited examiners may at any reasonable time and shall, at least once every five years, visit each health care corporation and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all of the laws and rules of this state. All expenses of each such examination conducted shall be borne by such corporation. The commissioner shall make a full written report of each such examination of the corporation, certified to by the commissioner or the examiner in charge of such examinations. The commissioner shall furnish a copy of the report to the corporation examined not less than thirty days prior to filing the same in his or her office. If such corporation so requests in writing, within such thirty-day period, the commissioner shall consider the objections of such corporation to the report as proposed and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The
report, when filed, shall be admissible in evidence in any action
or proceeding brought by the commissioner against the
corporation examined, or its officers or agents, and shall be
prima facie evidence of the facts stated therein. The commis-
sioner or his or her examiners may at any time testify and offer
other proper evidence as to information secured during the
course of an examination, whether or not a written report of the
examination has at that time been either made, served or filed
in the commissioner’s office.

(b) For such purposes the commissioner, his or her deputies
and employees shall have free access to all books, records,
papers, documents and correspondence of any such corporation
and such books, records, papers, documents and records shall
be and remain in the State of West Virginia. The licenses of
said corporation shall be automatically revoked if such books,
records, papers, documents and records are taken outside the
State of West Virginia without the prior written approval of the
commissioner.

(c) The commissioner shall revoke the license of any such
corporation which refuses to submit to such examination.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION
ACT.


(a) The commissioner may make an examination of the
affairs of any prepaid limited health service organization and
providers with whom the organization has contracts, agree-
ments or other arrangements as often as he or she considers it
necessary for the protection of the interests of the people of this
state but not less frequently than once every five years.

(b) The commissioner may contract with the Department of
Health and Human Resources, any entity which has been
accredited by a nationally recognized accrediting organization and has been approved by the commissioner to make examinations concerning the quality of health care services of any prepaid limited health service organization and providers with whom the organization has contracts, agreements or other arrangements, or any such entity contracted with by the Department of Health and Human Resources, as often as it considers necessary for the protection of the interests of the people of this state, but not less frequently than once every five years: Provided, That in making the examination, the Department of Health and Human Resources or the accredited entity shall utilize the services of persons or organizations with demonstrable expertise in assessing quality of health care.

(c) Every prepaid limited health service organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the commissioner and the Department of Health and Human Resources have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the prepaid limited health service organization and the principals of the providers concerning their business.

(d) The prepaid limited health service organization is subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of examinations.

(e) In lieu of the examination, the commissioner may accept the report of an examination made by another state.

(f) The expenses of an examination assessing quality of health care under subsection (b) of this section and section nineteen of this article shall be reimbursed pursuant to subdivision (5), subsection (i), section nine, article two of this chapter.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-22, relating to the Insurance Commissioner's authority; transferring authority of the former Workers’ Compensation Commission to the Insurance Commissioner with respect to collection of amounts owed by employers; permitting Insurance Commissioner to accept a bond from defaulting employers; requiring circuit courts to issue injunction against operation of business by a defaulting employer; and permitting the commissioner to waive penalties and interest on moneys due the old fund.

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 §33-2-22, to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-22. Authority of Insurance Commissioner regarding employers in default to workers’ compensation funds; injunctions against defaulting employers.

1 (a) Upon termination of the Workers’ Compensation Commission, all of the powers and authority previously conferred upon the Workers’ Compensation Commission
pursuant to article two, chapter twenty-three of this code, relating to employers in default to the Workers’ Compensation Fund, are hereby transferred to the Insurance Commissioner and shall be applied by the commissioner to those employers in default to the old fund or having liability to the uninsured employers’ fund or who are in policy default or fail to maintain mandatory workers’ compensation coverage, all as defined in article two-c, chapter twenty-three of this code.

(b) In any case in which an employer is in default to the old fund or has liability to the uninsured employers fund or who is in default on a policy or otherwise fails to maintain mandatory workers’ compensation coverage, all as defined in article two-c, chapter twenty-three of this code, the commission may bring an action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer’s business: Provided, That the commissioner may, in his or her sole discretion, and as an alternative to this action pursuant to this subsection, require the employer to file a bond, in the form prescribed by the commissioner, with satisfactory surety in an amount not less than one hundred fifty percent of the total payments, interest and penalties due.

(c) In any action instituted pursuant to subsection (b) of this section, the circuit court shall issue an injunction prohibiting the employer from operating the employer’s business, if the Insurance Commissioner proves by a preponderance of the evidence, that the employer is in default to the old fund or has liability to the uninsured fund or is in policy default or has otherwise failed to maintain mandatory workers’ compensation coverage.

(d) Notwithstanding any provision of this code to the contrary, the commissioner shall have the authority to waive penalty and interest accrued on moneys due the old fund. The enactment of the provisions of this subsection shall be applied
retrospectively to the first day of January, two thousand six, and may not be construed to require the commissioner to adjust or otherwise modify any agreements reached with regard to the payment of penalty or interest since that date.

CHAPTER 116

(S. B. 630 — By Senators Minard, Deem, Foster, Helmick, Jenkins, Lanham, Prezioso and Sharpe)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-37, relating to the cancellation or nonrenewal of combination insurance policies.

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 §33-6-37, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-37. Cancellation or nonrenewal of a combination insurance policy; offer of optional coverage; date of inception of optional coverage.

Notwithstanding of any provision of this chapter to the contrary, an insurer may cancel or nonrenew a combination automobile and homeowners policy of insurance if either the automobile or homeowners insurance in such policy may be
5 cancelled or nonrenewed pursuant to the cancellation or
6 nonrenewal provisions of this chapter pertaining to such
7 insurance: Provided, That the insurer shall offer, on a form
8 approved by the commissioner, to issue a policy of insurance,
9 effective as of the date of cancellation of the combination
10 policy, to the insured for the insurance that was not cancelled
11 or nonrenewed and shall issue such policy if the offer is
12 accepted by the insured. For the purposes of cancellation,
13 nonrenewal and termination of policies provided for in articles
14 six-a and seventeen-a of this chapter, the inception date of a
15 reissued policy is the inception date of the combination policy.

CHAPTER 117

(Com. Sub. for S. B. 467 — By Senator Jenkins)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §33-14-2 of the Code of West
Virginia, 1931, as amended, relating to modifying the employee
group requirements for group life insurance.

Be it enacted by the Legislature of West Virginia:

That §33-14-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-2. Employee groups.

1 The lives of a group of individuals may be insured under a
2 policy issued to an employer, or to the trustees of a fund
established by an employer, which employer or trustees shall be
d deemed the policyholder, to insure employees of the employer
for the benefit of persons other than the employer, subject to the
following requirements:

(a) The employees eligible for insurance under the policy
shall be all of the employees of the employer, or all of any class
or classes thereof determined by conditions pertaining to their
employment. The policy may provide that the term “employ-
ees” shall include the employees of one or more subsidiary
corporations and the employees, individual proprietors and
partners of one or more affiliated corporations, proprietors or
partnerships if the business of the employer and of such
affiliated corporations, proprietors or partnerships is under
common control through stock ownership, contract or other-
wise. The policy may provide that the term “employees” shall
include the individual proprietor or partners if the employer is
an individual proprietor or a partnership. The policy may
provide that the term “employees” shall include retired employ-
ees. No director of a corporate employer shall be eligible for
insurance under the policy unless such person is otherwise
eligible as a bona fide employee of the corporation by perform-
ing services other than the usual duties of a director. No
individual proprietor or partner shall be eligible for insurance
under the policy unless he is actively engaged in and devotes a
substantial part of his time to the conduct of the business of the
proprietor or partnership. A policy issued to trustees may
provide that the term “employees” shall include the trustees or
their employees, or both, if their duties are principally con-
ected with such trusteeship. A policy issued to insure the
employees of a public body may provide that the term “em-
ployees” shall include elected or appointed officials.

(b) The premium for the policy shall be paid either from the
employer’s funds or from funds contributed by the insured
employees, or both. Except as provided in subdivision (c) of this section, a policy on which no part of the premium is to be derived from funds contributed by the insured employees shall insure all eligible employees, except those who reject coverage in writing.

(c) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(d) The policy must cover at least two employees at date of issue.

(e) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

CHAPTER 118

(Com. Sub. for S. B. 468 — By Senator Jenkins)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §33-16-2 of the Code of West Virginia, 1931, as amended, relating to group accident and sickness insurance requirements; decreasing the number of employees that must participate; and eliminating the participation requirement if the premium is paid by the employees or jointly by the employer and employees.

Be it enacted by the Legislature of West Virginia:
That §33-16-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-2. Eligible groups.

1 Any insurer licensed to transact accident and sickness insurance in this state may issue group accident and sickness policies coming within any of the following classifications:

2 (1) A policy issued to an employer, who shall be considered the policyholder, insuring at least two employees of the employer, for the benefit of persons other than the employer, and conforming to the following requirements:

3 (A) If the premium is paid by the employer the group shall comprise all employees or all of any class or classes thereof determined by conditions pertaining to the employment; or

4 (B) If the premium is paid by the employer and the employees jointly, or by the employees, there shall be no employee participation requirement. The term “employee” as used herein is considered to include the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporate employer, and the individual proprietors, partners and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term “employer” as used herein may include any municipal or governmental corporation, unit, agency or department and the proper officers of any unincorporated municipality or department, as well as private individuals, partnerships and corporations.
(2) A policy issued to an association or to a trust or to the
trustees of a fund established, created or maintained for the
benefit of members of one or more associations. The associa-
tion or associations shall have at the issuance of the policy a
minimum of one hundred persons and have been organized and
maintained in good faith for purposes other than that of
obtaining insurance; shall have been in active existence for at
least one year; and shall have a constitution and bylaws that
provide that: The association or associations hold regular
meetings not less than annually to further the purposes of the
members; except for credit unions, the association or associa-
tions collect dues or solicit contributions from members; and
the members have voting privileges and representation on the
governing board and committees. The policy is subject to the
following requirements:

(A) The policy may insure members of the association or
associations, employees thereof or employees of members or
one or more of the preceding or all of any class or classes for
the benefit of persons other than the employee’s employer.

(B) The premium for the policy shall be paid from:

(i) Funds contributed by the association or associations;

(ii) Funds contributed by covered employer members;

(iii) Funds contributed by both covered employer members
and the association or associations;

(iv) Funds contributed by the covered persons; or

(v) Funds contributed by both the covered persons and the
association, associations or employer members.

(C) Except as provided in paragraph (D) of this subdivision,
a policy on which no part of the premium is to be derived from
funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject coverage in writing.

(D) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(E) A small employer, as defined in subdivision (r), section two, article sixteen-d of this chapter, insured under an eligible group policy provided in this subdivision shall also be subject to the marketing and rate practices provisions in article sixteen-d of this chapter.

(3) A policy issued to a bona fide association;

(4) A policy issued to a college, school or other institution of learning or to the head or principal thereof, insuring at least ten students, or students and employees, of the institution;

(5) A policy issued to or in the name of any volunteer fire department, insuring all of the members of the department or all of any class or classes thereof against any one or more of the hazards to which they are exposed by reason of the membership but in each case not less than ten members;

(6) A policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state, to insure any class or classes of individuals that could be insured under the group life policy; and

(7) A policy issued to cover any other substantially similar group which in the discretion of the commissioner may be subject to the issuance of a group accident and sickness policy or contract.
AN ACT to amend and reenact §33-16-3d of the Code of West Virginia, 1931, as amended, relating to group accident and sickness insurance; and updating the definition of Medicare supplement policy.

Be it enacted by the Legislature of West Virginia:

That §33-16-3d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

(a) Definitions. —

(1) “Applicant” means, in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) “Certificate” means, for the purposes of this section, any certificate issued under a group Medicare supplement policy, which policy has been delivered or issued for delivery in this state.

(3) “Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a
subscriber contract of hospital and medical service corporations
or health maintenance organizations, other than a policy issued
pursuant to a contract under Section 1876 of the federal Social
Security Act (42 U.S.C. §1395, et seq.) or an issued policy
under a demonstration project specified pursuant to amend-
ments to the federal Social Security Act in 42 U.S.C.
§1395ss(g)(1), which is advertised, marketed or designed
primarily as a supplement to reimbursements under Medicare
for the hospital, medical or surgical expenses of persons
eligible for Medicare. Such term does not include:

(A) A policy or contract of one or more employers or labor
organizations, or of the trustees of a fund established by one or
more employers or labor organizations, or a combination
thereof, for employees or former employees, or combination
thereof, or for members or former members, or combination
thereof, of the labor organizations;

(B) Medicare advantage plans established under Medicare
Part C, outpatient prescription drug plans established under
Medicare Part D, or any health care prepayment plan (HCPP)
that provides benefits pursuant to an agreement under Section
1833(a)(1)(A) of the Social Security Act.

(4) “Medicare” means the Health Insurance for the Aged
Act, Title XVIII of the Social Security Amendments of 1965,
as then constituted or later amended.

(b) Standards for policy provisions. —

(1) The commissioner shall issue reasonable rules to
establish specific standards for policy provisions of Medicare
supplement policies. Such standards shall be in addition to and
in accordance with the applicable laws of this state and may
cover, but shall not be limited to:

(A) Terms of renewability;
(B) Initial and subsequent conditions of eligibility;

(C) Nonduplication of coverage;

(D) Probationary period;

(E) Benefit limitations, exceptions and reductions;

(F) Elimination period;

(G) Requirements for replacement;

(H) Recurrent conditions; and

(I) Definitions of terms.

(2) The commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a Medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a Medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) *Minimum standards for benefits.* — The commissioner shall issue reasonable rules to establish minimum standards for benefits under Medicare supplement policies.

(d) *Loss ratio standards.* — Medicare supplement policies shall be expected to return to policyholders benefits which are
reasonable in relation to the premium charge. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios and for Medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules issued pursuant to this subsection, Medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(e) Disclosure standards. —

(1) In order to provide for full and fair disclosure in the sale of accident and sickness policies, to persons eligible for Medicare, the commissioner may require by rule that no policy of accident and sickness insurance may be issued for delivery in this state and no certificate may be delivered pursuant to such a policy unless an outline of coverage is delivered to the applicant at the time application is made.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subdivision (1) above. For purposes of this subdivision, “format” means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the exceptions, reductions and limitations contained in the policy;

(C) A statement of the renewal provisions including any reservation by the insurer of the right to change premiums and
(D) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer’s ability to select the most appropriate coverage and improve the buyer’s understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for Medicare.

(f) Notice of free examination. — Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the
applicant by the issuer in a timely manner. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(g) Administrative procedures. — Rules promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (the West Virginia Administrative Procedures Act) of this code.

(h) Severability. — If any provision of this section or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 120

(H. B. 4847 — By Delegates Michael, Frederick, Proudfoot, H. White, Browning, Susman, Palumbo, Hall, Border, Ashley and G. White)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16F-1, §33-16F-2,
§33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8, all relating to group limited health benefits insurance plans; declaring legislative intent; requiring approval of plans by Insurance Commissioner; providing eligibility requirements for temporary, part time and seasonal employees under such plans; setting forth statutory or regulatory provisions that specifically do or do not apply to such plans; authorizing Insurance Commissioner to forbear from enforcing certain statutory and regulatory provisions; establishing criteria for filing and approval of premium rates; authorizing Insurance Commissioner to promulgate emergency rules; mandating disclaimer on policies; exempting plans from premium taxes; providing for severability; and providing rule of construction.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8, all to read as follows:

ARTICLE 16F. GROUP LIMITED HEALTH BENEFITS PLANS.

§33-16F-1. Declaration of legislative intent.
§33-16F-2. Eligibility for coverage.
§33-16F-3. Applicability of other provisions.
§33-16F-4. Filing and approval of rates.
§33-16F-5. Emergency rules authorized; factors to be considered in determining required benefits.
§33-16F-6. Disclaimer.
§33-16F-7. Exemption from premium taxes.
§33-16F-8. Severability; controlling provisions.

§33-16F-1. Declaration of legislative intent.

The Legislature recognizes that a significant number of West Virginia workers do not have health insurance coverage and that the lack of coverage is an issue of affordability. One of the ways affordable premiums can be obtained is by some
combination of limiting benefits and increasing copays or
deductibles. In order to provide greater access to such afford-
able plans to employees, the Legislature has determined that
authorization of the sale of group policies with limited benefits
that would include physician, inpatient and outpatient care,
including preventive and primary care, will serve to bring
insurance coverage to many of those working West Virginians
and their families without any insurance coverage. It is,
therefore, the intent of the Legislature to introduce flexibility in
the design of group health insurance plans to allow insurers to
offer basic benefits at affordable prices. This article may be
known as the “Affordable Group Health Insurance Act.”

§33-16F-2. Eligibility for coverage.

(a) As used in this article, “group plan” means any plan
approved by the commissioner as a “group limited health
benefits plan” in accordance with this article. Each such plan
constitutes a health benefit plan “of a particular type” for the
purposes of subsection (a), section three-I, article sixteen and
subsection (d), section seven, article sixteen-d of this chapter.

(b) Notwithstanding any other provision of this code,
including provisions mandating the inclusion of certain benefits
in group health insurance plans, upon filing with and approval
by the commissioner as a “group limited health benefits plan,”
any insurer, including a health maintenance organization or
health service corporation, may offer the plan and rates associ-
ated with the plan to employers, subject to the conditions of this
article.

(c) The commissioner shall only approve a proposed “group
limited health benefits plan” that is limited to coverage of one
or more of the following classes of employees: Any class of
employees that comprises part-time, temporary or seasonal
employees that: (i) Are ineligible for coverage under any of the
employer’s group health benefits plans; or (ii) are employed by an employer that does not offer a group health benefits plan to any of its employees.

§33-16F-3. Applicability of other provisions.

(a) The following provisions of article sixteen of this chapter apply to group limited health benefits plans: Sections one-a, three, three-j, three-k, three-l, three-m, three-n, three-p, four, five, six, seven, nine, ten, eleven, thirteen, fourteen and fifteen; all other provisions of article sixteen do not apply to plans approved pursuant to this article unless and to the extent such provisions are specifically incorporated in rules promulgated by the commissioner.

(b) With respect to any “group limited health benefits plan” offered to any “small employer,” as that term is defined in section two, article sixteen-d of this chapter, the following provisions of article sixteen-d apply: Sections two, four, seven, eight, twelve and thirteen: Provided, That only the clause preceding the proviso in section thirteen, article sixteen-d of this chapter applies to group plans approved pursuant to this article. Notwithstanding any other provision of this code, all other provisions of article sixteen-d of this chapter do not apply to group plans approved pursuant to this article unless and to the extent such provisions are specifically incorporated in rules promulgated by the commissioner.

(c) Notwithstanding any other provision of this code or of the code of state rules, the provisions of article sixteen-e of this chapter and of legislative rules regulating group accident and sickness policies, including the rule set forth in series 39, title 114 of the West Virginia Code of State Rules, do not apply to group plans approved pursuant to this article unless and to the extent specifically incorporated in rules promulgated by the commissioner.
(d) The commissioner may forbear from applying any other statutory or regulatory requirements to insurers offering a group plan approved pursuant to this article, including any requirements in article twenty-four and twenty-five-a, if the commissioner determines that such forbearance furthers the legislative intent set forth in section one of this article.

(e) Nothing in this article may be construed to relieve an insurer or employer from complying with all applicable federal laws, including federal laws mandating the inclusion of benefits in an insurance plan.

§33-16F-4. Filing and approval of rates.

(a) Premium rate charges for any group plans shall:

1. Be reasonable in relation to the benefits available under the policy; and

2. Notwithstanding the provisions of section one, article sixteen-b of this chapter, be filed with the commissioner for a waiting period of thirty days before the charges become effective. At the expiration of thirty days, the premium rate charges filed are deemed approved unless prior thereto the charges have been affirmatively approved or disapproved by the commissioner.

(b) The commissioner shall disapprove premium rates that are not in compliance with the requirements of any rule promulgated by the commissioner. The commissioner shall send written notice of the disapproval to the insurer. The commissioner may approve the premium rates before the thirty-day period expires by giving written notice of approval.

(c) This section does not apply to group plans issued pursuant to this article upon which premiums are negotiated with the group policyholder and are experience rated.
§33-16F-5. Emergency rules authorized; factors to be considered in determining required benefits.

(a) The commissioner shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code on or before the first day of September, two thousand six, to prescribe requirements regarding ratemaking, which may include rules establishing loss ratio standards for group plans; to place further limitations on the eligibility of classes of employees or employees within a group; to determine benefits that must be included in such group plans, except that the commissioner may not exclude from coverage any benefits mandated by federal law; and to provide for any other matters deemed necessary to further the intent of this article.

(b) In determining what medical treatments, procedures, and related health services benefits must be included in such plans, the commissioner shall consider their effectiveness in improving the health status of individuals, their impact on maintaining and improving health and on reducing the unnecessary consumption of health care services, and their impact on the affordability of health care coverage.

§33-16F-6. Disclaimer.

Each group plan issued pursuant to this article shall include the following disclaimer printed in boldface type and located in a prominent portion of each policy, subscriber contract and certificate of coverage: “THIS LIMITED GROUP HEALTH BENEFITS PLAN DOES NOT PROVIDE COMPREHENSIVE MEDICAL COVERAGE. IT IS A BASIC OR LIMITED BENEFITS POLICY AND CONTAINS SPECIFIC DOLLAR LIMITS THAT WILL BE PAID FOR MEDICAL SERVICES WHICH MAY NOT BE EXCEEDED. IF THE COST OF SERVICES EXCEEDS THOSE LIMITS, THE BENEFICIARY AND NOT THE INSURER IS
RESPONSIBLE FOR PAYMENT OF THE EXCESS AMOUNTS.”

§33-16F-7. Exemption from premium taxes.

Products authorized under this article are exempt from the premium taxes and surcharges assessed under article three of this chapter.

§33-16F-8. Severability; controlling provisions.

(a) If any provision of this act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the act and application of such provision to other persons or circumstances shall not be affected thereby.

(b) To the extent that provisions of this article differ from those contained elsewhere in this chapter, the provisions of this article control.

CHAPTER 121
(S. B. 438 — By Senators Minard and Foster)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §33-20-2 and §33-20-3 of the Code of West Virginia, 1931 as amended, all relating to title insurance; providing for review of title insurance rates by the Insurance Commissioner; setting forth criteria for rate review; allowing grouping into different rate classifications; requiring separate rate filings for commercial and non-commercial risks; and excluding certain expenses from inclusion in title insurance rates.
Be it enacted by the Legislature of West Virginia:

That §33-20-2 and §33-20-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

§33-20-3. Ratemaking.

§33-20-2. Scope of article.

(a) This article applies to fire, marine, casualty and surety insurance on risks or operations in this state.

(b) This article does not apply:

(1) To reinsurance, other than joint reinsurance to the extent stated in section eleven of this article;

(2) To life or accident and sickness insurance;

(3) To insurance of vessels or craft, their cargoes, marine builders’ risks, marine protection and indemnity or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) To insurance against loss of or damage to aircraft, including their accessories and equipment, or against liability, other than workers’ compensation and employer’s liability, arising out of the ownership, maintenance or use of aircraft;

(5) To malpractice insurance insofar as the provisions of this article directly conflict and thereby are supplanted by article twenty-b of this chapter.

(c) If any kind of insurance, subdivision or combination thereof, or type of coverage, is subject to both the provisions of this article expressly applicable to casualty and surety insurance
and to those expressly applicable to fire and marine insurance, the commissioner may apply to filings made for such kind of insurance the provisions of this article which are in his or her judgment most suitable.

§33-20-3. Ratemaking.

All rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state and to all other relevant factors within and outside this state.

(b) Rates may not be excessive, inadequate or unfairly discriminatory.

(c) Rates for casualty and surety insurance to which this article applies shall also be subject to the following provisions:

(1) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(2) Risks shall be grouped by classifications and by territorial areas for the establishment of rates and minimum
25 premiums. Classification of rates shall be modified to produce
26 rates for individual risks in a territorial area in accordance with
27 rating plans which establish standards for measuring variations
28 in hazards or expense provisions, or both. Such standards may
29 measure any differences among risks that can be demonstrated
to have a probable effect upon losses or expenses: Provided,
30 That such standards shall include the establishment of at least
31 seven territorial rate areas within the state: Provided, however,
32 That such territorial rate established by any insurer or group of
33 insurers may differ from those of other insurers or group of
34 insurers.

(3) Due consideration shall be given to such factors as
36 expense, management, individual experience, underwriting
37 judgment, degree or nature of hazard or any other reasonable
38 considerations, provided such factors apply to all risks under
39 the same or substantially the same circumstances or conditions.

(d) Rates for fire and marine insurance to which this article
41 applies shall also be subject to the following provisions:

(1) Manual, minimum, class rates, rating schedules or rating
43 plans shall be made and adopted, except in the case of specific
44 inland marine rates on risks specially rated.

(2) Due consideration shall be given to the conflagration
46 hazard and in the case of fire insurance rates, consideration
47 shall be given to the experience of the fire insurance business
48 during a period of not less than the most recent five-year period
49 for which such experience is available.

(e) Rates for title insurance to which this article applies
51 shall also be subject to the following provisions:

(1) Title insurance rates shall be reasonable and adequate
53 for the class of risks to which they apply. Rates may not be
55 unfairly discriminatory between risks involving essentially the
same hazards and expense elements. The rates may be fixed in an amount sufficient to furnish a reasonable margin for profit after provisions to account for: (i) Probable losses as indicated by experience within and without this state; (ii) exposure to loss under policies; (iii) allocations to reserves; (iv) costs participating insurance; (v) operating costs; and (vi) other items of expense fairly attributable to the operation of a title insurance business.

(2) (A) Policies may be grouped into classes for the establishment of rates. A title insurance policy that is unusually hazardous to the title insurance company because of an alleged defect or irregularity in the title insured or because of uncertainty regarding the proper interpretation or application of the law involved may be classified separately according to the facts of each case.

(B) Title insurance companies shall file separate rate schedules for commercial and non-commercial risks. The Insurance Commissioner shall promulgate rules regarding the requirements of this subsection which shall give due consideration to the nature of commercial transactions and the need for greater protections for consumers in non-commercial transactions.

(3) Title insurance rates may not include charges for abstracting, record searching, certificates regarding the record title, escrow services, closing services and other related services that may be offered or furnished or the cost and expenses of examinations of titles.

(f) Except to the extent necessary to meet the provisions of subdivisions (b) and (c) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(g) Rates made in accordance with this section may be used subject to the provisions of this article.
AN ACT to amend and reenact §33-20F-5 of the Code of West Virginia, 1931, as amended, relating to the governance and organization of the West Virginia Physicians’ Mutual Insurance Company; and removing a restriction limiting service on the board of directors of the company to two consecutive terms.

Be it enacted by the Legislature of West Virginia:

That §33-20F-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-5. Governance and organization.

1 (a) (1) The Board of Risk and Insurance Management shall implement the initial formation and organization of the company as provided by this article.

(2) From the first day of July, two thousand three, until the thirtieth day of June, two thousand four, the company shall be governed by a provisional board of directors consisting of the members of the Board of Risk and Insurance Management, the Dean of the West Virginia University School of Medicine or a physician representative designated by him or her and five physician directors elected by the policyholders whose policies
are to be transferred to the company pursuant to section nine of this article.

(3) Only physicians who are licensed to practice medicine in this state pursuant to article three or fourteen, chapter thirty of this code and who have purchased medical professional liability coverage from the Board of Risk and Insurance Management are eligible to serve as physician directors on the provisional board of directors. One of the physician directors shall be selected from a list of three physicians nominated by the West Virginia Medical Association. The Board of Risk and Insurance Management shall develop procedures for the nomination of the remaining physician directors and for the conduct of the election, to be held no later than the first day of June, two thousand three, of all of the physician directors, including, but not limited to, giving notice of the election to the policyholders. These procedures shall be exempt from the provisions of article three, chapter twenty-nine-a of this code.

(b) From the first day of July, two thousand four, the company shall be governed by a board of directors consisting of eleven directors, as follows:

(1) Five directors who are physicians licensed to practice medicine in this state by the Board of Medicine or the Board of Osteopathy, including at least one general practitioner and one specialist: *Provided*, That only physicians who have purchased medical professional liability coverage from the Board of Risk and Insurance Management are eligible to serve as physician representatives on the company’s first board of directors;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) Two directors with general knowledge and experience in business management who are officers and employees of the company and are responsible for the daily management of the company; and
(4) One director who is a dean of a West Virginia school of medicine or osteopathy or his or her designated physician representative. This director’s position shall rotate annually among the Dean of the West Virginia University School of Medicine, the Dean of the Marshall University Joan C. Edwards School of Medicine and the Dean of the West Virginia School of Osteopathic Medicine. This director shall serve until such time as the moneys loaned to the company from the West Virginia Tobacco Settlement Medical Trust Fund have been replenished as provided in subsection (e), section four of this article. After the moneys have been replenished to the West Virginia Tobacco Settlement Medical Trust Fund, this director shall be a physician licensed to practice medicine in this state by the Board of Medicine or the Board of Osteopathy.

(c) In addition to the eleven directors required by subsection (b) of this section, the bylaws of the company may provide for the addition of at least two directors who represent an entity or institution which lends or otherwise provides funds to the company.

(d) 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 in accordance with the provisions of subdivision (3), subsection (a) of this section shall serve for the following terms: (1) Three for four-year terms; (2) three for three-year terms; (3) three for two-year terms; and (4) two for one-year terms. Thereafter, the directors shall serve staggered terms of four years. If an additional director is added to the board as provided in subsection (c) of this section, his or her initial term shall be for four years.

(e) The incorporators are to prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of this chapter and chapter thirty-one of this code.
AN ACT to amend and reenact §33-20F-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §55-7B-2 of said code; and to amend said code by adding thereto a new section, designated §55-7B-12, all relating to medical professional liability insurance; authorizing the West Virginia Physicians’ Mutual Insurance Company to decline or refuse to renew insurance policies transferred to the company from the Board of Risk and Insurance Management upon the expiration of the terms of the policies so transferred; describing the criteria according to which the company may classify, rate and price policies of insurance; describing the criteria according to which the company may elect to underwrite or decline to underwrite insurance coverage; and establishing basic requirements and minimum standards for physician self-funded insurance arrangements to qualify as medical professional liability insurance for purposes of article seven-b, chapter fifty-five of said code.

Be it enacted by the Legislature of West Virginia:

That §33-20F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §55-7B-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §55-7B-12, all to read as follows:

Chapter

33. Insurance.

55. Actions, Suits and Arbitration; Judicial Sale.
CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-9. Kinds of coverage authorized; transfer of policies from the State Board of Risk and Insurance Management; risk management practices authorized.

(a) Upon approval by the commissioner for a license to transact insurance in this state, the company may issue nonassessable policies of malpractice insurance, as defined in subdivision (9), subsection (e), section ten, article one of this chapter, insuring a physician. Additionally, the company may issue other types of casualty or liability insurance as may be approved by the commissioner.

(b) On the transfer date:

(1) The company shall accept from the Board of Risk and Insurance Management the transfer of any and all medical liability insurance obligations and risks of existing or in-force contracts of insurance covering physicians, physician corporations and physician-operated clinics issued by the board pursuant to article twelve-b, chapter twenty-nine of this code: Provided, That the company may decline or refuse to renew any and all such contracts of insurance transferred to the company from the Board of Risk and Insurance Management upon the expiration of the respective terms of each contract of insurance so transferred and nothing in this section is intended to or shall be construed to otherwise obligate the company to accept, underwrite or renew any contract of insurance whatsoever. The transfer shall not include medical liability insurance obligations and risks of existing or in-force contracts of insurance covering hospitals and nonphysician providers;
(2) The company shall assume all responsibility for and defend, indemnify and hold harmless the Board of Risk and Insurance Management and the state with respect to any and all liabilities and duties arising from the assets and responsibilities transferred to the company pursuant to article twelve-b, chapter twenty-nine of this code;

(3) The Board of Risk and Insurance Management shall disburse and pay to the company any funds attributable to premiums paid for the insurance obligations transferred to the company pursuant to subdivision (1) of this subsection, with earnings thereon, less paid losses and expenses, and deposited in the medical liability fund created by section ten, article twelve-b, chapter twenty-nine of this code as reflected on the ledgers of the Board of Risk and Insurance Management;

(4) The Board of Risk and Insurance Management shall disburse and pay to the company any funds in the Board of Risk and Insurance Management Physicians’ Mutual Insurance Company account created by section seven of this article. All funds in this account shall be transferred pursuant to terms of a surplus note or other loan arrangement satisfactory to the Board of Risk and Insurance Management and the Insurance Commissioner.

(c) The Board of Risk and Insurance Management shall cause an independent actuarial study to be performed to determine the amount of all paid losses, expenses and assets associated with the policies the board has in force pursuant to article twelve-b, chapter twenty-nine of this code. The actuarial study shall determine the paid losses, expenses and assets associated with the policies to be transferred to the company pursuant to subsection (b) of this section and the paid losses, expenses and assets associated with those policies retained by the board. The determination shall not include liabilities created by issuance of new tail insurance policies for nonphysician
providers authorized by subsection (n), section six, article twelve-b, chapter twenty-nine of this code.

(d) The Board of Risk and Insurance Management may enter into such agreements, including loan agreements, with the company that are necessary to accomplish the transfers addressed in this section.

(e) The company shall make policies of insurance available to physicians in this state, regardless of practice type or specialty. Policies issued by the company to each class of physicians are to be essentially uniform in terms and conditions of coverage.

(f) Notwithstanding the provisions of subsection (b), (c) or (e) of this section, the company may:

(1) Establish reasonable classifications of physicians, insured activities and exposures based on a good faith determination of relative exposures and hazards among classifications;

(2) Vary the limits, coverages, exclusions, conditions and loss-sharing provisions among classifications;

(3) Establish, for an individual physician within a classification, reasonable variations in the terms of coverage, including rates, deductibles and loss-sharing provisions, based on underwriting criteria established by the company, from time to time, which underwriting criteria may take into account factors considered by other medical malpractice insurance companies, from time to time, in underwriting similar risks and which factors may include, but are not limited to, the insured’s prior loss experience; current professional training and capability; disciplinary action taken against the physician by the Board of Medicine or Board of Osteopathy; felonies or other criminal offenses committed by the physician; evidence of alcohol or chemical dependency or abuse; evidence of sexual misconduct;
and other factors relevant to the liability risk profile of the physician.

(4) Refuse to provide insurance coverage for individual physicians who do not meet underwriting criteria established by the company, from time to time, which underwriting criteria may take into account factors considered by other medical malpractice insurance companies, from time to time, in underwriting or declining to underwrite similar risks and which factors may include, but are not limited to, prior loss experience, current professional training and capability, disciplinary action taken against the physician by the Board of Medicine or Board of Osteopathy; felonies or other criminal offenses committed by the physician; evidence of alcohol or chemical dependency or abuse; evidence of sexual misconduct; and other factors relevant to the liability risk profile of the physician and which do or may indicate that the physician represents an unacceptable risk of loss if coverage is provided.

(g) The company shall establish reasonable risk management and continuing education requirements which policyholders must meet in order to be and remain eligible for coverage.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-2. Definitions.

§55-7B-12. Self-funding program; requirements; minimum standards.

§55-7B-2. Definitions.

(a) “Board” means the state Board of Risk and Insurance Management.

(b) “Collateral source” means a source of benefits or advantages for economic loss that the claimant has received from:
(1) Any federal or state act, public program or insurance which provides payments for medical expenses, disability benefits, including workers' compensation benefits, or other similar benefits. Benefits payable under the Social Security Act are not considered payments from collateral sources except for Social Security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services or provide similar benefits;

(3) Any group accident, sickness or income disability insurance, any casualty or property insurance (including automobile and homeowners' insurance) which provides medical benefits, income replacement or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured's employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability.

(c) "Consumer price index" means the most recent consumer price index for all consumers published by the United States Department of Labor.

(d) "Emergency condition" means any acute traumatic injury or acute medical condition which, according to standardized criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions, or, with respect to a pregnant woman, a significant risk to the health of the unborn child.
(e) “Health care” means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to or on behalf of a patient during the patient’s medical care, treatment or confinement.

(f) “Health care facility” means any clinic, hospital, nursing home or assisted living facility, including personal care home, residential care community and residential board and care home, or behavioral health care facility or comprehensive community mental health/mental retardation center, in and licensed by the State of West Virginia and any state-operated institution or clinic providing health care.

(g) “Health care provider” means a person, partnership, corporation, professional limited liability company, health care 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, podiatrist, chiropractor, physical therapist, psychologist, emergency medical services authority or agency, or an officer, employee or agent thereof acting in the course and scope of such officer’s, employee’s or agent’s employment.

(h) “Medical injury” means injury or death to a patient arising or resulting from the rendering of or failure to render health care.

(i) “Medical professional liability” means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient.

(j) “Medical professional liability insurance” means a contract of insurance or any actuarially sound self-funding program that pays for the legal liability of a health care facility
or health care provider arising from a claim of medical professional liability. In order to qualify as medical professional liability insurance for purposes of this article, a self-funding program for an individual physician must meet the requirements and minimum standards set forth in section twelve of this article.

(k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental anguish and grief.

(l) “Patient” means a natural person who receives or should have received health care from a licensed health care provider under a contract, expressed or implied.

(m) “Plaintiff” means a patient or representative of a patient who brings an action for medical professional liability under this article.

(n) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal agent of another.

§55-7B-12. Self-funding program; requirements; minimum standards.

(a) An irrevocable trust may be established by or for the benefit of the physician and funded by conveyance to the trustee of the sum of not less than one million dollars, in cash or cash equivalents, subject to disbursement and replenishment from time to time, as described in this section, and exclusive of funds needed for maintenance, administration, legal defense and all other costs.

(b) A physician who has established a trust pursuant to this section may subsequently terminate the trust and elect to acquire coverage from a commercial medical professional liability insurance carrier. The assets of the trust may not be distributed to the physician settlor until the costs associated
with the administration of the trust have been satisfied and the
trustee receives certification that the physician has acquired
medical professional liability insurance tail coverage or prior
acts coverage, whichever is applicable. The tail coverage or
prior acts coverage must cover the time period from the
establishment of the trust to the effective date of the newly
acquired medical professional liability insurance coverage or
twelve years, whichever is shorter.

(c) For a period of not less than the applicable statute of
limitations for medical professional liability, a physician who
has established an actuarially sound physician self-funding
insurance program under this section and has such a program in
effect at the time of retirement shall, following his or her
retirement, either maintain the trust in effect at funding levels
required by this section, or purchase and maintain in force and
effect tail insurance as required by article twenty-d, chapter
thirty-three of this code.

(d) The trustee for the trust must be an independent
professional, bank or other qualified institutional fiduciary. The
trustee has all necessary and appropriate powers to fulfill the
purposes of the trust, including, but not limited to, the powers
to:

(1) Disburse funds for the maintenance and administration
of the trust, and for defense costs, judgments, arbitration
indemnity awards and settlements;

(2) Hire an actuary who is a member of the Casualty
Actuarial Society and experienced in medical professional
liability protection programs to provide a periodic opinion, but
not less frequently than annually, as to the actuarial soundness
of the fund, a copy of which opinion shall be provided upon
request to any facility where the physician maintains clinical
privileges;
(3) Hire a qualified, third-party claims manager experienced in handling medical professional liability claims, with the power and authority to set reserves and administer and oversee the defense of all claims; and

(4) Require that the physician replenish the trust so as to maintain at all times a funding level of no less than one million dollars or such greater amount as set forth in the most current actuarial opinion as described in subdivision (2) of this subsection, exclusive of funds needed for maintenance, administration, defense or other costs.

(e) The trustee, acting directly or through its hired professionals, as appropriate, shall periodically, but not less frequently than annually, evaluate and set required trust funding levels for the trust; make assessments against the physician for payments into the trust in order to replenish and maintain the trust at levels required by this subsection and required to render the trust actuarially sound from time to time; and otherwise take such actions as may appear necessary, desirable or appropriate to fulfill the purposes and integrity of the trust. Should the physician fail to timely meet any of the requests or requirements of the trustee with regard to funding of the trust or otherwise, or should the trust at any time fail to meet all the requirements of this subsection, thereupon the trust arrangement will conclusively no longer qualify under this article as an actuarially sound self-funding program: Provided, That all assets of the trust at the time of any such disqualifying event or circumstance will remain trust assets and may not be distributed to the physician settlor of the trust until the latter of the date on which any and all medical professional liability claims asserted or pending against the physician at the time of such disqualifying event or circumstance or within the applicable statute of limitations for medical malpractice liability thereafter have been finally adjudicated or otherwise resolved and fully satisfied to the extent of trust assets available for such purpose.
In the event that more than one claim arises within the period since the last annual evaluation, a new evaluation will be performed within sixty days or at the time of the next annual audit, whichever is shorter, in order to evaluate the trust and replenish funds to ensure that its assets total not less than one million dollars, or such other amount that is actuarially determined necessary to satisfy the aggregate outstanding claims, whichever is greater, exclusive of funds needed for maintenance, administration, legal defense or other costs.

CHAPTER 124

(Com. Sub. for S. B. 754 — By Senator Minard)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §33-22-7 and §33-22-8 of the Code of West Virginia, 1931, as amended, all relating to farmers’ mutual fire insurance companies; clarifying that certain requirements for the filing of fire and marine policies apply to farm mutual insurance companies; clarifying types of policies that all such companies may issue; describing types of policies of liability insurance for which an extension of a license must be obtained; permitting commissioner to limit duration of such license extensions; and establishing criteria by which farm mutual insurance companies must demonstrate that they serve underserved areas.

Be it enacted by the Legislature of West Virginia:

That §33-22-7 and §33-22-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.

§33-22-7. Filing and approval of policy; setting out terms and conditions; limiting liability; standard forms or provisions.


§33-22-7. Filing and approval of policy; setting out terms and conditions; limiting liability; standard forms or provisions.

(a) No policy form shall be issued or used by any such company unless such form has been filed with and approved by the commissioner. The filing, approval and disapproval of such forms shall be governed by the provisions of sections eight and nine, article six of this chapter and section eight, article seventeen of this chapter in the same manner as form filings of other insurers.

(b) All terms and conditions of such policies shall be set forth in full in the policy or endorsements attached thereto including the contingent liability, if any, of the policyholder and no provision purporting to make any portion of the charter, bylaws or other documents a part of the policy shall be valid unless such portion is set forth in full in the policy.

(c) Policies may limit the liability of the company to a fixed percent of the value of the property insured.

(d) Whenever the commissioner believes the public interest requires a standard form for a particular kind of coverage, the commissioner may prescribe a standard form of policy for such companies, or a standard specific provision to be inserted in such policies, and all policies thereafter issued by such companies shall conform to such standard forms or provisions.


(a) Any company subject to the provisions of this article may issue the following types of policies of insurance:
(1) Fire insurance, which 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 the loss or damage;

(2) Loss or damage by insects or disease to farm crops or products and loss of rental value of land used in producing those crops or products;

(3) Loss or damage to domestic farm animals by dogs or wild animals;

(4) Loss or damage to property by burglary, theft, larceny, robbery, vandalism, malicious mischief or wrongful conversion, or any attempt at any of the foregoing;

(5) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause; and

(6) Glass insurance, which is insurance against loss or damage to glass, including its ornamentation and fittings.

(b) In addition to the policies of insurance permitted by subsection (a) of this section, a company may apply to the commissioner for an extension of its license and upon complying with reasonable standards established by the commissioner to assure the solvency of the company and the protection of its policyholders, may, in the discretion of the commissioner, be granted an extension of its license upon such conditions and for such period as the commissioner may prescribe to permit the company to issue policies of insurance on risks insuring against one or more of the following:

Legal liability for the death, injury or disability of any human being, or for damage to property, excluding liability
resulting from the ownership, maintenance or use of vehicles or
aircraft; and provisions for medical, hospital, surgical and
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
the liability coverage. For the purposes of this subsection, the
term "vehicle" does not include a "farm tractor", "implement of
husbandry", as defined in section one, article one, chapter
seventeen-a of this code; a "wheelchair", as defined in section
sixty-five, article one, chapter seventeen-c of this code and any
similar vehicle used by persons with disabilities; a "golf cart"
while used for golfing; or other motorized vehicle used to
service the premises.

(c) The commissioner may, for good cause shown or on
application of the company, limit the license of a company to
make insurance to any one or more of the perils or coverages
set forth in subsection (a) or (b) of this section.

(d) A farm mutual insurance company insuring property
located outside this state must meet the capital and surplus
requirements of section five-b, article three of this chapter.

(e) On and after the first day of January, two thousand
seven, any company subject to the provisions of this article
must have a majority of its book of business, as determined by
either gross direct premiums or policy count, in underserved
areas of the insurance market in the State of West Virginia. For
purposes of this article, "underserved areas of the insurance
market in the State of West Virginia" means any of the
following or any combination thereof: Persons or property
insured that have a public fire protection classification of five
or higher, or the equivalent thereof, according to a rating
organization licensed pursuant to section six, article twenty of
this chapter; residential structures or dwellings insured on an
actual cash-value basis; residential structures or dwellings over forty years of age; vacant or seasonally occupied residential structures or dwellings; property or persons who have had insurance canceled or declined by any insurance company licensed to do business in this state; and farm property or structures. Upon determination, after notice and hearing, that any farm mutual fire insurance company has failed to comply with this subsection, the commissioner may require the company to pay all taxes, additional taxes, surcharges and fees pursuant to article three of this chapter, require conversion under section nineteen of this article, or revoke its license under section four of this article, or any combination thereof.

CHAPTER 125

(S. B. 454 — By Senator Minard)

[Passed February 24, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2006.]

AN ACT to amend and reenact §33-25A-3 of the Code of West Virginia, 1931, as amended, relating to removing the Commissioner of Insurance as the attorney in fact for health maintenance organizations for service of process purposes.

Be it enacted by the Legislature of West Virginia:

That §33-25A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

(1) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish or operate a health maintenance organization in compliance with this article. No person shall sell health maintenance organization enrollee contracts, nor shall any health maintenance organization commence services, prior to receipt of a certificate of authority as a health maintenance organization. Any person may, however, establish the feasibility of a health maintenance organization prior to receipt of a certificate of authority through funding drives and by receiving loans and grants.

(2) Every health maintenance organization in operation as of the effective date of this article shall submit an application for a certificate of authority under this section within thirty days of the effective date of this article. Each applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied pursuant to section four of this article, the applicant shall be treated as a health maintenance organization whose certificate of authority has been revoked: Provided, That all health maintenance organizations in operation for at least five years are exempt from filing applications for a new certificate of authority.

(3) The commissioner may require any organization providing or arranging for health care services on a prepaid per capita or prepaid aggregate fixed sum basis to apply for a certificate of authority as a health maintenance organization. The commissioner shall promulgate rules to facilitate the enforcement of this subsection: Provided, That any provider who is assuming risk by virtue of a contract or other arrangement with a health maintenance organization or entity which has a certificate may not be required to file for a certificate: Provided, however, That the commissioner may require the exempted entities to file complete financial data for a determination as to their solvency. Any organization directed to apply
for a certificate of authority is subject to the provisions of subsection (2) of this section.

(4) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner and shall set forth or be accompanied by any and all information required by the commissioner, including:

(a) The basic organizational document;

(b) The bylaws or rules;

(c) A list of names, addresses and official positions of each member of the governing body, which shall contain a full disclosure in the application of any financial interest by the officer or member of the governing body or any provider or any organization or corporation owned or controlled by that person and the health maintenance organization and the extent and nature of any contract or financial arrangements between that person and the health maintenance organization;

(d) A description of the health maintenance organization;

(e) A copy of each evidence of coverage form and of each enrollee contract form;

(f) Financial statements which include the assets, liabilities and sources of financial support of the applicant and any corporation or organization owned or controlled by the applicant;

(g)(i) A description of the proposed method of marketing the plan;

(ii) A schedule of proposed charges; and

(iii) A financial plan which includes a three-year projection of the expenses and income and other sources of future capital;
(h) A statement reasonably describing the service area or areas to be served and the type or types of enrollees to be served;

(i) A description of the complaint procedures to be utilized as required under section twelve of this article;

(j) A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section six of this article;

(k) A complete biographical statement on forms prescribed by the commissioner and an independent investigation report on all of the individuals referred to in subdivision (c) of this subsection and all officers, directors and persons holding five percent or more of the common stock of the organization;

(l) A comprehensive feasibility study, performed by a qualified independent actuary in conjunction with a certified public accountant which shall contain a certification by the qualified actuary and an opinion by the certified public accountant as to the feasibility of the proposed organization. The study shall be for the greater of three years or until the health maintenance organization has been projected to be profitable for twelve consecutive months. The study must show that the health maintenance organization would not, at the end of any month of the projection period, have less than the minimum capital and surplus as required by paragraph (ii), subdivision (c), subsection (2), section four of this article. The qualified independent actuary shall certify that: The rates are neither inadequate nor excessive nor unfairly discriminatory; the rates are appropriate for the classes of risks for which they have been computed; the rating methodology is appropriate:

Provided, That the certification shall include an adequate description of the rating methodology showing that the methodology follows consistent and equitable actuarial principles; the
health maintenance organization is actuarially sound: *Provided, however,* That the certification shall consider the rates, benefits and expenses of, and any other funds available for the payment of obligations of, the organization; the rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed; and incurred but not reported claims and claims reported but not fully paid have been adequately provided for;

(m) A description of the health maintenance organization's quality assurance program; and

(n) Such other information as the commissioner may require to be provided.

(5) A health maintenance organization shall, unless otherwise provided for by rules promulgated by the commissioner, file notice prior to any modification of the operations or documents filed pursuant to this section or as the commissioner may require by rule. If the commissioner does not disapprove of the filing within ninety days of filing, it shall be considered approved and may be implemented by the health maintenance organization.

CHAPTER 126

(S. B. 462 — By Senators Tomblin, Mr. President, Jenkins and Minard)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-1B-8, relating to
filing interstate compacts in the office of the Secretary of State; establishing requirements for compact and associated documents to be filed by entities administering the compact; requiring further filings when compact contents, status or membership changes; establishing administrative requirements for the Secretary of State; allowing public inspection of compacts; and establishing requirements for compacts entered into prior to effective date of this section.

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 §29-1B-8, to read as follows:

ARTICLE 1B. COMMISSION ON INTERSTATE COOPERATION.

§29-1B-8. Filing interstate compacts.

(a) Within ninety days of entering into an interstate compact, a commission, agency or person administering the compact between or among states or the federal government, having the force of law and to which this state is a party, shall file with the office of the Secretary of State:

(1) A copy of the compact accompanied by a signed letter of a representative of the commission, agency or person administering the compact stating that the copy is a true and accurate copy of the adopted compact;

(2) A listing of all other jurisdictions party to the compact and the date on which each jurisdiction entered into participation; and

(3) Citations to any act or resolution of the Congress of the United States consenting to the compact.
(b) The commission, agency or person administering the compact shall submit, within a reasonable time from when the information becomes available:

(1) The status of each compact with respect to withdrawals or additions of participating jurisdictions; and

(2) Any amendment, supplementary agreement or administrative rule having the force of law and implementing or modifying the compact.

(c) The office of the Secretary of State shall index these documents and make them available for inspection upon request of any person during normal business hours.

(d) The provisions of this section are in addition to other requirements of law for filing, publication or distribution.

(e) Certified copies of interstate compacts entered into by this state prior to the effective date of this section and the information required to be filed under subsection (a) of this section shall be filed with the office of the Secretary of State by the commission, agency or person administering the compacts within ninety days of the effective date of this section.

CHAPTER 127

(S. B. 551 — By Senators Prezioso, Kessler and Hunter)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §27-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-2,
§27-5-3 and §27-5-4 of said code, all relating to institution of proceedings for involuntary custody for examination; addressing procedures regarding custody, probable cause and other hearings; examination of individuals; admission under involuntary hospitalization for examination; release; institution of final commitment proceedings; other hearing requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §27-1-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-2, §27-5-3 and §27-5-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-12. Likely to cause serious harm.

(a) “Likely to cause serious harm” means an individual is exhibiting behaviors consistent with a medically recognized mental disorder or addiction, excluding, however, disorders that are manifested only through antisocial or illegal behavior and as a result of the mental disorder or addiction:

(1) The individual has inflicted or attempted to inflict bodily harm on another;

(2) The individual, by threat or action, has placed others in reasonable fear of physical harm to themselves;

(3) The individual, by action or inaction, presents a danger to himself, herself or others in his or her care;

(4) The individual has threatened or attempted suicide or serious bodily harm to himself or herself; or
(5) The individual is behaving in a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless adequate treatment is afforded.

(b) In making the “likely to cause serious harm” determination, judicial, medical, psychological and other evaluators and decisionmakers should utilize all available information, including psychosocial, medical, hospitalization and psychiatric information and including the circumstances of any previous commitments or convalescent or conditional releases that are relevant to a current situation, in addition to the individual’s current overt behavior. The rules of evidence shall be followed in making the “likely to cause serious harm” determination except that hearsay evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the
individual to be examined is addicted, as defined in section
eleven, article one of this chapter, or is mentally ill and,
because of his or her addiction or mental illness, the individual
is likely to cause serious harm to himself, herself or to others if
allowed to remain at liberty while awaiting an examination and
certification by a physician or psychologist.

Notwithstanding any language in this subsection to the
contrary, if the individual to be examined under the provisions
of this section is incarcerated in a jail, prison or other correc-
tional facility, then only the chief administrative officer of the
facility holding the individual may file the application and the
application must include the additional statement that the
correctional facility itself cannot reasonably provide treatment
and other services for the individual’s mental illness or
addiction.

(b) The person making the application shall make the
application under oath.

(c) Application for involuntary custody for examination
may be made to the circuit court or a mental hygiene commis-
sioner of the county in which the individual resides or of the
county in which he or she may be found. When no circuit court
judge or mental hygiene commissioner is available for immedi-
ate presentation of the application, the application may be made
to a magistrate designated by the chief judge of the judicial
circuit to accept applications and hold probable cause hearings.
A designated magistrate before whom an application or matter
is pending may, upon the availability of a mental hygiene
commissioner or circuit court judge for immediate presentation
of an application or pending matter, transfer the pending matter
or application to the mental hygiene commissioner or circuit
court judge for further proceedings unless otherwise ordered by
the chief judge of the judicial circuit.
(d) The person making the application shall give information and state facts in the application as may be required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner or designated magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in subsection (g) of this section for the purpose of an examination of the individual by a physician, psychologist, a licensed independent clinical social worker practicing in compliance with article thirty, chapter thirty of this code or advanced nurse practitioner with psychiatric certification practicing in compliance with article seven of said chapter: Provided, That a licensed independent clinical social worker or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed independent clinical social worker or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or addiction sufficient to make the determinations as are required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held forthwith and is to provide for the appointment of counsel for the individual: Provided, however, That the order may allow the hearing to be held up to twenty-four hours after the person to be examined is taken into custody rather than forthwith if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane
treatment of persons: *Provided further, That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual’s existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, “psychiatric emergency” means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself or others. Where a physician, psychologist, licensed independent clinical social worker or advanced nurse practitioner with psychiatric certification has within the preceding seventy-two hours performed the examination required by the provisions of this subdivision, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, subsection (r), section four of this article applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or addicted, or is determined to be mentally ill or addicted but not likely to cause harm to himself, herself or others, the individual shall be immediately released without the need for a probable cause hearing and absent a finding of professional negligence the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court or designated magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme
Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate designated by the chief judge of the judicial circuit, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the rules of evidence of the Supreme Court of Appeals, except as provided in section twelve, article one of this chapter. At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself or herself or to others.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for addiction to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law
and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) The magistrate, mental hygiene commissioner or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of section four of this article finds that the individual, as a result of mental illness or addiction, is likely to cause serious harm to himself, herself or others and because of mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the question of whether the individual’s circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit court judge. If the magistrate, mental hygiene commissioner or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or addiction remains likely to cause serious harm to himself, herself or others, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of section three of this article may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable
insurance coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the Department of Health and Human Resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual
may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

(i) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) Admission to a mental health facility for examination. — Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in section two of this article and
upon certification by a physician, psychologist, licensed
independent clinical social worker practicing in compliance
with the provisions of article thirty, chapter thirty of this code
or an advanced nurse practitioner with psychiatric certification
practicing in compliance with article seven of said chapter that
he or she has examined the individual and is of the opinion that
the individual is mentally ill or addicted and, because of such
mental illness or addiction, is likely to cause serious harm to
himself, herself or to others if not immediately restrained:
Provided, That the opinions offered by an independent clinical
social worker or an advanced nurse practitioner with psychiatric
certification must be within their particular areas of expertise,
as recognized by the order of the authorizing court.

(b) Three-day time limitation on examination. — If the
examination does not take place within three days from the date
the individual is taken into custody, the individual shall be
released. If the examination reveals that the individual is not
mentally ill or addicted, the individual shall be released.

(c) Three-day time limitation on certification. — The
certification required in subsection (a) of this section shall be
valid for three days. Any individual with respect to whom the
certification has been issued may not be admitted on the basis
of the certification at any time after the expiration of three days
from the date of the examination.

(d) Findings and conclusions required for certification. —
A certification under this section must include findings and
conclusions of the mental examination, the date, time and place
of the examination and the facts upon which the conclusion that
involuntary commitment is necessary is based.

(e) Notice requirements. — When an individual is admitted
to a mental health facility pursuant to the provisions of this
section, the chief medical officer of the facility shall immedi-
ately give notice of the individual’s admission to the individ-
(f) *Five-day time limitation for examination and certification at mental health facility.* — After the individual’s admission to a mental health facility, he or she may not be detained more than five days, excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is mentally ill or addicted and is likely to injure himself, herself or others if allowed to be at liberty.

(g) *Fifteen-day time limitation for institution of final commitment proceedings.* — If, in the opinion of the examining physician, the patient is mentally ill or addicted and because of the mental illness or addiction is likely to injure himself, herself or others if allowed to be at liberty, the chief medical officer shall, within fifteen days from the date of admission, institute final commitment proceedings as provided in section four of this article. If the proceedings are not instituted within such fifteen-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) *Thirty-day time limitation for conclusion of all proceedings.* — If all proceedings as provided in articles three and four of this chapter are not completed within thirty days from the
§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in section three of this article, no individual may be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility: *Provided,* That, if the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual’s residence.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath and the certificate or affidavit is hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident, or where he or she may be found, or the county of the mental health facility, if he or she is hospitalized in a mental health facility located in a county other than where he or she resides or may be found by an adult person having personal knowledge of the facts of the case.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.
(2) The application shall contain statements by the applicant that he or she believes because of symptoms of mental illness or addiction the individual is likely to cause serious harm to himself, herself or to others and the grounds for the belief, stating in detail the recent overt acts upon which the belief is based.

(3) The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents related thereto, filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual are not open to inspection by any person other than the individual, except upon authorization of the individual or his or her legal representative or by order of the circuit court, and the records may not be published except upon the authorization of the individual or his or her legal representative.

(4) Applications may not be accepted for individuals who only have epilepsy, a mental deficiency or senility.

(d) Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate. —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or addicted and that because of the mental illness or addiction the individual is likely to cause serious harm to himself, herself or to others if he or she is allowed to remain at liberty and therefore he or she should be hospitalized, stating in detail the recent overt acts upon which the conclusion is based.

(2) A certificate is not necessary only when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.
(e) Notice requirements; eight days’ notice required. —

Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing: (1) To the individual; (2) to the applicant or applicants; (3) to the individual’s spouse, one of the parents or guardians, or if the individual does not have a spouse, parents or parent or guardian, to one of the individual’s adult next of kin if the next of kin is not the applicant; (4) to the mental health authorities serving the area; (5) to the circuit court in the county of the individual’s residence if the hearing is to be held in a county other than that of the individual’s residence; and (6) to the prosecuting attorney of the county in which the hearing is to be held. The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify the nature of the charges against the individual; the facts underlying and supporting the application of involuntary commitment; the right to have counsel appointed; the right to consult with and be represented by counsel at every stage of the proceedings; and the time and place of the hearing. The notice to the individual’s spouse, parents or parent or guardian, the individual’s adult next of kin, or to the circuit court in the county of the individual’s residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(f) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or
psychologist to examine the individual and report to the circuit

court or mental hygiene commissioner his or her findings as to

the mental condition or addiction of the individual and the

likelihood of him or her causing serious harm to himself,
herself or to others.

(2) If the designated physician or psychologist reports to the

circuit court or mental hygiene commissioner that the individ-

ual has refused to submit to an examination, the circuit court or

mental hygiene commissioner shall order him or her to submit
to the examination. The circuit court or mental hygiene

commissioner may direct that the individual be detained or
taken into custody for the purpose of an immediate examination

by the designated physician or psychologist. All such orders

shall be directed to the sheriff of the county or other appropriate

law-enforcement officer. After the examination has been

completed, the individual shall be released from custody unless

proceedings are instituted pursuant to section three of this

article.

(3) If the reports of the appointed physician or psychologist
do not confirm that the individual is mentally ill or addicted and
might be harmful to himself, herself or to others then the
proceedings for involuntary hospitalization shall be dismissed.

(g) Rights of the individual at the final commitment

hearing; seven days’ notice to counsel required. —

(1) The individual shall be present at the final commitment

hearing and he or she, the applicant and all persons entitled to

notice of the hearing shall be afforded an opportunity to testify

and to present and cross-examine witnesses.

(2) In the event that the individual has not retained counsel,

the court or mental hygiene commissioner at least six days prior
to hearing shall appoint a competent attorney and shall inform
the individual of the name, address and telephone number of his or her appointed counsel.

(3) The individual has the right to have 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. The cost of the independent expert shall be borne by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(h) *Duties of counsel representing individual; payment of counsel representing indigent.* —

(1) The counsel representing an individual shall conduct a timely interview, make investigation and secure appropriate witnesses and shall be present at the hearing and protect the interest of the individual.

(2) Any counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code.

(i) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.
(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician’s or psychologist’s testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. Any psychologist or physician testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or section two or three of this article, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual, his or her counsel or the prosecuting attorney within thirty days, if it is requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(j) Requisite findings by the court. —

(1) Upon completion of the final commitment hearing, and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to whether or not the individual is mentally ill or addicted and because of illness or addiction is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty and is a
resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county.

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual.

(3) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.

(k) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months.

(2) The individual may not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization to determine whether the original order for a temporary observation period should be modified or changed to an order of
indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

(4) An order for an indeterminate period expires of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the Department of Health and Human Resources, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization: Provided, That if the patient or his or her counsel requests a hearing, then a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(I) Dismissal of proceedings. — If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not because of the illness or addiction likely to cause serious harm to himself, herself or to others if allowed to remain at liberty, the proceedings shall be dismissed.

(m) Immediate notification of order of hospitalization. — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual’s residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(n) Consideration of transcript by circuit court of county of individual’s residence; order of hospitalization; execution of order. —

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the
individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which the individual is a resident, who shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth above, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(o) Order of custody to responsible person. — In lieu of ordering the patient to a mental health facility, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(p) Individual not a resident of this state. — If the individual found to be mentally ill or addicted by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be forthwith given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned
on the agreement of the individual except as qualified by the interstate compact on mental health.

(q) *Report to the Secretary of the Department of Health and Human Resources.* —

(1) The chief medical officer of a mental health facility admitting a patient pursuant to proceedings under this section shall forthwith make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility to comply with the time requirements of this article, the chief medical officer of the mental health facility shall forthwith after the release of the individual make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(r) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* —

(1) The state shall pay the commissioner’s fee and the court reporter fees that are not paid and reimbursed under article twenty-one, chapter twenty-nine of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and witness called by the indigent individual.
AN ACT to amend and reenact §49-5-6 of the Code of West Virginia, 1931, as amended, relating to jury trials in juvenile proceedings; establishing the right to trial by a twelve person jury when a juvenile is accused of acts of juvenile delinquency which constitute a crime if committed by an adult which would subject an adult to incarceration; and eliminating the right to demand trial by jury for status offenses allegedly committed by a juvenile or where the court has ruled pre-trial that incarceration is not a possibility.

Be it enacted by the Legislature of West Virginia:

That §49-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-6. Jury trial under article.

(a) In a proceeding under this article, the juvenile, the juvenile’s counsel or the juvenile’s parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any question of fact, in which the juvenile is accused of any act or acts of delinquency which, if committed by an adult would expose the adult to incarceration.
(b) A juvenile who is charged with a status offense or other offense where incarceration is not a possibility due either to the statutory penalty or where the court rules pre-trial that a sentence of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

(c) The provisions of this section are inapplicable to proceedings held pursuant to the provisions of section thirteen-d of this article.

(d) Juries shall consist of twelve members.

CHAPTER 129

(Com. Sub. for S. B. 517 — By Senators Foster, Unger and Hunter)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §49-5-13a and §49-5-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-3 of said code, all relating to juvenile proceedings and multidisciplinary teams; requiring the Division of Juvenile Services to establish a multidisciplinary team treatment planning process for certain juveniles in its custody; requiring multidisciplinary team to be convened and directed by the Division of Juvenile Services for juveniles committed to its custody by the court for examination and diagnosis; specifying members of the multidisciplinary team; requiring multidisciplinary team to be convened for juveniles prior to discharge from a juvenile correctional facility; authorizing those who convene a multidisciplinary team meeting to obtain an order
of the circuit court setting a hearing and compelling attendance;  
and exceptions to team meeting requirement.

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

That §49-5-13a and §49-5-20 of the Code of West Virginia, 1931,  
as amended, be amended and reenacted; and that §49-5D-3 of said  
code be amended and reenacted, all to read as follows:

**Article  
5D. Multidisciplinary Teams.**

**ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-5-13a. Examination, diagnosis and classification; period of custody.  
§49-5-20. After-care plans.

**§49-5-13a. Examination, diagnosis and classification; period of custody.**

(a) As a part of the dispositional proceeding for a juvenile  
who has been adjudicated delinquent, the court may, upon its  
own motion or upon request of counsel, order the juvenile to be  
delivered into the custody of the Director of the Division of  
Juvenile Services, who shall cause the juvenile to be transferred  
to a juvenile diagnostic center for a period not to exceed sixty  
days. During this period, the juvenile shall undergo examination,  
diagnosis, classification and a complete medical examination  
and shall at all times be kept apart from the general  
juvenile inmate population in the director's custody.

(b) During the examination period established by subsection (a) of  
this section, the director, or his or her designee, shall  
convene and direct a multidisciplinary treatment team for the  
juvenile which team shall include the juvenile, if appropriate,  
the juvenile's probation officer, the juvenile's social worker, if  
any, the juvenile's custodial parent or parents, the juvenile's  
guardian, attorneys representing the juvenile or the parents, the
guardian ad litem, if any, the prosecuting attorney and an appropriate school official or representative. The team may also include, where appropriate, a court-appointed special advocate, a member of a child advocacy center and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.

(c) Not later than sixty days after commitment pursuant to this section the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the Director of the Division of Juvenile Services shall make or cause to be made a report to the court containing the results, findings, conclusions and recommendations of the multidisciplinary team with respect to that juvenile.

§49-5-20. After-care plans.

(a) Prior to the discharge of a juvenile from any institution or facility to which the juvenile was committed pursuant to subdivision (5) or (6), subsection (b), section thirteen of this article, the superintendent of the institution or facility shall call a meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral has been made, convene a multidisciplinary treatment team for any child for which a multidisciplinary treatment plan is required by the provisions of section three, article five-d of this chapter and forward a copy of the juvenile’s proposed after-care plan to the circuit court which committed the juvenile. A copy of the plan shall also be sent to: (1) The juvenile’s parents or legal guardian; (2) the juvenile’s lawyer; (3) the juvenile’s probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school which the juvenile will attend. The plan shall have a list of the names and addresses of these persons attached to it.
(b) The after-care plan shall contain a detailed description of the education, counseling and treatment which the juvenile received while at the institution or facility and it shall also propose a plan for education, counseling and treatment for the juvenile upon the juvenile’s discharge. The plan shall also contain a description of any problems the juvenile has, including the source of those problems, and it shall propose a manner for addressing those problems upon discharge.

(c) Within twenty-one days of receiving the plan, the juvenile’s probation officer or community mental health center professional shall submit written comments upon the plan to the circuit court which committed the juvenile. Any other person who received a copy of the plan pursuant to subsection (a) of this section may submit written comments upon the plan to the circuit court which committed the juvenile. Any person who submits comments upon the plan shall send a copy of those comments to every other person who received a copy of the plan.

(d) Within twenty-one days of receiving the plan, the juvenile’s probation officer or community mental health center professional shall contact all persons, organizations and agencies which are to be involved in executing the plan to determine whether they are capable of executing their responsibilities under the plan and to further determine whether they are willing to execute their responsibilities under the plan.

(e) If adverse comments or objections regarding the plan are submitted to the circuit court, it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the adverse comments or objections. Any person, organization or agency which has responsibilities in executing the plan, or their representatives, may be required to appear at the hearing unless they are excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts
the plan as submitted or as modified in response to any comments or objections.

(f) If no adverse comments or objections are submitted, a hearing need not be held. In that case, the circuit court shall consider the plan as submitted and shall, within forty-five days of receiving the plan, issue an order which adopts the plan as submitted.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which is adopted by the circuit court shall be in the best interests of the juvenile and shall also be in conformity with West Virginia’s interest in youth as embodied in subsection (b), section thirteen of this article.

(h) The circuit court which committed the juvenile shall appoint the juvenile’s probation officer or community mental health center professional to act as supervisor of the plan. The supervisor shall report the juvenile’s progress under the plan to the circuit court every sixty days or until the circuit court determines that no report or no further care is necessary.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor’s advisory council as set forth in section four, article four, chapter seven of this code. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to the custody of the director of the division.

(2) Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are...
victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children for juveniles and their families involved in status offense or delinquency proceedings when, in a status offense proceeding, the court refers the juvenile for services pursuant to sections eleven and eleven-a, article five of this chapter and when, in a delinquency proceeding, the court is considering placing the juvenile in the department’s custody or placing the juvenile out-of-home at the department’s expense pursuant to the provisions of section thirteen of said article. In any such status offense or delinquency case, the juvenile probation officer shall notify the local office of the Department of Health and Human Resources and the Division of Juvenile Services at least five working days before the court proceeding in order to allow the multidisciplinary treatment team to convene and develop a comprehensive individualized service plan for the child:

Provided, That such notice is not required in cases where the child is already in state custody or there exist exigent circumstances which justify taking the child immediately into custody without a judicial proceeding. In developing an individualized service plan for a child, the team shall utilize a uniform comprehensive assessment of the child. The department shall adopt a standard uniform comprehensive assessment instrument or protocol to be used by treatment teams.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.
(b) Each treatment team shall be convened and directed by the child’s or family’s case manager in the Department of Health and Human Resources or the Division of Juvenile Services if the juvenile has been ordered into its custody for examination and diagnosis pursuant to section thirteen, article five of this chapter. The treatment team shall consist of the child’s custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the child, the parent or parents of the child, the child’s attorney, the guardian ad litem, if any, the prosecuting attorney or his or her designee and where appropriate to the particular case under consideration and available, a court-appointed special advocate, a member of a child advocacy center, an appropriate school official and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile probation officer shall be a member of the treatment team. Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) State, county and local agencies shall provide the multidisciplinary treatment teams with any information requested in writing by the team as allowable by law or upon
receipt of a certified copy of the circuit court’s order directing
said agencies to release information in its possession relating to
the child. The team shall assure that all information received
and developed in connection with the provisions of this article
remain confidential. For purposes of this section, the term
“confidential” shall be construed in accordance with the
provisions of section one, article seven of this chapter.

(e) Nothing in this section may be construed to require a
multidisciplinary team meeting to be held prior to temporarily
placing a child out-of-home under exigent circumstances or
upon a court order placing the juvenile in a juvenile facility
operated by the Division of Juvenile Services.

CHAPTER 130

(H. B. 4355 — By Delegates Brown, DeLong, Mahan and Amores)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §48-27-403 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §49-5-7
and §49-5-8 of said code, all relating to custody by
law-enforcement officials of juveniles who are respondents in an
emergency productive order in which the petitioner resides with
the juvenile respondent.

Be it enacted by the Legislature of West Virginia:

That §48–27-403 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; and that §49-5-7 and §49-5-8 of
said code be amended and reenacted, all to read as follows:
ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may deem necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner’s legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final
hearing before the family court and a statement of the right of
the respondent to appear and participate in the final hearing, as
provided in subsection (d) of this section. Copies of any order
entered under the provisions of this section, a notice of the final
hearing before the family court and a statement of the right of
the petitioner to appear and participate in the final hearing, as
provided in subsection (d) of this section, shall also be deliv-
ered to the petitioner. Copies of any order entered shall also be
delivered to any law-enforcement agency having jurisdiction to
enforce the order, including municipal police, the county
sheriff’s office and local office of the State Police, within
twenty-four hours of the entry of the order. An emergency
protective order is effective until modified by order of the
family court upon hearing as provided in subsection (d) of this
section. The order is in full force and effect in every county in
this state.

(c) Subsequent to the entry of the emergency protective
order, service on the respondent and the delivery to the peti-
tioner and law-enforcement officers, the court file shall be
transferred to the office of the clerk of the circuit court for use
by the family court.

(d) The family court shall schedule a final hearing on each
petition in which an emergency protective order has been
entered by a magistrate. The hearing shall be scheduled not
later than ten days following the entry of the order by the
magistrate. The notice of the final hearing shall be served on the
respondent and delivered to the petitioner, as provided in
subsection (b) of this section, and must set forth the hearing
date, time and place and include a statement of the right of the
parties to appear and participate in the final hearing. The notice
must also provide that the petitioner’s failure to appear will
result in a dismissal of the petition and that the respondent’s
failure to appear may result in the entry of a protective order
against him or her for a period of ninety or one hundred eighty
days, as determined by the court. The notice must also include the name, mailing address, physical location and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, or such petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(f) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days. The hearing may be continued on motion of the respondent, at
the convenience of the court. Otherwise, the hearing may be
continued by the court no more than seven days. If a hearing is
continued, the family court may modify the emergency
protection order as it deems necessary.

(h) Notwithstanding any other provision of this code to the
contrary, a petition filed pursuant to this section that results in
the issuance of an emergency protective order naming a
juvenile as the respondent in which the petition for the emer-
gency protective order is filed by or on behalf of the juvenile’s
parent, guardian or custodian or other person with whom the
juvenile resides shall be treated as a petition authorized by
section seven, article five, chapter forty-nine of this code,
alleging the juvenile is a juvenile delinquent: Provided, That the
magistrate court shall notify the prosecuting attorney in the
county where the emergency protective order is issued within
twenty-four hours of the issuance of the emergency protective
order and the prosecuting attorney may file an amended verified
petition to comply with the provisions of subsection (a) of
section seven, article five, chapter forty-nine of this code within
two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents;
subpoena.
§49-5-8. Taking a juvenile into custody.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents;
subpoena.

(a)(1) A petition alleging that a juvenile is a status offender
or a juvenile delinquent may be filed by a person who has
knowledge of or information concerning the facts alleged. The
petition shall be verified by the petitioner, shall set forth the name and address of the juvenile’s parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred: Provided, That any proceeding under this chapter may be removed, for good cause shown, in accordance with the provisions of section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged conduct; a statement of the right to have counsel appointed and consult with counsel at every stage of the proceedings; and the relief sought.

(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing as provided in section nine of this article and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless such respondent cannot be found after diligent search. If any such respondent cannot be found after diligent search, the court may proceed without further requirement of notice: Provided, That the court may order service by
first class mail to the last known address of such respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court or referee.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the court or referee shall forthwith cause the juvenile and his or her parents, guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within ninety-six hours of the time custody began and if the petition is not served within that time, the juvenile shall be released forthwith.

(e) The clerk of the court shall promptly notify the local office of the Department of Health and Human Resources of all proceedings under this article, which shall then be responsible for convening and directing the multi-disciplinary treatment planning process in accordance with the provisions of section three, article five-d of this chapter: Provided, That in status offense or delinquency cases where a case manager has not been assigned, the juvenile probation officer shall be responsible for notifying the local office of the Department of Health and Human Services which will assign a case manager who will initiate assessment and be responsible for convening and directing the multi-disciplinary treatment planning process.

(f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code in which the petition for the emergency protective order is filed by or on
69 behalf of the juvenile’s parent, guardian or custodian or other
70 person with whom the juvenile resides and that results in the
71 issuance of an emergency protective order naming a juvenile as
72 the respondent, shall be treated as a petition authorized by this
73 section, alleging the juvenile is a juvenile delinquent: Provided,
74 That the magistrate court shall notify the prosecuting attorney
75 in the county where the emergency protective order is issued
76 within twenty-four hours of the issuance of the emergency
77 protective order and the prosecuting attorney may file an
78 amended verified petition to comply with the provisions of
79 subsection (a) of this section within two judicial days.

§49-5-8. Taking a juvenile into custody.

(a) In proceedings formally instituted by the filing of a
1 juvenile petition, the circuit court, a juvenile referee or a
2 magistrate may issue an order directing that a juvenile be taken
3 into custody before adjudication only upon a showing of
4 probable cause to believe that one of the following conditions
5 exists: (1) The petition shows that grounds exist for the arrest
6 of an adult in identical circumstances; (2) the health, safety and
7 welfare of the juvenile demand such custody; (3) the juvenile
8 is a fugitive from a lawful custody or commitment order of a
9 juvenile court; or (4) the juvenile is alleged to be a juvenile
delinquent with a record of willful failure to appear at juvenile
10 proceedings and custody is necessary to assure his or her
11 presence before the court. A detention hearing pursuant to
12 section eight-a of this article shall be held by the judge, juvenile
13 referee or magistrate authorized to conduct such hearings
14 without unnecessary delay and in no event may any delay
15 exceed the next day.

(b) Absent a court order, a juvenile may be taken into
18 custody by a law-enforcement official only if one of the
19 following conditions exists: (1) Grounds exist for the arrest of
20 an adult in identical circumstances; (2) emergency conditions
exist which, in the judgment of the officer, pose imminent
danger to the health, safety and welfare of the juvenile; (3) the
official has reasonable grounds to believe that the juvenile has
left the care of his or her parents, guardian or custodian without
the consent of such person, and the health, safety and welfare
of the juvenile is endangered; (4) the juvenile is a fugitive from
a lawful custody or commitment order of a juvenile court; (5)
the official has reasonable grounds to believe the juvenile to
have been driving a motor vehicle with any amount of alcohol
in his or her blood; or (6) the juvenile is the named respondent
in an emergency protective order issued pursuant to section four
hundred three, article twenty-seven, chapter forty-eight of this
code and the individual filing the petition for the emergency
protective order is the juvenile’s parent, guardian, or custodian
or other person with whom the juvenile resides.

(c) Upon taking a juvenile into custody, with or without a
court order, the official shall:

(1) Immediately notify the juvenile’s parent, guardian,
custodian or, if the parent, guardian or custodian cannot be
located, a close relative;

(2) Release the juvenile into the custody of his or her
parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious
bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody
the juvenile can be delivered: Provided, That each day the
juvenile is detained, a written record must be made of all
attempts to locate such a responsible adult; or

(C) The juvenile has been taken into custody for an alleged
act of delinquency for which secure detention is permissible.
(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6) of subsection (b), immediately notify the Department of Health and Human Resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a juvenile referee or judge of the circuit court for a detention hearing pursuant to section eight-a of this article: Provided, That if no judge or juvenile referee is then available in the county, the official shall take the juvenile without unnecessary delay before any magistrate then available in the county for the sole purpose of conducting such a detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the court or juvenile referee. The sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile’s right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff’s or detention center director’s custody, that official shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile has been placed in detention after a hearing conducted pursuant to section eight-a of this article.
AN ACT to repeal §21-1C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21-1C-5 of said code, relating to continuing the West Virginia Jobs Act; and requiring annual reports by the Division of Labor.

Be it enacted by the Legislature of West Virginia:

That §21-1C-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §21-1C-5 of said code be amended and reenacted to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-5. Applicability and scope of article; reporting requirements.

1 (a) This article applies to expenditures for construction projects by any public authority for public improvements as defined by this article.

(b) For public improvement projects let pursuant to this article, the public authority shall file, or require an employer as defined in section two of this article to file, with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to article five-a of this chapter, or other comparable
documents that include the number of employees, the county and state wherein the employees reside and their occupation.

(c) The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by the fifteenth day of October. The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division’s method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this article.

(d) Each public authority has the duty to implement the reporting requirements of this article. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this article.

(e) The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in section six of this article and transmittal of data to the Joint Committee on Government and Finance.

CHAPTER 132

(Com. Sub. for H. B. 4454 — By Mr. Speaker, Mr. Kiss, and Delegates Morgan, Pethtel, Stemple, Trump, Amores, Schadler, Hartman, Sobonya, Craig and Azinger)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to wages withheld from an employee;
and providing that liquidated damages will equal three times the amount of wages unpaid when due.

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

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

§21-5-4. Cash orders; employees separated from payroll before paydays.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of such checks by employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, such person, firm or corporation shall pay the employee’s wages in full within seventy-two hours.

(c) Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee’s wages no later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period’s notice of intention to quit the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to such employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.
(e) If a person, firm or corporation fails to pay an employee wages as required under this section, such person, firm or corporation shall, in addition to the amount which was unpaid when due, be liable to the employee for three times that unpaid amount as liquidated damages. Every employee shall have such lien and all other rights and remedies for the protection and enforcement of such salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of such liquidated damages, such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon such petition.

CHAPTER 133

(H. B. 4479 — By Delegates Pethtel, Poling, Cann, Frederick, Browning, Martin, Talbott and Hartman)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §21-9-9 and §21-9-10 of the Code of West Virginia, 1931, as amended, all relating to Manufactured Housing Construction and Safety Standards; creating a fund; providing for spending from certain funds; and authorizing the assessment of annual fees in satisfaction of assurance requirements.

Be it enacted by the Legislature of West Virginia:

That §21-9-9 and §21-9-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:
ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

§21-9-10. Licensee to furnish bond or other form of assurance.

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

(a) No manufacturer, dealer, distributor or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within thirty days after proper and complete application. All licenses shall expire on the thirtieth day of June of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of thirty days.

(c) The annual license fees shall be in the amounts prescribed from time to time by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, three hundred dollars;

(2) For dealers, one hundred dollars;

(3) For distributors, one hundred dollars; and

(4) For contractors, fifty dollars: Provided, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in article eleven of this chapter, has paid the annual license fee under section eight,
article eleven of this chapter and has furnished bond or other
assurance or fee under section ten of this article, he or she shall
not be required to pay the annual license fee set forth in this
section.

(d) The board shall prescribe the form of license and each
license shall have affixed thereon the seal of the State Division
of Labor.

(e) Each licensee shall conspicuously display the license in
its established place of business.

(f) Pursuant to such rules and regulations as may be
promulgated by the board, the board may deny the issuance of
a license or revoke or suspend any license.

(g) All license fees collected shall be deposited in a special
account in the State Treasury to be known as the “State Manu-
factured Housing Administration Fund”. Expenditures from the
fund shall be for the administration of the provisions of 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 two, chapter
eleven-b of this code: Provided, That for the fiscal year ending
the thirtieth day of June, 2006, expenditures are authorized
from collections rather than pursuant to appropriation by the
Legislature.

§21-9-10. Licensee to furnish bond or other form of assurance.

(a) Each manufacturer, dealer, distributor or contractor
which applies for a license under section nine of this article
shall, at the time of making application for the license, furnish
a surety bond or any other form of assurance of the applicant’s
financial responsibility permitted by the board by rule or
regulation, the surety bond or other form of assurance to be in
the amount prescribed by rule or regulation. In the event of
forfeiture of any bond or security, the proceeds thereof shall be deposited in the special account continued in subsection (c) of this section.

(b) The board may assess an annual fee on licensees in satisfaction of the surety bond or other form of assurance required by subsection (a). This annual fee shall be in the amounts prescribed from time to time by legislative rules promulgated by the board but in no event less than the following amounts:

(1) For each manufacturer’s licensed business location, two thousand five hundred dollars;

(2) For each dealer’s and/or distributor’s licensed business location, one thousand dollars;

(3) For each licensed contractor, five hundred dollars.

(c) All fees collected from fees assessed pursuant to this section or the proceeds from the forfeiture of any bond or other security provided pursuant to this section or any fines paid to the board shall be deposited in the special account in the State Treasury known as the “State Manufactured Housing Recovery Fund”. Expenditures from the fund shall be for the purposes set forth in subsection (d) of this section. The assets of the fund may be invested and reinvested by the board in accordance with applicable law. Interest revenues derived from the fund shall be used solely to maintain the fund. If the balance of the fund on the thirtieth day of June of any year equals or exceeds three hundred thousand dollars, no assessments shall be collected from any previously licensed manufacturer, dealer, distributor or contractor for the next licensure period. New applicants for licensure shall pay the applicable assessment fee regardless of the balance of the fund. The board is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the board determines
that the assessments are necessary to maintain the fiscal
integrity of the fund. In no event may a special assessment be
issued by the board until or unless the balance of the fund falls
below two hundred fifty thousand dollars.

(d) Moneys in the fund shall cover any misappropriation of
funds of a purchaser or prospective purchaser of a manufac-
tured home, any deception or false or fraudulent representations
or deceitful practices in selling or representing a product, any
failure by a licensee, because of bankruptcy, insolvency or
other reason, to fulfill warranty obligations and any failure of
the licensee, its agents or employees, to comply with federal
standards, this article or any rules or regulations promulgated
by the board pursuant to this article: Provided, That any
payment to purchasers or prospective purchasers by the board
from licensee bonds or other forms of financial assurance shall
not include punitive or exemplary damages, any compensation
for property damage other than to the manufactured home, any
recompense for any personal injury or inconvenience, any
reimbursement for alternate housing, or any payments for
attorney fees, legal expenses or court costs.

CHAPTER 134

(S. B. 479 — By Senators Kessler, Dempsey, Fanning, Foster,
Hunter, Jenkins, Minard, Oliverio, White, Caruth,
Deem, Harrison, Lanham and Weeks)

[Passed March 8, 2006; in effect from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §15-11-2 of the Code of West
Virginia, 1931, as amended, relating to expanding the funeral
expense payment benefit to include all probation officers killed in the line of duty.

Be it enacted by the Legislature of West Virginia:

That §15-11-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

(a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding eight thousand dollars for the reasonable funeral expenses, including burial expenses, of a law-enforcement, safety or emergency worker killed on or after the first day of January, one thousand nine hundred ninety-nine, while carrying out official duties: Provided, That no funds shall be expended for any funeral expense that is otherwise payable pursuant to the provisions of article four, chapter twenty-three of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: Provided, however, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than eight thousand dollars, funds provided by the provisions of this section shall be expended so as to ensure that at least eight thousand dollars is available for reasonable funeral expenses. The secretary shall direct payment of the funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.
(b) The secretary shall supply the draft in the name of the person contracting for the funeral services and, if known, the service provider to the employer or agency head making the request who shall tender the draft to the person who contracted for the services.

(c) For the purposes of this section, “law-enforcement, safety or emergency worker” means:

(1) Any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, and including those persons employed as security officers at municipal, county, regional or state offices, authorities or institutions, although their employers may not be public law-enforcement agencies, employed by the Hatfield-McCoy Regional Recreation Authority and members of the West Virginia National Guard while engaged in active duty service: Provided, That this section does not apply to those persons employed by private security firms or agencies;

(2) Any state, regional, county or municipal correctional employee;

(3) Any firefighter employed by the state or any political subdivision of the state and any volunteer firefighter performing as a member of a volunteer fire department;

(4) Any “emergency medical services personnel”, as defined in section three, article four-c, chapter sixteen of this code, employed by or volunteering for any state agency or institution or political subdivision of the state; or

(5) Any probation officer appointed under the provisions of either section five, article twelve, chapters sixty-two of this code or section fifteen, article five, chapter forty-nine of this code.
AN ACT to amend and reenact §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, all relating to definitions and modifications of exemptions from notification and licensure with respect to lead abatement.

Be it enacted by the Legislature of West Virginia:

That §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 35. LEAD ABATEMENT.


§16-35-7. Exemptions from notification and licensure.


(a) “Abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;
(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

(3) Projects for which there is a written contract to permanently eliminate lead-based paint hazards from a dwelling unit or child-occupied building;

(4) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil; and

(5) Projects involving the permanent elimination of lead-based paint hazards that are conducted in response to federal, state or local abatement orders.

(b) "Child lead poisoning" means that the amount of lead circulating in the blood stream of children is at or exceeds the level defined by the United States center for disease control.

c) "Child-occupied building" means any of the following structures built before one thousand nine hundred seventy-eight: Public or private buildings, or portions thereof, or a room in a residential dwelling or unit, any of which structures are currently visited, or intended to be visited, three hours a day twice a week or more often by a child age six or under, including, but not limited to, day care centers, kindergarten classrooms, schools, camps and recreational facilities.

d) "Contained work area" means a designated room or rooms, spaces, or other areas, including a decontamination structure, where lead abatement activities are performed, separated from the uncontaminated environment in accordance with OSHA standards.

e) "Commissioner" means the Commissioner of the West Virginia Bureau for Public Health or his or her representative.

(f) "Discipline" means any one of the following: Lead abatement contractor, lead abatement supervisor, lead inspector,
lead risk assessor, lead abatement worker, or lead abatement project designer.

(g) “Elevated blood-lead level” means a concentration of lead in the blood stream as defined by the United States Center for Disease Control.

(h) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings or other industrial structures including the land on which it is located.

(i) “Inspection” means a surface-by-surface investigation to determine the presence of lead-based paint or lead hazards and the provision of a report explaining the results of the investigation.

(j) “Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(k) “Lead” means elemental lead and all inorganic and organic lead compounds.

(l) “Lead abatement contractor” means any person who contracts to conduct any lead abatement activity.

(m) “Lead abatement designer” means an individual who designs lead abatement projects and occupant protection plans.

(n) “Lead abatement project” means an activity in target housing or child-occupied buildings intended to permanently remove or encapsulate lead-based paint, lead-containing dust, lead-containing soil or other lead-containing materials and
decontamination of an area, but does not include interim
controls which do not permanently eliminate lead hazards.

(o) “Lead abatement worker” means an individual who is
employed by a lead abatement contractor for a lead abatement
project.

(p) “Lead-based paint” means paint or other surface
coatings that contains lead at a level defined by the commis-
sioner by legislative rule as provided in section four of this
article.

(q) “Lead hazard” means any condition that may result in
exposure to lead including, but not limited to, lead-contaminated dust, lead-contaminated soil, or lead-based
paint present on accessible surfaces, friction surfaces, impact
surfaces or other lead sources that could result in adverse
effects on human health.

(r) “Lead inspector” means an individual who conducts
inspections to determine and report the existence, nature, severity and location of lead-based paint or lead hazards.

(s) “Lead risk assessment” means an investigation of the
potential risk to human health or the environment posed by lead
abatement projects or lead hazards, including, but not limited
to, considerations of toxicity, concentration, form, mobility and
potential of exposure.

(t) “Lead risk assessor” means an individual who is
responsible for or conducts lead risk assessments and estab-
ishes priorities for a lead abatement project.

(u) “Lead supervisor” means a person employed by a lead
abatement contractor to supervise workers on a lead abatement
project, to develop occupant protection plans and to develop
abatement reports.
(v) “OSHA” means the United States Occupational Safety and Health Administration.

(w) “Owner-occupied housing” means a detached single unit residence owned by the individual living within the unit.

(x) “Person” means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit, or instrumentality of federal, state or local government.

(y) “Target housing” means residential structures built prior to one thousand nine hundred seventy-eight or residential structures that are confirmed by inspection to contain lead-based paint.

§16-35-7. Exemptions from notification and licensure.

(a) Homeowners performing lead abatement or interim abatement controls on their single unit owner-occupied housing are exempt from the requirements of this article: Provided, That the provisions of this section do not apply to any residential dwelling occupied by a person or persons other than the owner or the owner’s immediate family as well as to any residential dwelling where a child with a documented elevated blood lead level resides.

(b) Abatement does not include renovation, remodeling, landscaping or other activities, when the purpose of such activities are not intended to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Abatement also does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently reduce lead-based paint hazards.
(c) The provisions of this article do not apply to lead-hazard
reduction activities or to persons performing such activities
when such activities are performed wholly within or on an
industrial facility and are performed by persons who are subject
to the training requirements of OSHA: Provided, That the
provisions of this article do apply to any child-occupied
building or area such as a child day care center located at an
industrial facility.

CHAPTER 136

(H. B. 4774 — By Delegates Amores, Schadler and Mahan)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §29A-2-7 of the Code of West
Virginia, 1931, as amended, relating to the publication of the code
of state rules; permitting the technical changes to the procedure
governing the publication of the rules; and allowing the use of
electronic media.

Be it enacted by the Legislature of West Virginia:

That §29A-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:


(a) The Legislature intends that the secretary of state offer
to the public convenient and efficient access to copies of the
state register or parts thereof desired by the citizens. The
provisions of this section are enacted in order to provide a
means of doing so pending any other means provided by law or
legislative rule.

(b) All materials filed in the state register shall be indexed
daily in chronological order of filing with a brief description of
the item filed and a columnar cross index to (1) agency and (2)
section, article and chapter of the code to which it relates and
by which it is filed in the state register and (3) such other
information in the description or cross index as the secretary of
state believes will aid a citizen in using the chronological index.

(c) To give users of the code of state rules a means to know
whether the rule is being superseded by a version of the rule
that has become effective, but not yet been final-filed, prepared,
proofed and distributed, or may be superseded by a rule which
is being proposed and promulgated pursuant to article three but
not yet become final, the Secretary of State shall provide with
each update of the code of state rules, a copy of the rule monitor
and its cross index which shows the rules that have become
effective but not yet distributed and the rules which may be
superseded by a rule which is being proposed. The copy of the
rule monitor distributed with the updates of the code of state
rules shall state plainly that this version of the rule monitor only
shows the status of the promulgation of rules as of the date of
distribution of the update of the code of state rules, and that to
obtain the most recent status of the rules, the user should
consult the rule monitor in the most recent publication of the
state register. With the first distribution to the loose leaf version
of the code of state rules the Secretary of State shall also
distribute a divider where the current rule monitor shall be
maintained. With the first distribution, the Secretary of State
shall also include instructions, with a copy for insertion in or on
the front of each volume of the loose-leaf versions of the code
of state rules, to users on how the rule monitor can be utilized
to determine whether the version of the rule in the code of state
rules is currently in effect. This subsection is not to be con-
strued to require that subscribers to the updates of the code of state rules receive a subscription to the state register.

(d) The Secretary of State shall cause to be duplicated in such number as shall be required, on white paper with three punches suitable for fastening in three-ring binders or electronic media, the permanent biennial state register, the chronological index and other materials filed in the register, or any part by agency or section, article or chapter for subscription at a cost including labor, paper and postage, sufficient in his judgment to defray the expense of such duplication. The Secretary of State shall also offer, at least at monthly intervals, supplements to the published materials listed above. Any subscription for monthly supplements shall be offered annually and shall include the chronological index and materials related to such agency or agencies, or section, article or chapter of the code as a person may designate. A person may limit the request to notices only, to notices and rules, or to notices and proposed rules, or any combination thereof.

(e) Every two years, the Secretary of State shall offer for purchase succeeding biennial permanent state registers which shall consist of all rules effective on the date of publication selected by the Secretary of State, which date shall be at least two years from the last such publication date, and materials filed in the state register relating thereto. The cost of the succeeding biennial permanent state register and for the portion relating to any agency or any section, article or chapter of the code which may be designated by a person purchasing the same shall be fixed in the same manner specified in section eleven of this article.

(f) The Secretary of State may omit from any duplication made pursuant to subsection (e) of this section any rules the duplication of which would be unduly cumbersome, expensive or otherwise inexpedient, if a copy of such rules is made
available from the original filing of such rule, at a price not exceeding the cost of duplication, and if the volume from which such rule is omitted includes a notice in that portion of the publication in which the rule would have been located, stating (1) the general subject matter of the omitted rule, (2) each section, article and chapter of this code to which the omitted rule relates, and (3) the means by which a copy of the omitted rule may be obtained.

(g) The Secretary of State may propose changes to the procedures outlined in the section above by proposing a legislative rule under the provisions of section nine, article three of this chapter, but may promulgate no rules containing those changes unless authorized by the Legislature pursuant to article three of this chapter.

(h) Beginning the first day of July, two thousand one, one half of the fees and amounts collected for the sale of the state register, the code of state rules and other copies or data provided by the Secretary of State shall be deposited in the state general revenue fund and one half of the fees in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled "state register" as established by chapter one hundred twenty-one, acts of the Legislature, regular session, one thousand nine hundred eighty-two, shall be transferred to 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.
CHAPTER 137

(Com. Sub. for H. B. 4172 — By Delegates Mahan, Palumbo, Cann, Pino, Armstead and Overington)

[Amended and again passed March 19, 2006, as a result of the objections of the Governor; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; the promulgation of administrative rules by the Department of Administration and the procedures relating thereto legislative mandate or authorization; the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to selecting de-
sign-builders under the Design Build Procurement Act; disapproving promulgation of a rule by the Department of Administration relating to cannibalization of state property; disapproving promulgation of a rule by the Department of Administration relating to waste disposal of state property; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers’ Defined Benefit Plan; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; authorizing the Ethics Commission to promulgate a legislative rule relating to complaints, investigations and hearings; authorizing the Ethics Commission to promulgate a legislative rule relating to lobbying; authorizing the Ethics Commission to promulgate a legislative rule relating to a code of conduct for administrative law judges; authorizing the Ethics Commission to promulgate a legislative rule relating to the filing of verified time records; authorizing the Ethics Commission to promulgate a legislative rule relating to compliance audits; and authorizing the Ethics Commission to promulgate a legislative rule relating to ethics training requirements for designated public officials.

Be it enacted by the Legislature of West Virginia:

That § 64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:
Article

2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the Code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section forty-two, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Department of Administration (Leasing space on behalf of state spending
units, 148 CSR 2), is authorized, with the following amendments:

On page one, subsection 3.2, following the word “re-requested” and the comma by striking out the remainder of subsection 3.2;

And,

On page seven, subsection 12.4, by striking out the word “disbar” and inserting in lieu thereof the word “debar”.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section six, article twenty-two-a, chapter five of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand six, relating to the Department of Administration (Selecting design-builders under the Design Build Procurement Act, 148 CSR 11), is authorized, with the following amendments:

On page seven, subsection 13.2, following the word “Agency” by striking out the remainder of subsection 13.2 and inserting in lieu thereof the following: “at any time prior to the start of construction if any requirement of the project is not satisfied.”; and

On page eight, following subsection 14.7 by inserting the following:


15.1. If an application for a Design-Build proposal is filed which indicates a public emergency, the Design-Build Board shall take immediate action to determine if the project meets the criteria for a design-build project.
15.2. If the criteria are satisfied, the board shall meet to approve or disapprove the application. If this situation occurs, the board shall file a notice of emergency meeting with the Secretary of State in accordance with the Open Governmental Meetings Act.

15.3. A design-build project application may not indicate a public emergency if the emergency indicated is the result of self-imposed hardships, such as, neglect, poor planning, or a lack of organization by the applicant.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section forty-five, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand five, relating to the Department of Administration (Cannibalization of state property, 148 CSR 16), is disapproved and not authorized.

(d) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section forty-five, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand five, relating to the Department of Administration (Waste disposal of state property, 148 CSR 17), is disapproved and not authorized.


(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the Consolidated Public Retirement Board to
meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Consolidated Public Retirement Board (Benefit determination and appeal, 162 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Consolidated Public Retirement Board (Teachers’ Defined Benefit Plan, 162 CSR 4), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of January, two thousand six, relating to the Consolidated Public Retirement Board (Service credit for accrued and unused sick and annual leave, 162 CSR 8), is authorized, with the following amendment:

On page four, line twenty-seven, by striking out subsection 7.2 in its entirety and inserting in lieu thereof the following:

“7.2. Limitation on the Accrual of Unused Sick and Annual Leave. – If the West Virginia State Police policy for the accrual of unused sick and annual leave is more generous than that of the State of West Virginia for its state agency employees, trooper members shall receive service credit only for unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the
7.2.1. Except as provided in 7.2.2 of this rule, for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, a trooper member with up to 480 hours (60 work days) accrued and unused annual leave that was carried forward from 2005 to 2006 may carry forward accrued and unused annual leave from 2006 to 2007 in an amount not to exceed either the amount of accrued and unused annual leave actually carried over from 2005 to 2006 or the amount of accrued and unused annual leave actually remaining to the trooper member at the expiration of calendar year 2006, whichever is lesser. At the end of each calendar year thereafter, the trooper member may carry over the lesser of the amount carried over the previous year or the amount actually remaining to the trooper member at the expiration of calendar year.

7.2.2. If the amount of a trooper member’s unused annual leave carried over from 2005 to 2006, or from any year to the next thereafter, is less than the amount of unused annual leave permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, the provisions of 7.2.1 of this rule do not apply and the trooper member shall thereafter be governed by the provisions of 7.2 of this rule and for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, is permitted to carry over annual leave up to but not exceeding the amounts permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

7.2.3. The provisions of this rule govern the determination of service credit that may be received by a trooper member for accrued and unused annual leave, and may not be construed to
supersede any West Virginia State Police policy for the accrual
of unused sick and annual leave applicable to contributing
trooper members before retirement.”

(d) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand five, authorized under
the authority of section one, article ten-d, chapter five of this
code, modified by the Consolidated Public Retirement Board to
meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the third day of
January, two thousand six, relating to the Consolidated Public
Retirement Board (West Virginia State Police, 162 CSR 9), is
authorized.

(e) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand five, authorized under
the authority of section one, article ten-d, chapter five of this
code, modified by the Consolidated Public Retirement Board to
meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the third day of
January, two thousand six, relating to the Consolidated Public
Retirement Board (Deputy Sheriff Retirement System, 162 CSR
10), is authorized.


(a) The legislative rule filed in the State Register on the
twentieth day of July, two thousand five, authorized under the
authority of section two, article two, chapter six-b of this code,
modified by the Ethics Commission to meet the objections of
the Legislative Rule-Making Review Committee and refiled in
the State Register on the twentieth day of January, two thousand
six, relating to the Ethics Commission (West Virginia Ethics
Commission, 158 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the
twentieth day of July, two thousand five, authorized under the
authority of section two, article two, chapter six-b of this code, relating to the Ethics Commission (Complaints, investigations and hearings, 158 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand six, relating to the Ethics Commission (Lobbying, 158 CSR 12), is authorized.

(d) The legislative rule filed in the State Register on the twentieth day of July, two thousand five, authorized under the authority of section five-a, article two, chapter six-b of this code, relating to the Ethics Commission (code of conduct for administrative law judges, 158 CSR 13), is authorized.

(e) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, relating to the Ethics Commission (filing of verified time records, 158 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on the twentieth day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand six, relating to the Ethics Commission (Compliance audits, 158 CSR 15), is authorized.

(g) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section two, article two, chapter six-b of this code,
code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refilled in the State Register on the twentieth day of January, two thousand six, relating to the Ethics Commission (Ethics training requirements for designated public officials, 158 CSR 18), is authorized.

CHAPTER 138

(Com. Sub. for H. B. 4135 — By Delegates Mahan, Palumbo, Cann, Pino, Armstead and Overington)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; directing studies and reports to the Legislature and further rulemaking in certain circum-
stances; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Nox Budget Trading Program as a means of the control and reduction of nitrogen oxides from non-electric generating units as a means to mitigate the transport of ozone precursors; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources Pursuant to 40 CFR Part 60; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Mercury Budget Trading Program to reduce mercury emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions to mitigate interstate transport of fine particulate matter and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxide emissions to mitigate interstate transport of ozone and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual sulfur dioxide emissions to mitigate interstate transport of fine particulate matter and sulfur dioxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to coalbed methane wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Oil and Gas Conservation Commission; authorizing the Department of Environment-
tal Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Community Infrastructure Investment Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Environmental Excellence Program.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of Environmental Protection.

§64-3-2. Oil and Gas Conservation Commission.

§64-3-3. Directing further study of 45CSR37.

§64-3-4. Directing further study of 35CSR3.

§64-3-1. Division of Environmental Protection.

1 (a) The legislative rule filed in the state register on the twenty-second day of March, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (Nox Budget Trading Program as a means of the control and reduction of nitrogen oxides from non-electric generating units as a means to mitigate the transport of ozone precursors, 45 CSR 1), is authorized.
(b) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15), is authorized.

(c) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(e) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (Mercury Budget Trading Program to reduce mercury emissions, 45 CSR 37), is authorized.

(g) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under
the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of annual nitrogen oxide emissions to mitigate interstate transport of fine particulate matter and nitrogen oxides, 45 CSR 39), is authorized.

(h) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of ozone season nitrogen oxide emissions to mitigate interstate transport of ozone and nitrogen oxides, 45 CSR 40), is authorized.

(i) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of annual sulfur dioxide emissions to mitigate interstate transport of fine particulate matter and sulfur dioxides, 45 CSR 41), is authorized.

(j) The legislative rule filed in the state register on the second day of November, two thousand five, authorized under the authority of section four, article three, chapter twenty-two, of this code, relating to the Department of Environmental Protection (West Virginia surface mining reclamation, 38 CSR 2), is authorized, with the following amendments:

On page seventy-one, section two, paragraph §38-2.7.2.e.1, after line five, by inserting a new paragraph, designated §38-2.7.2.e.1, to read as follows:

§38-2.7.2.e.1. Bio-oil Cropland. Agricultural production of renewable energy crops through long-term intensive cultivation of close-growing commercial biological oil species (such as soybeans, rapeseed or canola) for harvest and ultimate
production of bio-fuels as an alternative to petroleum based fuels and other valuable products;

On page seventy-one, section two, paragraph §38-2.7.3.d, after §38-2.7.3.c, by inserting a new paragraph, designated §38-2.7.3.d, to read as follows:

§38-2.7.3.d. A change in postmining land use to bio-oil cropland constitutes an equal or better use of the affected land, as compared with pre-mining use for purposes of W. Va. Code §22-3-13(c) in the determination of variances of approximate original contour for mountaintop removal operations subject to §38-2-7.8 of this rule;

On page one hundred two, after §38-2-7.7.f.3, by inserting a new subsection, designated §38-2-7.8, to read as follows:


7.8.1.a. An alternative postmining land use for bio-oil cropland may be approved by the secretary after consultation with the landowner and/or land management agency having jurisdiction over state or federal lands: Provided, That the following conditions have been met.

7.8.1.a.1. There is a reasonable likelihood for the achievement of bio-oil crop production (such as soybeans, rapeseed or canola) as witnessed by a contract between the landowner and a commercially viable individual or entity, binding the parties to the production of bio-oil crops for a measurement period of at least two years after the completion of all restoration activity within the permitted boundaries;

7.8.1.a.2. The bio-oil crop reclamation plan is reviewed and approved by an agronomist employed by the West Virginia
Department of Agriculture. The applicants shall pay for any review under this section;

7.8.1.a.3. The use does not present any actual or probable hazard to the public health or safety or threat of water diminution or pollution;

7.8.1.a.4. Bio-oil crop production is not:

7.8.1.a.4.A. Impractical or unreasonable;

7.8.1.a.4.B. Inconsistent with applicable land use policies or plans;

7.8.1.a.4.C. Going to involve unreasonable delays in implementation; or

7.8.1.a.4.D. In violation of any applicable law.

7.8.2. Soil reconstruction specifications for bio-oil crop postmining land use shall be established by the W. Va. Department of Agriculture in consultation with the U. S. Natural Resources Conservation Service and based upon the standards of the National Cooperative Soil Survey and shall include, at a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that constructed soils will have the capability of achieving levels of yield equal to, or higher than, those required for the production of commercial seed oils species (such as soybeans, rapeseed or canola) and meets the requirement of 14.3 of this rule.

7.8.3. Bond Release.

7.8.3.a. Phase I bond release shall not be approved until W. Va. Department of Agriculture certifies and the secretary finds that the soil meets the criteria established in this rule and has
been placed in accordance with this rule. The applicants shall pay for any review under this section.

7.8.3.b. The secretary may authorize in consultation with the W. Va. Department of Agriculture, the Phase III bond release only after the applicant affirmatively demonstrates, and the secretary finds, that the reclaimed land can support bio-oil production; and there is a binding contract for production which meets the requirements of subdivision 7.8.1.a of this rule; and the requirements of paragraph 9.3.f.2 of this rule are met. The applicant shall pay for any review under this section.

7.8.3.c. Once final bond release is authorized, the permittee's responsibility for implementing the bio-oil cropland reclamation plan shall cease.

(k) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section four, article twenty-one, chapter twenty-two, of this code, relating to the Department of Environmental Protection (coalbed methane wells, 35 CSR 3), is authorized.

(l) The legislative rule filed in the state register on the nineteenth day of July, two thousand five, authorized under the authority of section five, article fifteen, chapter twenty-two, of this code, relating to the Department of Environmental Protection (solid waste management, 33 CSR 1), is authorized.

(m) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section six, article eighteen, chapter twenty-two, of this code, relating to the Department of Environmental Protection (hazardous waste management, 33 CSR 20), is authorized.

(n) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under
the authority of section seven-b, article eleven, chapter twenty-two, of this code, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized.

(o) The legislative rule filed in the state register on the twenty-sixth day of October, two thousand five, authorized under the authority of section nine, article twenty-eight, chapter twenty-two, of this code, relating to the Department of Environmental Protection (Community Infrastructure Investment Program, 47 CSR 61), is authorized.

(p) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, two thousand five, relating to the Department of Environmental Protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(q) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article twenty-five, chapter twenty-two, of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, two thousand six, relating to the Department of Environmental Protection (Environmental Excellence Program, 60 CSR 8), is authorized.

§64-3-2. Oil and Gas Conservation Commission.

The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the
authority of section five, article nine, chapter twenty-two-c, of
this code, relating to the Department of Environmental
Protection (rules of the Commission, 39 CSR 1), is authorized.

§64-3-3. Directing further study of 45CSR37.

(a) The Legislature declares that mercury is highly toxic,
persistent and bioaccumulates in the food chain and is trans-
ported through the atmosphere and deposits on land and water
bodies, and according to the Environmental Protection Agency,
other serious human health risks, known and unknown, may
result from human exposure of mercury in any amount.
Emissions from electric utility coal fired steam generating units
and other industrial activities cause significant discharges of
mercury in West Virginia, therefore, it is appropriate to closely
monitor these activities and study this pollutant.

(b) The Commissioner of the Bureau for Public Health,
pursuant to and consistent with section six, article one, chapter
sixteen of this code, is directed to participate with the Depart-
ment of Environmental Protection to conduct an assessment on
the actual and potential human health pathways and risks from
mercury consumption and make appropriate recommendations
to the Department of Environmental Protection.

(c) Pursuant to and consistent with section three-a, article
one, chapter twenty-two of this code, The Division of Air
Quality and the Department of Environmental Protection are
directed to further study 45CSR37 [Mercury Budget Trading
Program to Reduce Mercury Emissions] to evaluate scientific
evidence, considering specific environmental characteristics of
West Virginia, hold public hearings and accept and review
appropriate evidence regarding mercury exposure, including
recommendations from the Bureau for Public Health. The
Department of Environmental Protection shall also conduct an
assessment which is also to include an evaluation of the
available mercury control technologies for coal-fired steam
generating units and other industrial activities that emit mercury, the availability and cost of mercury measurements technology and an analysis of feasibility of implementation of these technologies. The Division of Air Quality shall also consider and address any Bureau for Public Health recommendations considering health risks of West Virginians, and enter a finding as to whether the citizens of West Virginia or regions of West Virginia are exposed to a potential health risk because of mercury contamination, and if so, to propose for legislative promulgation prior to the first day of January, two thousand seven, revisions to 45 CSR 37 and any other appropriate rulemaking to effectuate its findings. The division may also recommend legislation that may be necessary to protect human health and the environment consistent with the division’s findings.

§64-3-4. Directing further study of 35CSR3.

(a) Department of Environmental Protection’s Office of Oil and Gas’s Legislative Rule 35CSR3, [Coalbed Methane Wells] authorized pursuant to section one of this article, addresses the new technology of horizontal drilling of coalbed methane, the process of drilling along coal seams to increase production of a single coalbed methane well. However, the Legislature finds, because of the newness of the technology and drilling methods, further review and study is required to consider and address any potential adverse environmental impacts from coalbed methane wells. The Office of Oil and Gas is directed to conduct a study of this new process as follows:

(1) Conduct an analysis of literature and seek input from experts in hydrology, geology and engineering, to develop a thorough understanding of coalbed methane drilling, how the drilling is physically done, the type of equipment utilized, fluids used or encountered, and pressures induced or encountered in the drilling process;
(2) Review the regulatory scheme of other states in the Appalachian basin to determine if innovative regulatory approaches would be instructive and should be incorporated into West Virginia’s regulatory scheme;

(3) Review the potential effect of drilling coalbed methane wells in areas where abandoned or active gas or oil wells are located; and

(4) Assess whether special requirements should be adopted providing protections for groundwater and water wells, to prevent contamination and other adverse impacts.

(b) The Office of Oil and Gas shall call upon other divisions of the Department of Environmental Protection as needed to assist in this review, and report to the Legislature by the first of January, two thousand seven, and propose further legislative rule amendments to the rule as are necessary and appropriate.

CHAPTER 139

(Com. Sub. for S. B. 396 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of
certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee and as amended by the Legislature; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to the Ron Yost Personal Assistance Services Board.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Division of Rehabilitation Services.

The legislative rule filed in the State Register on the twenty-seventh day of May, two thousand five, authorized under the authority of section six, article ten-L, chapter eighteen of this code, modified by the Division of Rehabilitation Services to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on the eighteenth day of November, two thousand five, relating to the Division of Rehabilitation Services (Ron Yost Personal Assistance Services Act Board, 198 CSR 1), is authorized.