ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2007
First Extraordinary Session, 2007
Second Extraordinary Session, 2006

Volume I
Chapters 1-145
FOREWORD


First Regular Session, 2007

The First Regular Session of the 78th Legislature convened on January 10, 2007. The constitutional sixty-day limit on the duration of the session was midnight, March 10, 2007. The Governor issued Proclamations on March 7 and March 16, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned sine die on March 18, 2007.

Bills totaling 2,037 were introduced in the two houses during the session (1,276 House and 761 Senate). The Legislature passed 273 bills, 113 House and 160 Senate.

The Governor vetoed six House bills (Com. Sub. for H. B. 2027, Allowing awards under the crime victims compensation program to be made to victims of identity theft; Com. Sub. for H. B. 2498, Relating to sexual offenses involving children; Com. Sub. for H. B. 2558, Relating to donation and transfer of surplus personal computers and other information systems, technology and equipment for educational purposes; Com. Sub. for H. B. 2709, Requiring the installation of fire hydrants at intervals of not more than every two thousand feet on all new installation of water mains; Com. Sub. for H. B. 2748, Relating to the receipt and transfer of scrap metal; and Com. Sub. for H. B. 2787, Creation of the Address Confidentiality Program) and ten Senate bills (Com. Sub. for S. B. 70, Providing penalties for employing unauthorized workers; Com. Sub. for S. B. 148, Providing breast feeding not considered public indecency; S. B. 183, Providing Board of Banking and Financial Institutions authority to approve acquisitions of out-of-state banks; Com. Sub. for S. B. 400, Appointing additional circuit court judges; S. B. 413, Relating to hearings before Magistrates involving seizing abandoned, neglected or cruelly treated animals; Com. Sub. for S. B. 414,
Establishing flat fee for certain services by circuit clerks; S. B. 438, Relating to Investment Management Board; Com. Sub. for S. B. 641, Defining term "PSC motor carrier inspectors and enforcement officers" for criminal provisions purposes; Com. Sub. for S. B. 738, Requiring legislative approval of proposed new or revised existing toll by Parkways Authority; and S. B. 748, Creating Electronic Telecommunication Open Infrastructure Act). The Legislature amended and again passed five bills (Com. Sub. for H. B. 2498, Relating to sexual offenses involving children; Com. Sub. for H. B. 2709, Requiring the installation of fire hydrants at intervals of not more than every two thousand feet on all new installation of water mains; Com. Sub. for S. B. 70, Providing penalties for employing unauthorized workers; Com. Sub. for S. B. 414, Establishing flat fee for certain services by circuit clerks; and S. B. 438, Relating to Investment Management Board), leaving a net total of 262 bills, 109 House and 153 Senate, which became law.

There were 183 Concurrent Resolutions introduced during the session, 97 House and 86 Senate, of which 26 House and 26 Senate were adopted. There were 28 House Joint Resolutions and 11 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 36 House Resolutions, and the Senate introduced 52 Senate Resolutions, of which 31 House and 52 Senate were adopted.

The Senate failed to pass 43 House bills passed by the House, and 62 Senate bills failed passage by the House.
First Extraordinary Session, 2007

The Proclamation calling the Legislature into Extraordinary Session on March 18, 2007, contained five items for consideration.

The Legislature passed 5 bills, 3 House bills and 2 Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 6:07 P.M. that same day.

Second Extraordinary Session, 2006

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., November 9, 2006, contained thirteen items for consideration.

The Legislature passed 12 bills, 1 House bill and 11 Senate bills. The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* November 14, 2006.

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

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

GREGORY M. GRAY
Clerk of the House and
Keeper of the Rolls.
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Clerk--Gregory M. Gray, Charleston
Sergeant at Arms--Oce Smith, Fairmont
Doorkeeper--John Roberts, Hedgesville

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(D) Democrats ........................................ 72
(R) Republicans ....................................... 28

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

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## MEMBERS OF THE SENATE

### REGULAR SESSION, 2007

### 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>H. Truman Chaifin (D)</td>
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<td>66th - 78th</td>
</tr>
<tr>
<td></td>
<td>John Pat Fanning (D)</td>
<td>Jaeger</td>
<td>58th - 64th; 67th - 68th; 73rd - 78th</td>
</tr>
<tr>
<td>Seventh</td>
<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd - 64th); 65th - 78th</td>
</tr>
<tr>
<td>Eighth</td>
<td>Ron Stollings (D)</td>
<td>Madison</td>
<td>78th</td>
</tr>
<tr>
<td></td>
<td>Vic Sprouse (R)</td>
<td>South Charleston</td>
<td>(House 72nd); 73rd - 78th</td>
</tr>
<tr>
<td>Ninth</td>
<td>Erik P. Wells (D)</td>
<td>Charleston</td>
<td>78th</td>
</tr>
<tr>
<td></td>
<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Pineville</td>
<td>Appt. 1-91, 70th; 71st - 78th</td>
</tr>
<tr>
<td>Tenth</td>
<td>Mike Green (D)</td>
<td>Daniels</td>
<td>78th</td>
</tr>
<tr>
<td></td>
<td>Donald T. Caruth (R)</td>
<td>Mercer</td>
<td>(House 76th); 77th - 78th</td>
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<td></td>
<td>Jesse O. Quillis (R)</td>
<td>Lewisburg</td>
<td>76th - 78th</td>
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<tr>
<td>Eleventh</td>
<td>Shirley Love (D)</td>
<td>Oak Hill</td>
<td>72nd - 77th</td>
</tr>
<tr>
<td></td>
<td>C. Randy White (D)</td>
<td>Webster Springs</td>
<td>(House 73rd - 75th); 76th - 78th</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/83, 66th; 67th - 69th x 70th; 74th - 78th</td>
</tr>
<tr>
<td></td>
<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
<td>55th - 64th; 67th - 78th</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Michael A. Oliverio, II (D)</td>
<td>Morgantown</td>
<td>(House 71st); 72nd - 78th</td>
</tr>
<tr>
<td></td>
<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69th - 72nd);</td>
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<tr>
<td>Fourteenth</td>
<td>Jon Blair Hunter (D)</td>
<td>Clarksburg</td>
<td>73rd - 78th</td>
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<tr>
<td></td>
<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
<td>78th</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr.; 69th); Appt. 9/89, 69th, 70th - 78th</td>
</tr>
<tr>
<td>Sixth</td>
<td>Clark Barnes (R)</td>
<td>Randolph</td>
<td>77th - 78th</td>
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<td>John Yoder (R)</td>
<td>Harpers Ferry</td>
<td>71st - 72nd; 77th - 78th</td>
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<tr>
<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74th - 78th</td>
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<tr>
<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th - 78th</td>
</tr>
<tr>
<td></td>
<td>Dan Foster (D)</td>
<td>Charleston</td>
<td>(House 76th); 77th - 78th</td>
</tr>
</tbody>
</table>

(D) Democrats .............................................. 23  
(R) Republicans ........................................... 11  

TOTAL .......................................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2007

STANDING

AGRICULTURE AND NATURAL RESOURCES
Stemple (Agriculture Chair), Tabb (Agriculture Vice Chair), Talbott (Natural Resources Chair), Argento (Natural Resources Vice Chair), Barker, Caputo, Crosier, Eldridge, Ellis, Fragale, Martin, Moore, Moye, Paxton, Rodigherio, Shaver, Varner, Wells, Hamilton, Anderson, Canterbury, Evans, Ireland, C. Miller and Romine.

BANKING AND INSURANCE
Moore (Banking Chair), Perry (Banking Vice Chair), Kominar (Insurance Chair), Barker (Insurance Vice Chair), Amores, Beach, Ellis, Guthrie, Hartman, Hutchins, Iaquinta, Kessler, Mahan, Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley, Azinger, Border, Carmichael, Schoen and Walters.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Hutchins (Vice Chair), Amores, Brown, Campbell, Caputo, Doyle, Guthrie, Hatfield, Kominar, Long, Marshall, Morgan, Palumbo, Pino, Staggers, Wells, Webster, Anderson, Blair, Ellem, Lane, J. Miller, Overington and Sobonya.

EDUCATION
M. Poling (Chair), Paxton (Vice Chair), Browning, Craig, Crosier, Ellis, Ennis, Frederick, Fragale, Moye, Perry, Pethetel, Rodigherio, Shaver, Stephens, Ron Thompson, Wells, Wysong, Duke, Ireland, J. Miller, Romine, Rowan, Sumner and Tansill.

FINANCE
White (Chair), Boggs (Vice Chair), Amores, Barker, Campbell, Doyle, Iaquinta, Klempa, Kominar, Manchin, Marshall, Perdue, M. Poling, Reynolds, Spencer, Stalnaker, Tucker, Yost, Anderson, Ashley, Blair, Border, Carmichael, Evans and Walters.

[XXXVII]
HOUSE OF DELEGATES COMMITTEES

GOVERNMENT ORGANIZATION
Morgan (Chair), Martin (Vice Chair), Argento, Beach, Caputo, Cann, DeLong, Eldridge, Hartman, Hatfield, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, Williams, Andes, Canterbury, Cowles, C. Miller, Porter, Rowan and Schoen.

HEALTH AND HUMAN RESOURCES
Perdue (Chair), Hatfield (Vice Chair), Boggs, Campbell, Cann, Eldridge, Fleischauer, Long, Longstreth, Marshall, Moore, Moye, Pino, Rodigherio, Staggers, Stalnaker, Spencer, Wysong, Ashley, Border, Canterbury, Lane, J. Miller, Rowan and Sumner.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

JUDICIARY
Webster (Chair), Proudfoot (Vice Chair), Brown, Burdiss, Fleischauer, Guthrie, Hrutkay, Kessler, Long, Longstreth, Mahan, Miley, Moore, Pino, Shook, Stemple, Tabb, Varner, Azinger, Ellem, Hamilton, Lane, Overington, Schadler and Sobonya.

PENSIONS AND RETIREMENT
Spencer (Chair), Craig (Vice Chair), Browning, Stemple, Stephens, Canterbury and Duke.

POLITICAL SUBDIVISION
Manchin (Chair), Yost (Vice Chair), Beach, Browning, Craig, Doyle, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, Ron Thompson, Varner, Wysong, Cowles, Duke, Rowan, Schadler, Schoen, Sumner and Tansill.

[XXXVIII]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION
Hrutkay (Chair), Stephens (Vice Chair), Argento, Boggs, Burdiss, Crosier, Ennis, Klempa, Manchin, Martin, Michael, Pethel, Pino, Proudfoot, Shook, Stalnaker, Wells, Wysong, Duke, Ellem, Evans, Porter, Romine, Schadler and Tansill.

RULES

VETERANS AFFAIRS AND HOMELAND SECURITY
Iaquinta (Veterans Affairs Chair), Longstreth (Veterans Affairs Vice Chair), Swartzmiller (Homeland Security Chair), Ennis (Homeland Security Vice Chair), Burdiss, Cann, Hatfield, Hrutkay, Hutchins, Paxton, Pethel, Shaver, Shook, Staggers, Stephens, Tucker, Williams, Yost, Armstead, Azinger, Ireland, Porter, Sumner, Tansill and Walters.

JOINT COMMITTEES

ENROLLED BILLS
Doyle (Chair), Beach (Vice Chair) and Fragale.

GOVERNMENT AND FINANCE
Richard Thompson (Co-Chair), Caputo, DeLong, Webster, White and Armstead.

LEGISLATIVE RULE-MAKING REVIEW
Brown (Chair), Miley (Vice Chair), Burdiss, Talbott, Overington and Sobonya.

[XXXIX]
HOUSE OF DELEGATES COMMITTEES

STATUTORY LEGISLATIVE COMMISSIONS

INTERSTATE COOPERATION
Pino (Chair), Frederick (Vice Chair), Blair and Walters.

COMMISSION ON SPECIAL INVESTIGATIONS
Richard Thompson (Co-Chair), DeLong, White, Armstead and Ellem.
COMMITTEES OF THE SENATE
Regular Session, 2007

STANDING

AGRICULTURE AND NATURAL RESOURCES
Edgell (Chair), Love (Vice Chair), Bailey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Sypolt.

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

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

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

EDUCATION
Plymale (Chair), Edgell (Vice Chair), Bailey, Green, Hunter, Oliverio, Stollings, Unger, Wells, White, Boley, Guills, Hall and Sprouse.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Hunter (Vice Chair), Fanning, Green, Helmick, Jenkins, Kessler, Stollings, Wells, Deem, Guills, Sprouse and Sypolt.

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

[XLI]
SENATE COMMITTEES

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Foster, Jenkins, Kessler, McCabe, Minard, Plymale, Stollings, White, Barnes, Boley, Sypolt and Yoder.

HEALTH AND HUMAN RESOURCES
Prezioso (Chair), Stollings (Vice Chair), Bailey, Foster, Green, Hunter, Jenkins, McCabe, Sharpe, Boley, Guills, Hall and Sprouse.

INTERSTATE COOPERATION
Jenkins (Chair), Foster (Vice Chair), Minard, Stollings, Wells, Caruth and Sypolt.

JUDICIARY
Kessler (Chair), Oliverio (Vice Chair), Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder.

LABOR
Oliverio (Chair), Green (Vice Chair), Edgell, Foster, Love, Prezioso, Wells, White, Barnes, Deem and Yoder.

MILITARY
Hunter (Chair), Wells (Vice Chair), Bailey, Edgell, Minard, Oliverio, Boley, Hall and Sypolt.

NATURAL RESOURCES
Fanning (Chair), White (Vice Chair), Bowman, Green, Helmick, Love, McCabe, Prezioso, Unger, Barnes, Deem, Facemyer and McKenzie.

PENSIONS
Foster (Chair), McCabe (Vice Chair), Edgell, Oliverio, Plymale, Deem and Hall.
SENATE COMMITTEES

RULES
Tomblin (Chair), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE
Unger (Chair), Jenkins (Vice Chair), Fanning, Love, Stollings, White, Barnes, Facemyer and McKenzie.

JOINT COMMITTEES

ENROLLED BILLS
White (Co-Chair), Green, Love, Sprouse and Yoder.
AN ACT to amend and reenact §56-1-1 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-1-1a, relating to civil actions filed in the courts of the state; repealing unconstitutional venue provision; and the codification of the doctrine of forum non conveniens.

Be it enacted by the Legislature of West Virginia:

That §56-1-1 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 §56-1-1a, all to read as follows:

ARTICLE 1. VENUE.

§ 56-1-1. Venue generally.
§ 56-1-1a. Forum non conveniens.

§ 56-1-1. Venue generally.

1 (a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

2 (1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;

3 (2) If a corporation be a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

4 (3) If it be to recover land or subject it to a debt, where the land or any part may be;
24 (4) If it be against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him or them;

27 (5) If it be to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

34 (6) If it be on behalf of the state in the name of the attorney general or otherwise, where the seat of government is; or

37 (7) If a judge of a circuit be interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

41 (b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

§56-1-1a. Forum non conveniens.
(a) In any civil action if a court of this state, upon a timely written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action, or dismiss any plaintiff: Provided, That the plaintiff’s choice of a forum is entitled to great deference, but this preference may be diminished when the plaintiff is a nonresident and the cause of action did not arise in this state. In determining whether to grant a motion to stay or dismiss an action, or dismiss any plaintiff under the doctrine of forum non conveniens, the court shall consider:

(1) Whether an alternate forum exists in which the claim or action may be tried;

(2) Whether maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(3) Whether the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff’s claim;

(4) The state in which the plaintiff(s) reside;

(5) The state in which the cause of action accrued;

(6) Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions
Ch. 1] ACTIONS AND SUITS

31 that occurred in this state. Factors relevant to the private
32 interests of the parties include, but are not limited to, the
33 relative ease of access to sources of proof; availability of
34 compulsory process for attendance of unwilling witnesses;
35 the cost of obtaining attendance of willing witnesses;
36 possibility of a view of the premises, if a view would be
37 appropriate to the action; and all other practical problems
38 that make trial of a case easy, expeditious and inexpensive.
39 Factors relevant to the public interest of the state include,
40 but are not limited to, the administrative difficulties flowing
41 from court congestion; the interest in having localized
42 controversies decided within the state; the avoidance of
43 unnecessary problems in conflict of laws, or in the
44 application of foreign law; and the unfairness of burdening
45 citizens in an unrelated forum with jury duty;

46 (7) Whether not granting the stay or dismissal would
47 result in unreasonable duplication or proliferation of
48 litigation; and

49 (8) Whether the alternate forum provides a remedy.

50 (b) A motion pursuant to subsection (a) of this section is
51 timely if it is filed either concurrently or prior to the filing
52 of either a motion pursuant to Rule twelve of the West
53 Virginia Rules of Civil Procedure or a responsive pleading
54 to the first complaint that gives rise to the grounds for such
55 a motion: Provided, That a court may, for good cause
56 shown, extend the period for the filing of such a motion.

57 (c) If the statute of limitations in the alternative forum
58 expires while the claim is pending in a court of this state,
59 the court shall grant a dismissal under this section only if
60 each defendant waives the right to assert a statute of
61 limitation defense in the alternative forum. The court may
62 further condition a dismissal under this section to allow for
the reinstatement of the same cause of action in the same forum in the event a suit on the same cause of action or on any cause of action arising out of the same transaction or occurrence is commenced in an appropriate alternative forum within sixty days after the dismissal under this section and such alternative forum declines jurisdiction.

(d) Except as provided in subsection (b), section one of this article, if an action involves both legal resident and non-resident plaintiffs, the court may not stay or dismiss the action under subsection (a) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under subsection (a) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(e) In actions filed pursuant to Rule twenty-three of the West Virginia Rules of Civil Procedure the provisions of this section shall apply only to the class representative(s).

(f) A court that grants a motion to stay or dismiss an action pursuant to this section shall set forth specific findings of fact and conclusions of law.

(g) For the purposes of this section "legal resident" means an individual who is a resident of West Virginia at the time the cause of action arose or at the time the action is filed, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in this State in bad faith for purposes of avoiding the application of this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-4c; and to amend and reenact §11-22-2 of said code, all relating to the West Virginia Affordable Housing Trust Fund generally; imposing a fee of twenty dollars on the transfer of real property in addition to the excise tax imposed on property transfers; imposing a fee of twenty dollars in addition to the consumers sales and service tax on the sale of factory-built homes by licensed dealers; dedicating the revenue from the additional fees to the West Virginia Affordable Housing Trust Fund; and authorizing expenditures for administrative and operating expenses.

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 §11-15-4c; and that §11-22-2 of said code be amended and reenacted, all to read as follows:

Article
15. Consumers Sales and Service Tax.
22. Excise Tax on Privilege of Transferring Real Property.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.
§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile factory-built homes; deposit of additional fee in West Virginia Affordable Housing Trust Fund.

(a) There is imposed, in addition to the sales tax imposed by the provisions of this article and article fifteen-a of this chapter, a fee of twenty dollars on all sales by licensed dealers of factory-built homes as that term is defined in section two, article fifteen, chapter thirty-seven of this code to be collected as provided in article fifteen-b of this chapter and remitted to the Tax Commissioner to be deposited by the commissioner in the West Virginia Affordable Housing Trust Fund, as provided in article eighteen-d, chapter thirty-one of this code.

(b) The moneys collected from this additional fee shall be segregated from other funds in the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. Not more than ten percent of these additional moneys may be expended by the West Virginia Affordable Housing Trust Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Affordable Housing Trust Fund.

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax.

(a) Every person who delivers, accepts or presents for recording any document, or in whose behalf any document is delivered, accepted or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring
title to real estate at the rate of one dollar and ten cents for each five hundred dollars’ value or fraction thereof as represented by the document as defined in section one of this article. The state tax is payable at the time of delivery, acceptance or presenting for recording of the document. In addition to the state excise tax described in this subsection, there is assessed a fee of twenty dollars upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional twenty-dollar fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the West Virginia Affordable Housing Trust Fund as provided in article eighteen-d, chapter thirty-one of this code. The moneys collected from this additional fee shall be segregated from other funds in the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. Not more than ten percent of these additional moneys may be expended by the West Virginia Affordable Housing Trust Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Affordable Housing Trust Fund. The Housing Development Fund, as fiscal agent of the West Virginia Affordable Housing Trust Fund, shall publish monthly on the internet site an accounting of all revenue deposited into the fund during the month and a full disclosure of all expenditures from the fund including the group receiving funds, their location and any contractor awarded the construction contract. Additionally, the West Virginia Affordable Housing Trust Fund is to provide an annual report to the Joint Committee on Government and Finance before the first day of December, two thousand seven, and each year thereafter.

(b) Effective the first day of January, one thousand nine hundred sixty-eight, and thereafter, there is imposed an additional county excise tax for the privilege of transferring
title to real estate at the rate of fifty-five cents for each five
hundred dollars’ value or fraction thereof as represented by
such document as defined in section one of this article,
which county tax shall be payable at the time of delivery,
acceptance or presenting for recording of such document:
Provided, That after the first day of July, one thousand nine
hundred eighty-nine, the county may increase said excise
tax to an amount equal to the state excise tax. The
additional tax hereby imposed is declared to be a county tax
and to be used for county purposes: Provided, however,
That only one such state tax and one such county tax shall
be paid on any one document and shall be collected in the
county where the document is first admitted to record and
the tax shall be paid by the grantor therein unless the
grantee accepts the document without such tax having been
paid, in which event such tax shall be paid by the grantee:
Provided further, That on any transfer of real property from
a trustee or a county clerk transferring real estate sold for
taxes, such tax shall be paid by the grantee. The county
excise tax imposed under this section may not be increased
in any county unless the increase is approved by a majority
vote of the members of the county commission of such
county. Any county commission intending to increase the
excise tax imposed in its county shall publish a notice of its
intention to increase such tax not less than thirty days nor
more than sixty days prior to the meeting at which such
increase will be considered, such notice to be published as a
Class I legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code
and the publication area shall be the county in which such
county commission is located.
AN ACT to amend and reenact §19-12A-1a of the Code of West Virginia, 1931, as amended, relating to the Weston State Hospital Institutional Farm property; transferring the Weston State Hospital Institutional Farm to the Department of Health and Human Resources; permitting the Department of Agriculture to retain all oil, gas and mineral rights; permitting the Department of Health and Human Resources to sell the property; and providing the Lewis County Commission retain ownership of the communication tower located on the property.

Be it enacted by the Legislature of West Virginia:

That §19-12A-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. LAND DIVISION.

§19-12A-1a. Farm management commission abolished; property transferred; powers and duties of commissioner of agriculture.

1 (a) The farm management commission previously established by this article is hereby abolished. The real and
personal property held by the commission, including all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities, operating revenue funds for those operations, and all employees of the farm management commission, are hereby transferred to the Department of Agriculture. The Commissioner of the Department of Agriculture shall have all those powers, duties and responsibilities previously vested in the farm management commission and the farm management director pursuant to this article.

(b) Not later than the first day of January, one thousand nine hundred ninety-five, the Commissioner of the Department of Agriculture shall report to the Legislature on the optimum use or disposition of each institutional farm transferred pursuant to this section. The commissioner shall set forth the objectives of the agency with respect to the land, the criteria by which the agency has determined the optimum use or disposition of the property, and determinations as to whether the land shall be used in the production of food products, the production or development of natural resources, held for recreational or other specified uses, or sold, or leased in whole or in part. With respect to each institutional farm, the commissioner shall report on which properties are subject to reversionary clauses or other restrictions in deeds of conveyance which may affect permitted uses, or proposed sales or leases. With respect to each institutional farm, the commissioner shall report on projected revenues and expenses from operations. Planned activities and uses with respect to the land shall be detailed for at least five years specifically and at least ten years generally and shall include a cost benefit analysis of options or alternatives for action. In the case of land managed for production of timber, the commissioner shall report on projections for timber harvesting on a sustained-yield basis,
income estimates, and the years in which income will be generated. The report shall detail planned actions to protect the land from erosion, fire, plant and animal pests, noxious insects, noxious weeds and plant and animal diseases. In the case of land subject to rights granted by existing contracts, leases, licenses or easements, the report shall include a determination as to whether the interest granted should be continued or withdrawn. In the case of land managed under land management plans adopted prior to the effective date of this section, land management plans shall be reviewed and amended as may be necessary. When appropriate, the commissioner shall consult with the secretaries of the various departments of state government and shall request from the secretaries suggestions for land use and resource development on the land. In the case of land recommended for sale, lease, or transfer, the report shall include the review and approval of the director of the West Virginia Development Office of the proposed use and alternate suggestions for use of any institutional farm which may be in the public interest. Notwithstanding any other provision of this subsection to the contrary, title to the Weston State Hospital Institutional Farm, located at Weston, Lewis County, is hereby transferred from the Department of Agriculture to the Department of Health and Human Resources, including all buildings thereon: Provided, That the Department of Agriculture shall retain all oil, gas and mineral rights, interests and title underlying the surface of the real property being transferred to the Department of Health and Human Resources under this subsection.

The Secretary of the Department of Health and Human Resources is authorized to sell, lease, donate or otherwise transfer the Weston State Hospital Institutional Farm, as well as the grounds of the former Weston State Hospital including the improvements and appurtenances belonging
thereto: Provided, That notice of the sale of the real estate at auction shall include the right of the state to reject any and all bids: Provided, however, That the deed conveying title to the real estate shall contain a reservation in it providing that the communications tower, located on the real estate and owned and maintained by the county commission of Lewis County, shall remain the property of the Lewis County Commission and shall remain on the real estate free of any cost or rent and the county commission of Lewis County shall have an easement for ingress and egress and for the maintenance of the tower in perpetuity unless agreed otherwise in writing by the county commission of Lewis County.

(c) Nothing in this section shall be construed to limit the duties imposed on the Department of Health and Human Resources and the Division of Corrections to purchase food products pursuant to section five of this article and to make interdepartmental transfers pursuant to section six of this article: Provided, That purchases shall be made from and transfers made to the Department of Agriculture.

(d) Nothing in this section shall be construed to invalidate any action or contractual obligation of the farm management commission prior to the effective date of this section.

(e) Notwithstanding the provisions of subsection (b) of this section, in any case where the farm management commission has determined by motion adopted prior to the effective date of this article that an institutional farm or part thereof should be transferred or disposed of, or authorized any formal agreement for this purpose, whether or not any documents related to the agreement have been reduced to writing or executed, the commissioner shall execute all
documents and take all necessary actions to implement the transfer or disposition of the property.

(f) For any land transferred to the public land corporation for sale, exchange or transfer pursuant to section five of this article, the farm property shall be offered for sale in both small parcels of land and as whole farms and shall be sold in the form which brings the highest price for the total property. For purposes of this subsection, "small parcels" means parcels of no more than five acres.

CHAPTER 4

(S.B. 431 - By Senators Edgell and Love)

[Passed March 5, 2007; in effect from passage.]
[Approved by the Governor on March 28, 2007.]


Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

§19-15A-2. Registration of brands; registration fees.
§19-15A-4. Inspection fee; report of tonnage; annual report.
§19-15A-5. Inspection; sampling; analysis.
§19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.


1 As used in this article:

2 (a) "Agricultural liming material" means a product that contains calcium and magnesium carbonate, hydroxide or oxide which are capable of neutralizing soil acidity.

3 (b) "Brand" means the term, designation, trademark, product name or other specific designation under which individual agricultural liming materials are offered for sale.

4 (c) "Bulk" means materials in nonpackaged form.

5 (d) "Burnt lime" means a calcined material comprised chiefly of calcium oxide in natural association with lesser amounts of magnesium, and which is capable of slaking with water.

6 (e) "Calcium carbonate equivalent" (CCE) is an expression of the acid-neutralizing capacity of an agricultural liming material relative to that of a pure calcium carbonate, expressed as a percentage.
(f) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia or his or her duly authorized agent.

(g) "Distributor" means any person who sells or offers for sale agricultural liming products that are registered pursuant to this article, but does not include persons who retail registered products in nonbulk form to the ultimate consumer.

(h) "Dolomite" means an agricultural liming material composed chiefly of carbonates of magnesium and calcium in substantially equimolar (1-1.19) proportions.

(i) "Embargo" means an order prohibiting the sale, processing, mixing, transporting and use of any product.

(j) "Fineness" means the percentage by weight of the material which will pass U. S. standard sieves of specific sizes.

(k) "Ground shells" means a material obtained by grinding the shells of mollusks.

(l) "High calcic liming material" means an agricultural liming material containing at least twenty-five percent calcium and at least ninety-one percent of the total calcium and magnesium is calcium.

(m) "High magnesic liming material" means an agricultural liming material containing at least six percent magnesium.

(n) "Hydrated lime" means a material made from burnt lime.
(o) "Industrial coproduct" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity which may be designated by prefixing the name of the industry or process by which it is produced, including, but not limited to: Gas-house lime, tanners’ lime, acetylene lime-waste, lime-kin ashes and calcium silicate.

(p) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(q) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(r) "Marl" means a granular or loosely consolidated earthy material composed largely of shell fragments and calcium carbonate precipitated in ponds.

(s) "Percent or percentage" means a part of a whole expressed in hundredths by weight.

(t) "Person" means any individual, partnership, association, fiduciary, firm, corporation or any organized group of persons whether incorporated or not.

(u) "Registrant" is a person who registers agricultural liming materials by product and is responsible for the guarantee of the product.

(v) "Type" means the designation given to the product from its source material.
"Ton" means a weight of two thousand pounds avoirdupois.

"Weight" means the weight of undried liming material as offered for sale.

§19-15A-2. Registration of brands; registration fees.

(a) Agricultural liming material may not be used, sold or offered for sale in the state unless it has been registered with the commissioner.

(b) Application for registration shall be made to the commissioner on forms approved or supplied by the commissioner. Each separately identified agricultural liming material shall be registered before being distributed or used in the state.

(c) The commissioner shall collect a registration fee for each brand of the agricultural liming material registered and a registration fee from all distributors of agricultural liming materials. The commissioner shall set the registration fees by legislative rule.

(d) All registrations shall expire at the end of the calendar year of issue unless sooner revoked by the commissioner as provided in section six of this article.

(e) Valid registrants of agricultural liming materials are exempt from obtaining a distributors permit, unless distributing another registrants product.


(a) A person may not sell, offer to sell or expose for sale in the state any agricultural liming materials which do not
have affixed to the outside of each package in a conspicuous manner a plainly printed, stamped or otherwise marked label, tag or statement or, in the case of bulk sales, a delivery invoice including at least the following:

1. The name and principal business address of the manufacturer or distributor.
2. The brand name of the agricultural liming material.
3. The identification of the product as to the type of liming material.
4. The net weight of the agricultural liming material.
5. The minimum percentage of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate.
6. The calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists International (AOAC).
7. The minimum percent by weight passing through United States standard sieves.
8. The fineness classification of the material.

(b) A copy of the statement provided for in subsection (a) of this section shall be posted for each brand sold in bulk at each site where purchase orders are accepted or from which deliveries for such liming materials are made.

(c) No information or statement may appear on any package, label, delivery invoice or advertisement which gives a false or misleading impression to the purchaser as to
the quality, analysis, type or composition of the liming material.

(d) When agricultural liming material has been adulterated subsequent to packaging, labeling or loading thereof and before delivery has been made to the consumer, conspicuous, plainly worded notice to that effect shall be affixed by the vendor to the package or delivery invoice to identify the kind and degree of adulteration therein: Provided, That agricultural liming material may not be sold or offered for sale in the state which contains toxic materials in quantities injurious to plants or animals when applied according to directions.

§19-15A-4. Inspection fee; report of tonnage; annual report.

(a) Each sales invoice prepared in normal course of business by either a registrant or distributor shall reflect the amount of the inspection fee and the name of the payor.

(b) Within thirty days following the thirtieth day of June and the thirty-first day of December of each year, each registrant and distributor shall submit on a form furnished by the commissioner a summary of tons of each agricultural liming material sold or distributed by each registrant and distributor in the state during the previous six months' period. The report of tonnage shall be accompanied by payment of an inspection fee as established by legislative rule. If the tonnage, or portion thereof, has been paid by another person, documentation by invoice must accompany such report. The semiannual payment and late fee shall be established by legislative rule.

(c) The commissioner shall publish annually on the Department of Agriculture’s website a composite report showing the net tons of agricultural liming material sold in
this state during the preceding period. This report may not divulge information that can be related to the business of any individual registrant.

§19-15A-5. Inspection; sampling; analysis.

(a) The commissioner shall audit, inspect, sample, analyze and test agricultural liming materials used, sold or offered for sale within the state as he or she considers necessary to determine whether the agricultural liming materials are in compliance with the provisions of this article. For this purpose the commissioner may enter upon any public or private premises or carriers during reasonable times to inspect and sample liming materials and to inspect records related to their distribution.

(b) The methods of analysis and sampling shall be those approved by the commissioner and guided by the AOAC procedures.

(c) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the commissioner as he or she considers necessary to carry out the enforcement of this article.

(d) The commissioner shall, on request, provide the registrant with a portion of the official sample: Provided, That the request is made within thirty days of the assessment of a violation.

(e) In determining whether any agricultural liming material is deficient in guarantee, the commissioner shall be guided solely by the official sample.

§19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.
(a) The commissioner may suspend or cancel the registration of any brand of agricultural liming material and may refuse the application for registration of any brand of agricultural liming material upon being presented satisfactory evidence that the registrant has used false, fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article or any related rule: Provided, That no registration shall be suspended, revoked or refused until the registrant has been given an opportunity to appear for a hearing before the commissioner.

(b) The commissioner may issue an embargo order to the owner or custodian of any lot of agricultural liming material when he or she finds said agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this article or related rule. The order shall remain in effect until it has been rescinded in writing by the commissioner: Provided, That the commissioner may not rescind any embargo order until the requirements of this article have been complied with and all related costs and expenses have been paid.

(c) Any agricultural liming material found to be in violation of the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which such agricultural liming material is located. If the court orders the condemnation of such material it shall be disposed of in a manner consistent with the quality of the agricultural liming material and the laws of the state. The court may not order the disposition of agricultural liming material without first giving the owner or custodian an opportunity to apply to the court for release of the agricultural liming material or for permission to process or relabel the agricultural liming material to bring it in compliance with this article.

(a) A registrant shall pay a deficiency assessment in accordance with the provisions of this section for each lot of agricultural liming material found to be deficient in its guaranteed analysis. Deficiencies existing in more than one component shall be considered additional violations.

(b) A registrant shall pay the deficiency assessment to the ultimate consumer of the product and deliver receipts for the payment to the commissioner. If the ultimate consumer is not known, the penalty assessed shall be paid to the commissioner and deposited as set forth in section nine of this article.

(c) If a deficiency assessment has not been paid within sixty days of the notice of the assessment, then a late payment penalty, as established by legislative rule, will be added for each one hundred eighty days that the assessment remains unpaid.


The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The minimum acceptable fineness classifications;

(2) The minimum acceptable calcium carbonate equivalents for agricultural liming materials; and

(3) The establishment of fees required by this article.

Any fees and penalties collected under the provisions of this article shall be deposited with the State Treasurer in a special revenue account known as the Agricultural Fee Fund as established in article one, chapter nineteen of this code.


Any person violating any of the provisions of this article or related rule shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars nor more than three hundred dollars for the first offense and not less than three hundred dollars nor more than one thousand dollars for each subsequent offense.

CHAPTER 5

(Com. Sub for S.B. 528 - By Senator Kessler)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §19-16A-7 and §19-16A-23 of the Code of West Virginia, 1931, as amended, all relating to depositing the pesticide dealer, commercial and private applicator and business applicator license fees into the Pesticide Control Fund.

Be it enacted by the Legislature of West Virginia:
That §19-16A-7 and §19-16A-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.


§19-16A-23. Continuation of Pesticide Control Fund in State Treasury; disposition of certain fees to General Revenue Fund.


1 (a) No person may engage in the application of pesticides for hire at any time without a pesticide application business license issued by the commissioner. The commissioner shall require an annual fee for each pesticide application business license issued as prescribed by rules promulgated under this article.

7 (b) Application for a pesticide application business license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

14 (1) The full name of the person applying for the license;

15 (2) If different from subdivision (1) of this subsection, the full name of the individual qualifying under subsection (c) of this section;

18 (3) If the applicant is a person other than an individual, the full name of each member of the firm or partnership or
the names of the officers of the association, corporation or group;

(4) The principal business address of the applicant in the state and elsewhere;

(5) The address of each branch office or suboffice from which the business of applying pesticides is carried on. Each suboffice shall be licensed;

(6) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the pesticide application business;

(7) State tax number; and

(8) Any other necessary information prescribed by the commissioner.

(c) The commissioner may not issue a pesticide application business license until the owner, manager, partner or corporate officer is qualified by passing an examination to demonstrate to the commissioner his or her knowledge of the state and federal pesticide laws, safe use and storage of pesticides. The pesticide application business shall be limited to the classification or classifications for which the business maintains certified commercial applicators in their employ.

(d) If the commissioner finds the applicant qualified to apply pesticides in the classifications the applicant has applied for, and if the applicant files the financial security required by this article, and if the applicant applying for a license to engage in aerial application of pesticides has met all the requirements of the federal aviation agency, the aeronautics commission of this state, and any other applicable federal or state laws or regulations to operate the
equipment described in the application, the commissioner shall issue a pesticide application business license. The license expires at the end of the calendar year of issue, unless it has been revoked or suspended prior to expiration by the commissioner for cause. When the financial security required under this article is dated to expire at an earlier date, the license shall be dated to expire upon expiration date of the financial security. The commissioner may limit the license of the applicant to certain classifications of pest control work, or to certain areas or to certain types of equipment or to certain specific pesticides if the applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons for the denial.

(e) All persons applying pesticides as a pesticide business, whether or not they are applying restricted-use pesticides, shall be a certified applicator in the appropriate category or subcategory or shall be a registered technician under the direct supervision of a certified commercial applicator.

(f) All funds collected pursuant to this section shall be deposited in the Pesticide Control Fund of the state pursuant to section twenty-three of this article.

§19-16A-23. Continuation of Pesticide Control Fund in State Treasury; disposition of certain fees to General Revenue Fund.

There is continued a special fund in the State Treasury to be known as Pesticide Control Fund and may be expended on order of the commissioner. All product registration fees, dealer, commercial and private applicator license fees, pesticide application business license fees, nondedicated fees and civil penalties collected under this article shall be placed in the Pesticide Control Fund. The proceeds of the Pesticide Control Fund may be used in carrying out the purpose of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-5-19, relating to the establishment of a program to inventory emissions, reductions and carbon sequestrations of greenhouse gases; creating a voluntary registry for the reporting of voluntary reductions of greenhouse gas emissions if the reductions are made before they are required by law; clarifying that certain industries are exempt from reporting; providing public recognition of voluntary reduction or avoidance of greenhouse gases; providing definitions; and providing consideration of the reductions under future federal greenhouse gas emission reduction programs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §22-5-19, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.


1 (a) The secretary is authorized to propose legislative rules for promulgation in accordance with article three,
AIR POLLUTION

chapter twenty-nine-a of this code, establishing a net greenhouse gas inventory to determine whether West Virginia is a net sink or emitter of greenhouse gas and whether greenhouse gas can be developed as an asset for economic development by establishing an inventory using reasonable estimates of current and future greenhouse gas emissions. The inventory shall include all significant emissions, reductions, capture and sequestration of greenhouse gases from stationary, area and mobile sources, such as power plants, waste combustors, natural gas/oil systems, landfills, and waste water treatment facilities, highway and nonroad sources, agricultural sources and shall consider direct (geologic) and indirect (terrestrial) carbon sequestration. Stationary sources are not required to but may submit to the secretary estimates of carbon sequestration activities.

(b) To inventory greenhouse gas emissions, the secretary shall establish a program for the reporting and, where information already exists or is reported to the department or other state or federal agency, the collection of greenhouse gas emissions information from all sources that emit greater than a de minimis amount of greenhouse gases on an annual basis. De minimis shall mean emissions from an individual facility that are equal to or less than ten thousand tons per year for carbon dioxide, four hundred seventy-six tons per year for methane, thirty-two and six tenths tons per year for nitrous oxide, eight hundred fifty-thousandths tons per year for hydrofluorocarbons, one and nine hundredths tons per year for perfluorocarbons and forty-two hundredths tons per year for sulfur hexafluoride. Stationary sources shall only be required to report the annual quantities of nonmobile source, anthropogenic emissions of greenhouse gases, and shall not be required to report naturally occurring emissions of greenhouse gases. Only those stationary sources who are otherwise required to
report emissions of regulated air pollutants under rules promulgated by the secretary pursuant to section four of this article, shall be required to report their greenhouse gas emissions under this section. Stationary sources which are not required to report air emissions under this section and are regulated by the secretary under the provisions of article three, chapter twenty-two of this code are not required to, but may voluntarily, report such emissions. The reporting entities will be permitted to provide existing and ongoing documented inventories, such as those provided to the Environmental Protection Agency’s Climate Leaders Program, Chicago Climate Exchange Registry, the International Organization for Standardization, the SF6 Emissions Reduction Partnership for Electric Power Systems or other widely recognized and verified greenhouse gas inventory programs to completely fulfill their West Virginia program reporting requirements.

(c) The secretary shall establish a voluntary program under which the department registers voluntary reductions in emissions of greenhouse gases for reductions made before mandated by law. The voluntary program shall include, but not be limited to, developing criteria for establishing baseline emissions, quantifying emission reductions and providing public recognition. The department shall consider the information recorded in the voluntary emission reduction registry when determining baselines and reduction requirements under future emission reduction programs implemented under federal law.

(d) To inventory greenhouse gas reductions, the secretary shall consult and coordinate with other state agencies and higher education institutions, the citizenry and other entities such as industry trade groups that have knowledge or information relating to greenhouse gas emissions, measurement protocols, greenhouse gas
reductions and sequestration including, but not limited to, the Department of Agriculture, the Division of Forestry, Marshall University, West Virginia University and the Department of Transportation. These governmental entities shall enter into interagency agreements with the secretary and shall cooperate by: (i) Providing information relating to greenhouse gas emissions, reductions and sequestration; and (ii) providing any necessary assistance to the secretary in effectuating the purposes of this article. The secretary shall determine the form and format of the information submitted by these entities.

(e) In establishing the net greenhouse gas inventory program, the department shall make the program as consistent as possible with other state and federal programs designed to monitor, quantify and register reductions in emissions of greenhouse gases as referenced in subsection (b) of this section.

(f) As used in this section, “greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.
AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended; to amend and reenact §17-22-7 of said code; to amend and reenact §60-1-5a of said code; to amend and reenact §60-3A-18 of said code; to amend and reenact §60-4-2, §60-4-3, §60-4-3A, §60-4-15 and §60-4-22 of said code; to amend said code by adding thereto a new section, designated §60-4-3b; to amend and reenact §60-6-1 and §60-6-2 of said code; to amend and reenact §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19, §60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code; and to amend said code by adding thereto a new section, designated §60-8-6a, all relating to alcohol beverage regulation generally; the regulation of wine; requiring farm wineries to pay taxes and license fees, equalizing wineries with distilleries and farm wineries with mini-distilleries as to signage, licensing, license fees, sales and the use of suppliers and distributors; providing licensing procedure for wineries, farm wineries, suppliers or retailers to sell and direct ship wine for personal consumption by an adult over twenty-one years of age; providing licensing requirements and registration procedures for wine suppliers, subject to a review of all wine labels; amending the definition of “wine”; adding a private wine bed and breakfast license and a private wine spa license; permitting adult patrons at
private wine bed and breakfasts, private wine restaurants, private wine spas and private clubs to recork or reseal, with a tamper resistant cork or seal, for off-premises consumption up to two bottles of unconsumed wine when the sale of wine is accompanied by food or a meal; extending hours retail licensees may sell liquor; permitting a private wine restaurant or a private club to sell from its inventory, for off-premises consumption, one bottle of wine per adult; equalizing certain license fees; adding protections for wineries, farm wineries, suppliers and distributors by requiring written agreements between the parties, a notice of termination and ninety days for a party to either deplete wine inventories or reach some other agreement; and permitting sharing of tax, licensing and enforcement information between the Tax Commissioner and the Alcohol Beverage Control Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17-22-7 of said code be amended and reenacted; that §60-1-5a of said code be amended and reenacted; that §60-3A-18 of said code be amended and reenacted; that §60-4-2, §60-4-3, §60-4-3a, §60-4-15 and §60-4-22 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3b; that §60-6-1 and §60-6-2 of said code be amended and reenacted; that §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19, §60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-8-6a, all to read as follows:

Chapter
11. Taxation.
17. Roads and Highways.
60. State Control of Alcoholic Liquors.
ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

(a) **Purpose.** -- The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) **Exceptions to confidentiality.** --

(1) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the name and address of every taxpayer and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received shall be as follows:

(A) More than one dollar, but not more than fifty thousand dollars;

(B) More than fifty thousand dollars, but not more than one hundred thousand dollars;

(C) More than one hundred thousand dollars, but not more than two hundred fifty thousand dollars;
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24  (D) More than two hundred fifty thousand dollars, but not more than five hundred thousand dollars;

26  (E) More than five hundred thousand dollars, but not more than one million dollars; and

28  (F) More than one million dollars.

29  (2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the Tax Commissioner is required to seek the written recommendation of the Attorney General and the Attorney General has not recommended acceptance of the compromise or when the Tax Commissioner compromises any civil tax case for an amount that is more than two hundred fifty thousand dollars less than the assessment of tax owed made by the Tax Commissioner:

41  (A) The names and addresses of taxpayers that are parties to the compromise;

43  (B) A summary of the compromise;

44  (C) Any written advice or recommendation rendered by the Attorney General regarding the compromise; and

46  (D) Any written advice or recommendation rendered by the Tax Commissioner's staff.

48  Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under any other provisions of law be disclosed pursuant to the provisions of this subsection.

36
(3) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and receive timely return information: Provided, That the Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the Tax Commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. The agreements shall be published in the State Register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information so disclosed shall remain confidential in the hands of the other division to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written
agreement with the State Treasurer to disclose to the State Treasurer the following business registration information:

(A) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and

(B) The type of business activity and organization of those businesses. Disclosure of this information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder shall otherwise remain confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. -- Beginning on the fifteenth day of January, one thousand nine hundred ninety-two, and every fifteenth day of January thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year cycles, the reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the Tax Commissioner. For purposes of this section, the term "tax expenditure" shall mean a provision in the tax laws administered under this article, including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in
special circumstances: Provided, That the Tax Commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. -- Notwithstanding any other provisions of this section or of this code, no return information made available to the Tax Commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in any manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of the other states' confidentiality laws.

CHAPTER 17. ROAD AND HIGHWAYS.

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

The provisions of section three of this article shall not apply to the following: (a) Directional and other official signs and notices required or authorized by law, including, but not limited to, signs and notices pertaining to natural wonders, farm wineries, mini-distilleries, scenic and historical attractions, which such signs and notices shall conform to standards respecting lighting, size, number, spacing and such other appropriate requirements as may be designated and specified by the Secretary of Transportation of the United States: Provided, That the Commissioner of the Department of Highways shall not establish any standards respecting lighting, size, number, spacing and other appropriate requirements which are stricter than such
1 standards designated and specified by the Secretary of
2 Transportation of the United States; (b) signs, displays and
3 devices advertising the sale or lease of property upon which
4 they are located; and (c) signs, displays and devices
5 advertising activities conducted on the property on which
6 they are located, including markers of underground utility
7 facilities.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC
LIQUORS.

Article
3A. Sales By Retail Liquor Licenses.
4. Licenses.
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter: "Farm winery"
means an establishment where in any year fifty thousand
gallons or less of wine and nonfortified dessert wine are
manufactured exclusively by natural fermentation from
grapes, other fruits or honey or other agricultural products
containing sugar and where port, sherry and Madeira wine
may also be manufactured, with twenty-five percent of such
raw products being produced by the owner of such farm
winery on the premises of that establishment and no more
than twenty-five percent of such produce originating from
any source outside this state. Any port, sherry or Madeira
wine manufactured by a winery or a farm winery must not
exceed an alcoholic content of twenty-two percent alcohol
by volume and shall be matured in wooden barrels or casks.
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15  (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Sundays, Christmas or election day, or between the hours of twelve midnight and eight o'clock a. m., except that wine and fortified wines may be sold on such days and at such times as authorized in section thirty-four, article eight of this chapter.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.
§60-4-3. To whom licensed manufacturer may sell.
§60-4-3a. Distillery and mini-distillery license to manufacture and sell.
§60-4-3b. Winery and farm winery license to manufacture and sell.
§60-4-15. Amount of license fees.
§60-4-22. Wholesale representatives’ licenses.

§60-4-2. Licenses for manufacture.
The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

1. Distilleries in which only alcoholic liquors other than wine or beer is manufactured;
2. Wineries in which only wines are manufactured;
3. Breweries in which beer is manufactured;
4. Bottling plants in which beer only is bottled;
5. Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;
6. Farm wineries in which only wines are manufactured; and
7. Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

§60-4-3. To whom licensed manufacturer may sell.

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: Provided, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a winery or a farm winery or distillery or a mini-distillery are subject to regulation by the
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12 commissioner. A winery, distillery, farm winery or mini-
13 distillery may sell and ship alcoholic liquors outside of the
14 state subject to provisions of this chapter.

§60-4-3a. Distillery and mini-distillery license to manufacture
and sell.

1 (a) Sales of liquor. -- An operator of a distillery or a
2 mini-distillery may offer liquor for retail sale to customers
3 from the distillery or the mini-distillery for consumption off
4 premises only. Except for free complimentary samples
5 offered pursuant to section one, article six of this chapter,
6 customers are prohibited from consuming any liquor on the
7 premises of the distillery or the mini-distillery.

8 (b) Retail sales. -- Every licensed distillery or
9 mini-distillery shall comply with the provisions of sections
10 nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen,
11 twenty-two, twenty-three, twenty-four, twenty-five and
12 twenty-six, article three-a of this chapter and the provisions
13 of articles three and four of this chapter applicable to liquor
14 retailers and distillers.

15 (c) Payment of taxes and fees. -- The distillery or
16 mini-distillery shall pay all taxes and fees required of
17 licensed retailers and meet applicable licensing provisions
18 as required by this chapter and by rule of the commissioner.

19 (d) Payments to market zone retailers. -- Each distillery
20 or mini-distillery shall submit to the commissioner ten
21 percent of the gross sales price or each retail liquor sale for
22 the value of all sales at the distillery or the mini-distillery
23 each month. This collection shall be distributed by the
24 commissioner, at least quarterly, to each market zone
25 retailer located in the distillery or mini-distillery's market
(e) Limitations on licensees. -- No distillery or mini-distillery may sell more than three thousand gallons of product at the distillery or mini-distillery location the initial two years of licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery location by two thousand gallons following the initial 24-month period of licensure and may increase sales at the distillery or mini-distillery location each subsequent 24-month period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-distillery location. No licensed mini-distillery may produce more than twenty thousand gallons per calendar year at the mini-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) Sales of wine. -- An operator of a winery or farm winery may offer wine produced by the winery or farm winery for retail sale to customers from the winery or farm winery for consumption off the premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any wine on the premises of the winery or farm winery, unless such winery or farm winery has obtained a multicapacity winery or farm winery license.

(b) Retail sales. -- Every licensed winery or farm winery shall comply with the provisions of articles three, four and
eight of this chapter as applicable to wine retailers, wineries and suppliers when properly licensed in such capacities.

(c) Payment of taxes and fees. -- The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in article eight of this chapter.

(d) Advertising. -- A winery or farm winery may advertise a particular brand or brands of wine produced by it, and the price of the wine subject to federal requirements or restrictions.

(e) Limitations on licensees. -- A winery or farm winery must maintain separate winery or farm winery supplier, retailer and direct shipper licenses when acting in one or more of those capacities, and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. No more than one winery or farm winery license may be issued to a single person or entity, and no person may hold both a winery and a farm winery license.
§60-4-15. Amount of license fees.

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

1. Distilleries, one thousand five hundred dollars;
2. Wineries, one thousand five hundred dollars;
3. Breweries, one thousand five hundred dollars;
4. Bottling plants, one hundred dollars;
5. Wholesale druggists, fifty dollars;
6. Institutions, ten dollars;
7. Industrial use, fifty dollars;
8. Industrial plants producing alcohol, two hundred fifty dollars;
9. Retail druggists, ten dollars;
10. Farm wineries, fifty dollars;
11. Mini-distilleries, fifty dollars.

§60-4-22. Wholesale representatives' licenses.

A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person convicted of a felony within ten years prior to his or her application for such
License; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from the first day of July until the thirtieth day of June next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be one hundred dollars. The fee for any license granted for the remainder of any license year between the first day of January and the thirtieth day of June of the same calendar year shall be fifty dollars.

No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.

In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the

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commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the state capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers or processors of alcoholic liquor they represent. A licensed person may not share, divide or split his or her salary with any person other than his wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended or
revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding one thousand dollars or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;
11 (3) The holder of a winery or a farm winery license from
12 serving complimentary samples of its wine in moderate
13 quantities for tasting on the winery or the farm winery
14 premises; and

15 (4) The holder of a distillery or a mini-distillery license
16 from serving complimentary samples of its alcoholic liquor
17 in moderate quantities for tasting on the distillery or the
18 mini-distillery premises.

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

1 The provisions of this chapter may not prevent:

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

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

7 (3) A person from manufacturing and selling cider made
8 from apples produced by him or her within this state to
9 persons holding distillery licenses, if the manufacture and
10 sale is under the supervision and regulation of the
11 commissioner;

12 (4) A person from manufacturing and selling wine made
13 from fruit produced by him or her within this state to
14 persons holding winery licenses, if the manufacture and sale
15 is under the supervision and regulation of the commissioner;

16 (5) The holder of a winery or a farm winery license
17 from selling wine for off-premises consumption sold at
18 retail at the winery or the farm winery, as provided in
19 section four, article three-b of this chapter, or for any other
20 person who is licensed under this chapter to sell wine as a
21 wine supplier or distributor; and

(6) The holder of a distillery or a mini-distillery license
23 from selling alcoholic liquor for off-premises consumption
24 sold at retail at the distillery or the mini-distillery, as
25 provided in section four, article three-a of this chapter.

ARTICLE 8. SALE OF WINES.

§60-8-1. Construction and application of article.
§60-8-2. Definitions.
§60-8-3. Licenses; fees; general restrictions.
§60-8-4. Liter tax.
§60-8-5. Refund or credit of taxes.
§60-8-6. Licensed or registration required for sale or shipment of wine;
shipments of limited quantities of wine to adult residents permitted.
§60-8-6a. Direct shipper’s license.
§60-8-7. Records; inspection.
§60-8-16. Application for license.
§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.
§60-8-19. To whom licensed manufacturer may sell.
§60-8-20. Unlawful acts generally.
§60-8-23. Duties and powers of commissioner; rules.
§60-8-24. Disposition of revenue.
§60-8-25. Criminal penalties; public nuisances.
§60-8-26. Forfeiture of bond.
§60-8-28. Wine brand licensing and registration and review of wine labels.
§60-8-29. Bond required of distributors and suppliers.
§60-8-30. Exclusive franchise agreements prohibited.
§60-8-31. Other unlawful acts.
§60-8-32. Where wine may be sold at retail.
§60-8-34. When retail sales prohibited.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

(a) Every supplier must use a distributor to distribute wine
for retail sale in this state, except for such sales that occur by
wineries, farm wineries or suppliers holding a direct shipper’s license or farm wineries holding a multicapacity farm winery license. The provisions of Part II of this article shall have general application to the distribution and retail sale of wine in this state. The provisions of Part III of this article shall relate solely to the distribution and the regulation of suppliers and distributors of such wines as may be permitted to be sold at retail pursuant to the provisions of this article. The provisions of Part IV of this article shall relate solely to the retail sale of wine in grocery stores as the term "grocery store" is defined in this article and the retail sale of wine in wine specialty shops as defined in this article. In the event of any inconsistency of any provisions of Part II and the provisions of either Part III or Part IV of this article, the provisions of either Part III or Part IV shall prevail to the extent of such inconsistency.

(b) In the event of any inconsistency between any of the provisions of this article and provisions of any other article of this chapter or of this code, the provisions of this article shall prevail to the extent of any such inconsistency.

c) To the extent the provisions of this chapter exclusive of this article may be given application without creating an inconsistency with the provisions of this article, the provisions of this chapter, exclusive of this article, shall apply to the same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.
"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine.

"Fortified wine" shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent.

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

"Licensee" means the holder of a license granted under the provisions of this article.
“Private wine bed and breakfast” means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

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

“Private wine spa” means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services and relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or stylists, which business also:
(1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

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

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

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

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

"Varietal wine" means any wine labeled according to the grape variety from which such wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce such wine are harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.
"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code.

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

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any such activity after his or her license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed
and breakfast, private wine restaurant or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant or a private wine spa.

(b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) One hundred fifty dollars per year for a supplier’s license;

(2) Twenty-five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five hundred dollars as herein provided;

(3) One hundred fifty dollars per year for a retailer’s license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding such a license, except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in section two of this article;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license, and each separate bed and breakfast
from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of one hundred fifty dollars as herein provided;

(7) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of two hundred fifty dollars as herein provided;

(8) One hundred fifty dollars per year for a private wine spa license and each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of one hundred fifty dollars as herein provided;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (o) of this section or for a heritage fair and festival license under subsection (p) of this section; and

(11) One hundred fifty dollars per year for a direct shipper’s license for a licensee who sells and ships only wine and two hundred fifty dollars per for a direct shipper’s license who ships and sells wine, nonfortified dessert wine, port, sherry or Madeira wines.

(12) Three hundred dollars per year for a multicapacity winery or farm winery license which shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity.
(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by article seven of this chapter, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer or party supply store licensed in both such capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing such retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster’s club, which has at least fifty duly elected or approved dues-paying members in good standing. Such club shall meet on the wine specialty shop’s premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A
retailer’s license may be issued only to the proprietor or owner
of a bona fide grocery store or wine specialty shop.

(h) The commissioner may issue a special license for the
retail sale of wine at any festival or fair which is endorsed or
sponsored by the governing body of a municipality or a county
commission. Such special license shall be issued for a term of
no longer than ten consecutive days and the fee therefor shall
be two hundred fifty dollars regardless of the term of the
license unless the applicant is the manufacturer of said wine on
a winery or a farm winery as defined in section five-a, article
one of this chapter, in which event the fee shall be fifty dollars
if the event is held on the premises of the winery or farm
winery. The application for such license shall contain such
information as the commissioner may reasonably require and
shall be submitted to the commissioner at least thirty days
prior to the first day when wine is to be sold at such festival or
fair. A winery or a farm winery licensed under this subsection
may exhibit, conduct tastings, not to exceed a reasonable
serving, and may sell wine only for consumption off the
premises of such festival or fair. A special license issued other
than to a winery or a farm winery may be issued to a “wine
club” as defined herein below. The festival or fair committee
or the governing body shall designate a person to organize a
club under a name which includes the name of the festival or
fair and the words “wine club”. The license shall be issued in
the name of the wine club. A licensee may not commence the
sale of wine as provided in this subsection until the wine club
has at least fifty dues-paying members who have been enrolled
and to whom membership cards have been issued. Thereafter,
new members may be enrolled and issued membership cards at
any time during the period for which the license is issued. A
wine club licensed under the provisions of this subsection may
sell wine only to its members, and in portions not to exceed
eight ounces per serving. Such sales shall take place on
premises or in an area cordoned or segregated so as to be
closed to the general public, and the general public shall not be
admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules and orders of the commissioner relating to such special license: Provided, That the commissioner may by rule, regulation or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations or orders as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twelve of this article: Provided, however, That under no circumstances shall the provisions of subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

A license issued under the provisions of this subsection and the licensee holding such license shall not be subject to the provisions of subsection (g) of this section.

(i) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa or a private club may permit a person over twenty-one years of age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its members and their guests in accordance
with the provisions of this article and in accordance with regulations promulgated by the commissioner for the purpose of consumption of said wine off premises: Provided, however, that for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees is at least fifteen dollars: Provided further, That a licensed private wine restaurant or a private club may offer for sale for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over twenty-one years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

(j) With respect to subsections (h), (i), (n) and (o) of this section, the commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code with regard to the form of the applications, the suitability of both the applicant and location of the licensed premises and such other legislative rules deemed necessary to carry the provisions of such subsections into effect.

(k) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (i) of this section. Each restaurant so licensed shall be charged an additional one hundred dollar per year fee.

(l) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.
(m) Wineries and farm wineries may advertise off premises as provided in section seven, article twenty-two, chapter seventeen of this code.

(n) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than one ounce each, to any one consumer in one day. Persons serving the complimentary samples must be twenty-one years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee or representative may furnish, give or serve complimentary samples of wine to any person less than twenty-one years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(o) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine when raising money for athletic, charitable, educational or religious purposes. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the provision of
subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.

(p) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after the first day of July, two thousand seven, by suppliers to distributors, and including all wine sold and sent to West Virginia adult residents from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter.

Before the sixteenth day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or the West Virginia adult residents during the preceding month to the Tax Commissioner.
The reports shall contain other information and be in the form the Tax Commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of article ten, chapter eleven of this code. Failure to timely file the tax returns within five calendar days of the sixteenth day of each month will also subject a supplier, distributor and direct shipper to penalties under section eighteen of this article.

No wine imported, sold or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

§60-8-5. Refund or credit of taxes.

The Tax Commissioner shall refund, or credit on a subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty, other than breakage occurring on the premises of the licensee because such wine has been declared by the commissioner to be unfit for sale and the amount of tax paid exceeds fifty dollars, the Tax Commissioner shall refund the tax paid. The commissioner shall promulgate regulations establishing the procedure and nature of proof required in case of any claim for refund or credit.

§60-8-6. License or registration required for sale or shipment of wine; shipment of limited quantities of wine to adult residents permitted.

(a) Except as to the commissioner and except as provided in subsection (b) of this section, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this
state, who is engaged in or desires to engage in the sale or
shipment of wine to a distributor for resale under this article
shall, prior to engaging in such activities, register with the
commissioner. If any such person violates the provisions of
this article, he shall not be permitted to sell, ship or deliver any
wine to a distributor or to the commissioner, or otherwise
engage in the wine business in this state for a period of one
year from the date a notice is mailed to such person by the
commissioner of the fact that such person has violated the
provisions of this article. During such one-year period, it shall
be unlawful for any distributor within this state to buy or
receive wine from such person or to have any dealings with
such person with respect thereto. Hearings and appeals on
such notices may be had in the same manner as in the case of
revocations of licenses under this article.

(b) Notwithstanding the provisions of this chapter or any
other law to the contrary, any person or winery that is currently
licensed and in good standing in its domicile state as a winery,
farm winery, supplier or retailer of wine and who obtains a
direct shipper’s license from the commissioner, as provided in
this chapter, may ship up to a maximum of two cases of wine
per month directly to adult West Virginia residents who are
twenty-one years of age or over, for such adult resident’s
personal use and consumption and not for resale. Licensed
direct shippers must maintain accurate records of all shipments
sent to West Virginia residents. All shipments of wine into
West Virginia by licensed direct shippers shall be made by a
licensed and bonded shipping carrier. Direct shippers and their
carriers shall not ship wine to areas of West Virginia where
wine may not be lawfully sold by county, local or municipal
law. Any holder of a direct shipper’s license must collect all
taxes, sales taxes, municipal taxes and the liter tax due to West
Virginia, remit all sales, municipal taxes and the liter tax to the
tax commissioner at the close of each month and file a
monthly return reflecting the taxes paid for all sales and
shipments to residents in West Virginia. The commissioner
shall prescribe the forms to be used to file the monthly returns. The shipping container of any wine sent into or out of this state under this subsection shall be clearly and conspicuously labeled to indicate that the package cannot be delivered to: (1) Any person under the age of twenty-one; (2) to an intoxicated person; or (3) to a person physically incapacitated due to the consumption of nonintoxicating beer, wine or alcoholic liquors or the use of drugs; and (4) the carriers are required to obtain a written or electronic signature upon delivery of an adult resident who the carrier verifies is at least twenty-one years of age or older and if the carrier is not able to obtain a signature of a verified adult resident at least twenty-one years of age or older, then the carrier may not complete the delivery of the wine shipment. Failure of any holder of a direct shipper’s license or such licensee’s carrier to abide by the provisions of this chapter and the commissioner’s rules may subject the direct shipper to the penalties available to the commissioner under section eighteen of this article.

§60-8-6a. Direct shipper’s license.

(a) Before sending any shipment of wine to a resident of West Virginia, the direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner either the one hundred fifty dollar license fee to ship and sell only wine, the two hundred fifty dollar license fee to ship and sell wine and nonfortified dessert wine, port, sherry or Madeira wines, or the three hundred dollar multicapacity winery or farm winery license fee;
(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State, if a corporation;

(5) Provide the commissioner a true copy of its current alcoholic beverage license issued in the state of domicile, proving that the direct shipper is licensed in its state of domicile as a winery, farm winery, supplier or retailer of wine;

(6) Obtain from the commissioner a direct shipper’s license;

(7) Submit to the commissioner a list of all brands of wine to be shipped to West Virginia residents; and

(8) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(b) All direct shipper licensees shall:

(1) Not ship more than two cases of wine per month to any person. A case is defined as any combination of packages containing not more than nine liters of wine;

(2) Not ship to any address in an area identified by the commissioner as a “dry” or local option area where it is unlawful to sell wine or alcoholic liquors;

(3) Not ship to any licensed suppliers, distributors, retailers, private wine bed and breakfasts, private wine restaurants, private wine spas or wine specialty shops;

(4) Not ship wine from overseas or internationally unless it is first shipped to a licensed supplier or distributor;
(5) Ensure that all containers of wine shipped directly to a resident in this state are clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(6) File monthly returns to the commissioner and the Tax Commissioner showing the total of wines, by type, sold and shipped into West Virginia for the preceding month;

(7) Pay to the Tax Commissioner all sales taxes, municipal taxes and the liter tax due on sales and shipments to residents of West Virginia in the preceding month, the amount of such taxes to be calculated as the sales were made in West Virginia at the location where delivery is made;

(8) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the direct shipper’s records upon request;

(9) Be deemed to have consented to the jurisdiction of the commissioner or any other state agency, the Kanawha County circuit court located in Charleston, West Virginia, concerning enforcement of this article and any other related laws, rules; and

(10) Provide proof or records to the commissioner, upon request, that all direct shipments of wine were purchased and delivered to an adult resident of West Virginia over the age of twenty-one years of age.

(c) The direct shipper may annually renew its license with the commissioner by application, paying the direct shipper license fee and providing the commissioner with a true copy of a current alcoholic beverage license from the direct shipper’s domicile state.
(d) The commissioner may promulgate rules to effectuate the purposes of this law.

(e) The commissioner may enforce the requirements of this section by administrative proceedings to suspend or revoke a direct shipper’s license, and the commissioner may accept payment of a penalty or an offer in compromise in lieu of suspension, at the commissioner’s discretion.

(f) Shipments of wine direct to consumers in West Virginia from persons who do not possess a current direct shipper’s license or other permit or license from the commissioner are prohibited. Any person who knowingly makes, participates in, transports, imports or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and shall, upon conviction thereof, be fined in an amount not to exceed ten thousand dollars per violation or shall be imprisoned in jail for a period not to exceed seventy-two hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a direct shipment constitutes an act that is an unfair trade practice.

§60-8-7. Records; inspection.

Every person who sells or ships wine as a direct shipper to West Virginia adult residents or who sells or ships wine to a distributor, and every distributor shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The Tax Commissioner or the commissioner, or both, may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The Tax Commissioner or the commissioner, or both, may
require the production, within this state at the time and place
the Tax Commissioner or the commissioner, or both, may
designate, of any books, accounts, papers or records kept
within or without the state, or verified copies in lieu thereof, in
order that an examination thereof may be made by the Tax
Commissioner, the commissioner or their duly designated
agents.

§60-8-16. Application for license.

Any person desiring a license under this article shall file a
written application for a license with the commissioner and in
the application shall state under oath:

(1) The name of the applicant, including his or her trade
name if any, his or her address and the length of his or her
residence within this state;

(2) The address of the place of business for which the
license is desired, or other description that definitely locates it;
and that the place of business conforms to all health and fire
laws and regulations applicable thereto;

(3) The name of the owner of the premises upon which the
business is to be conducted and, if the owner is not the
applicant, that such applicant is the bona fide lessee of the
business;

(4) If the application is for a retailer’s license, that the
applicant is the proprietor or owner of a bona fide grocery
store, private wine bed and breakfast, private wine restaurant,
private wine spa or wine specialty shop;

(5) That the applicant intends to carry on the business
authorized by the license for himself or herself or under his or
her immediate supervision or direction;
(6) That the applicant is a citizen of the United States;

(7) That the applicant is an actual bona fide resident of the State of West Virginia, except for those applicants applying for a supplier’s license or a direct shipper’s license;

(8) That the applicant is not less than eighteen years of age;

(9) That the applicant has not been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application; and that he or she has not, within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States;

(10) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other state;

(11) If the applicant is a firm, association or partnership, the application shall state the matters required in subdivisions (6), (7), (8), (9) and (10), with respect to each of the members thereof, and each of said members must meet all the requirements in said subdivisions;

(12) If the applicant is a corporation, organized or authorized to do business in this state, the application shall state the matters required in subdivisions (6), (7), (8), (9) and (10), with respect to each of the officers and directors thereof, and any stockholder owning twenty percent or more of the stock of such corporation and the persons who conduct and manage the licensed premises for the corporation. Each of said individuals must meet all the requirements provided in those subdivisions except that the requirements as to citizenship and residence shall not apply to the officers, directors and stockholders of a corporation applying for a retailer’s license; and
(13) Any other information that the commissioner may reasonably require.

The foregoing statements required in an application shall constitute mandatory prerequisites for the issuance of a license.

The application must be verified by the owner, or each member of the firm, each partner, if a partnership, each member of the governing board, if an association, or each officer and director, if a corporation: Provided, That the application of a corporation applying for a retailer's license need be verified only by its president or vice president.

§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 supplier or distributor fails or refuses to keep in effect the bond required by section twenty-nine of this article, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by section twenty of this article is furnished to the commissioner, 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 commissioner if a written demand for hearing is served upon the commissioner within ten days following the receipt of the commissioner'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 in the circuit court of Kanawha County, West Virginia.

(h) The judgment of the Kanawha County 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.

§60-8-19. To whom licensed manufacturer may sell.

A licensed manufacturer who is licensed as a supplier of
wine, as defined in this article, may sell such wines in this state
only to the commissioner and to distributors as defined in this
article. Such manufacturers may sell such wine outside of this
state for use or resale outside this state. The provisions of this
section shall not apply to farm wineries as defined by section
five-a, article one of this chapter.

§60-8-20. Unlawful acts generally.

It shall be unlawful:

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

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

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

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

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

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

§60-8-23. Duties and powers of commissioner; rules.

(a) The commissioner is authorized:

(1) To enforce the provisions of this article.

(2) To enter the premises of any licensee at reasonable times for the purpose of inspecting the premises and determining the compliance of the licensee with the provisions of this article and any rules promulgated by the commissioner.

(3) In addition to rules relating to the tax imposed by section four of this article or otherwise authorized by this article, to promulgate reasonable rules as he deems necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to:

(A) The transport, use, handling, service and sale of wine;

(B) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption; and

(C) Restricting the content of wine advertising so as to prohibit false or misleading claims, or depictions or descriptions of wine being consumed irresponsibly or
immoderately, or advertising presentations designed to appeal to persons below the legal drinking age: Provided, That the commissioner shall not promulgate any rule which prohibits the advertising of a particular brand or brands of wine and the price thereof: Provided, however, That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(4) To issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twelve of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if said section was set forth in extenso in this subdivision.

(b) The authority granted in this subsection and subsections (a) and (d) of this section may also be exercised by the duly authorized or designated agents of the commissioner.

(c) Except as may be in this article to the contrary, the commissioner shall not have authority by rule or otherwise to regulate markups, prices, discounts, allowances or other terms of sale at which wine may be purchased or sold by wine distributors or licensees authorized to sell wine at retail but nothing herein shall be deemed to authorize or permit any discriminatory practice prohibited by subsection (a), section thirty-one of this article or any other discriminatory practice.

(d) All rules promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The rules promulgated pursuant to the prior enactment of this article and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules are not abrogated and made null and void by the reenactment of the sections of this article during the regular session of the Legislature for the year
one thousand nine hundred eighty-six. Any rule which is
inconsistent or contrary in any way to any provision of this
article now or hereafter enacted are null and void.

§60-8-24. Disposition of revenue.

(a) The first two hundred thousand dollars of fees collected
under the provisions of this article during each fiscal year shall
be deposited into a special revolving fund designated the Tax
Commissioner’s Wine Tax Administration Fund, which fund is
hereby created in the State Treasury. The Tax Commissioner’s
Wine Tax Administration Fund shall be used by the Tax
Commissioner to administer and support direct and indirect
costs of the Tax Division for administration, collection,
including compliance enforcement, auditing and distribution of
taxes on wine imposed by this code and for which the Tax
Commissioner has administration, collection, compliance
enforcement, auditing or distribution functions or
responsibilities.

(b) After collection and deposit of the first two hundred
thousand dollars, as specified in subsection (a) of this section,
all fees collected by the Alcohol Beverage Control
Commissioner under the provisions of this article shall next be
deposited in the State Treasury and credited to a special fund
to be known as the Wine License Special Fund. All moneys in
the Wine License Special Fund may be expended only by the
Alcohol Beverage Control Commissioner for the
administration of the provisions of this article or, to the extent
of any excess, for the administration of this chapter or as may
be appropriate by law.

(c) The liter tax imposed and collected by the Tax
Commissioner under the provisions of this article shall be paid
into the State Treasury and deposited in the General Revenue
Fund of the state.
(d) All moneys collected by the Alcohol Beverage Control Commissioner and the Tax Commissioner under the provisions of this article shall be remitted to the State Treasury monthly within fifteen days after the end of each month.

§60-8-25. Criminal penalties; public nuisances.

(a) Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts herein declared to be unlawful, is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both fined and imprisoned. Magistrate courts shall have concurrent jurisdiction with the circuit court for the trial of all misdemeanors arising under this article.

(b) The provisions of sections sixteen and seventeen, article six of this chapter shall apply to persons violating the provisions of this article to the same extent as if such provisions were set forth in extenso herein.

§60-8-26. Forfeiture of bond.

On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen of this article or upon finding of failure of a taxpayer to pay all taxes prescribed by section four of this article, which conviction, revocation or finding has become final, the licensee, former licensee or company registered and licensed as a supplier or distributor, as the case may be, shall forfeit any bond required by section twenty-nine of this article. The penal sum of any bond forfeited shall forthwith be paid to the State Treasurer and credited to the General Revenue Fund of this
11 state. Such sum may be collected by an action at law or other
12 appropriate remedy.

PART III. WINE DISTRIBUTION.

§60-8-28. Wine brand licensing and registration and review of
wine labels.

1 Every supplier offering wine for sale under this article shall
2 register with the commissioner each wine brand offered for
3 sale in the state and shall pay a fee of one hundred dollars for
4 the registration of such wine brand for three years, such fee
5 shall be returned to the supplier if the wine is not registered for
6 sale. No wine brand may be sold under this article unless all
7 of such wine brand’s labels intended for sale in the state have
8 been registered and reviewed by the commissioner. Every
9 supplier offering various wine labels of a registered and
10 reviewed wine brand for sale in the state shall submit all of the
11 wine brand’s labels intended for sale in the state for
12 registration prior to the sale of such wine labels in the state for
13 no additional fees. After the expiration of three years, the
14 supplier may renew the registered wine brand by paying a one
15 hundred dollar renewal fee for three more years and every
16 three years thereafter. Prior to registration of any wine labels,
17 the commissioner shall review the wine labels. This review
18 shall include, but not be limited to, a review of the alcohol
19 content, corporate or product information, marketing and
20 advertising so that the wine label is not intended to be
21 marketed to persons less than twenty-one years of age. The
22 commissioner shall remove all nonrenewed wine labels and
23 any licensee who sells wine with nonrenewed wine labels shall
24 be subject to the penalties under section eighteen of this article.
25 Failure to register, obtain certification and pay the annual fee
26 for a wine brand and failure to register the wine brand’s labels
27 will subject the supplier to penalties under said section.

§60-8-29. Bond required of distributors and suppliers.
Each applicant for a distributor's license or a supplier's license shall furnish at the time of application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

The penal sum of the bond for distributors shall be ten thousand dollars and the penal sum of the bond for suppliers shall be ten thousand dollars. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.

§60-8-30. Exclusive franchise agreements prohibited.

It shall be illegal for any manufacturer, winery, farm winery or supplier to enter into any exclusive franchise agreement with any distributor whereby any such distributor is given the exclusive right within this state or in any given territory within this state to distribute the product or products of such manufacturer which are to be sold or distributed pursuant to the provisions of this article. Further, all agreements between a manufacturer, winery, farm winery or supplier and a distributor must be in writing and on file with the commissioner and all such agreements must provide for termination of either party provided that notice of termination is provided in writing and by certified mail to the commissioner and all parties to the agreement ninety days prior to the termination date. Once the notice has been received by either party, the distributor shall: (1) Use the ninety-day period to deplete such distributor’s affected wine inventory; or (2) reach some agreement with the manufacturer,
winery, farm winery or supplier to return unused salable wine inventory or receive payment for unused salable wine inventory. No new distributor shall be appointed until the conclusion of the ninety days or as the parties have otherwise agreed to complete the termination. For the purposes of this article, “salable” shall mean inventory fit for human consumption or as otherwise determined by the commissioner.

§60-8-31. Other unlawful acts.

It is unlawful:

(a) For a distributor to discriminate in price, sales agreements, terms or services offered to retailers, licensees or to any licensee under article seven of this chapter and further it is unlawful for a supplier to discriminate against a distributor in price, sales agreements, terms or services. "Discriminate", as used in this section, means the granting of more favorable prices, agreements, terms or services to one person than to another.

(b) For a distributor, his or her agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under article seven of this chapter on Sunday or any general election day.

(c) For a distributor to sell wines authorized by this article to licensees under article seven of this chapter at a price which is greater than the price at which such wines are sold and distributed to retailers under this article.

PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.

Except as to sales permitted to be made by wineries or farm wineries that obtain a retailer’s license, private wine bed and
breakfasts, private wine restaurants and private wine spas, wine sold pursuant to this article may be sold at retail only by
the commissioner and in and by retailers and wine specialty shops as defined by section two of this article.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o'clock a.m. and one o'clock p. m. on Sundays, or between the hours of two o'clock a. m. and seven o'clock a. m. on weekdays and Saturdays.

CHAPTER 8

(H.B. 2745 - By Delegates Wysong, Tabb, Stemple, Pino, Staggers, Shaver, Ellis, Stephens, Rodighiero and Paxton)

[Passed March 10, 2007; in effect ninety days from passage.]
Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §60-3A-24 of the Code of West Virginia, 1931, as amended, relating to increasing the fine for furnishing alcohol to persons under 21 years of age.

Be it enacted by the Legislature of West Virginia:

That §60-3A-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a) (1) Any person who is eighteen or over but under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in jail for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in section four, article one, chapter forty-nine of this code and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in section eleven, article five of said chapter.

(2) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.
(b) Any person under the age of twenty-one years who,
for the purpose of purchasing liquor from a retail licensee,
misrepresents his or her age or who for such purpose
presents or offers any written evidence of age which is false,
fraudulent or not actually his or her own or who illegally
attempts to purchase liquor from a retail licensee is guilty of
a misdemeanor and, upon conviction thereof, shall be fined
an amount not to exceed fifty dollars or imprisoned in jail
for a period not to exceed seventy-two hours, or both fined
and imprisoned or, in lieu of such fine and imprisonment,
may, for the first offense, be placed on probation for a
period not exceeding one year.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to whom
he or she is not related by blood or marriage any liquor from
whatever source is guilty of a misdemeanor and, upon
conviction thereof, shall be fined an amount not to exceed
two hundred fifty dollars or imprisoned in jail for a period
not to exceed ten days, or both fined and imprisoned.

(d) No person while on the premises of a retail outlet
may consume liquor or break the seal on any package or
bottle of liquor. Any person who violates the provisions of
this subsection is guilty of a misdemeanor and, upon
conviction thereof, shall be fined an amount not to exceed
one hundred dollars or imprisoned in jail for a period not to
exceed ten days, or both fined and imprisoned.
AN ACT to amend and reenact §60-7-4 of the Code of West Virginia, 1931, as amended, relating to private clubs; and deleting provision that allowed private clubs segregated on the basis of race or color to obtain license to sell alcoholic liquors.

Be it enacted by the Legislature of West Virginia:

That §60-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

1 (a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

4 (1) The name of the applicant;
(2) If the applicant is an unincorporated association, the names and addresses of the members of its governing board;

(3) If the applicant is a corporation, the names and addresses of its officers and directors;

(4) The place at which the applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;

(6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation;

(7) The size and nature of the dining and kitchen facilities operated by applicant; and

(8) Such other information as the commissioner may reasonably require which shall include, but not be limited to, the criminal records, if any, of each member of the applicant's governing board and/or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(b) The application shall be verified by each member of the governing board of the applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The application shall be accompanied by the license fee hereinafter prescribed and by a bond of the applicant in the penal sum of five thousand dollars with a corporate surety authorized to transact business in the State of West Virginia, payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed and
34 on the faithful performance of and compliance with the
35 provisions of this article.

36 (c) Under no circumstance may any college fraternity or
37 sorority be issued a license to operate a private club.

38 (d) No license to operate a private club will be issued to
39 applicants who discriminate against any person or group of
40 persons because of race or color of such person or group of
41 persons.

CHAPTER 10

(Com. Sub. for H.B. 2181 - By Delegates Boggs and Hamilton)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §4-1-23 of the Code of West
Virginia, 1931, as amended; to amend and reenact §5-1-20 of
said code; and to amend said code by adding thereto a new
section, designated §30-1-17, all relating to authorizing state
offices, agencies, boards and commissions to submit annual
reports electronically; and requiring electronic copies to be
submitted to the Legislative Manager in certain
circumstances.

Be it enacted by the Legislature of West Virginia:

That §4-1-23 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; that §5-1-20 of said code be
amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-1-17, all to read as follows:

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

CHAPTER 4. THE LEGISLATURE.

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.

§4-1-23. Annual reports to be sent to the legislative librarian.

1 (a) Any office, agency, commission or board required by any section of this code to provide an annual report to the Legislature, Legislative Manager, Legislative Auditor, the President of the Senate and the Speaker of the House of Delegates or the Joint Committee on Government and Finance shall submit the report to the Legislative Librarian and may submit it on electronic media to be filed in the same manner as a printed annual report, or transmitted electronically via the internet. Any report filed in an electronic format shall be considered as having satisfied the filing requirements.

(b) If an office, agency, commission or board submits its annual report electronically, it shall transmit an electronic copy to the legislative manager.
ANNUAL REPORTS

(c) All audit reports shall be submitted to the Legislative Manager and may be submitted on electronic media or transmitted electronically via the internet.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 1. THE GOVERNOR.

§5-1-20. Reports to the Governor; form and contents; transmission to the Legislature; special reports.

(a) The secretaries of the executive department and the officers of all public institutions of the state shall make an annual report to the Governor as soon as possible after the close of each fiscal year, notwithstanding any other provision of law to the contrary.

(b) All state officers, boards, commissions, departments and institutions required by law to make reports to the Governor, the Legislature or any administrative board or state official shall cover fiscal year periods.

(c) Annual reports shall be submitted in typewritten form, any legible form produced by mechanical means, on electronic media, to be filed in the same manner as a printed annual report, or transmitted electronically via the internet. Any annual report filed in an electronic format shall be considered as having satisfied the filing requirements.

(d) The Governor shall by executive order prescribe the general contents of the reports to be submitted to him or her. The form and format of the reports shall be as prescribed in this code.
The Governor shall transmit, and may do so electronically, copies of the report to the Legislature and provide a copy of all such reports with the Division of Archives and History where the reports shall be kept as permanent records.

(f) All annual reports to the Legislature shall be submitted, and may do so electronically, to the Legislative Librarian.

(g) The Governor may at any time require information in writing, under oath, from any officer, board, department or commission of the executive department or the principal officer or manager of any state institution, upon any subject relating to the condition, management and expense of their respective offices or institutions.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

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

§30-1-17. Annual reports.

(a) A licensing board, organized under the provisions of this chapter, may submit its annual report on electronic media to be filed in the same manner as a printed annual report, or transmitted electronically via the internet. Any report filed in an electronic format shall be considered as having satisfied the filing requirements.

(b) If a board chooses to submit its annual report electronically, it shall transmit an electronic copy to the legislative manager.
AN ACT to amend and reenact §58-5-14 of the Code of West Virginia, 1931, as amended, relating to appeal bonds; limiting bond amounts; consolidating multiple judgments for bonding purposes; providing exceptions to bonding limitations; and providing for the adjustment of the appeal bonding limitations to reflect changes in the consumer price index.

Be it enacted by the Legislature of West Virginia:

That §58-5-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.


(a) When required by the court, an appeal shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal is allowed or entered with condition: If a supersedeas be awarded, to abide by and perform the judgment and to pay to the opposite party, and to any person injured, all such costs and damages as they, or either
of them, may incur or sustain by reason of said appeal, in case
such judgment, or such part, be affirmed, or the appeal be
dismissed, and also, to pay all damages, costs and fees, which
may be awarded against or incurred by the appellant or
petitioners; and if it is an appeal from a judgment dissolving an
injunction, or dismissing a bill of injunction, with a further
condition, to indemnify and save harmless the surety in the
injunction bond against loss or damage in consequence of his or
her suretyship; and with condition when no supersedeas is
awarded to pay such specific damages and such costs and fees
as may be awarded or incurred: Provided, That whenever an
appeal is awarded in any action or suit wherein a judgment for
the payment of money has been entered against an insured in an
action which is defended by an insurance corporation, or other
insurer, on behalf of the insured under a policy of insurance, the
limit of liability of which is less than the amount of said
judgment, execution on the judgment to the extent of the policy
coverage shall be stayed until final determination of such appeal
and no execution shall be issued, or action brought, maintained
or continued against such insured, insurance corporation or
other insurer, for the amount of such judgment so stayed, by
either the injured party, the insured or the legal representative,
heir or assigns of any of them, during the pendency of such
proceeding, provided such insurance corporation, or other
insurer, shall:

(1) File with the clerk of the court in which the judgment was
entered a sworn statement of one of its officers describing the
nature of the policy and the amount of coverage thereof;

(2) Give or cause to be given by the judgment debtor or some
other person for him or her a bond in a penalty to be fixed by
the court or judge by or in which the appeal is allowed or
entered, not to exceed the amount of such insurance coverage
set out in the sworn statement above required, with condition to
pay the amount of such coverage upon said judgment if the
judgment or such part is affirmed or the appeal is dismissed,
plus interest on said sum and cost;
(3) Serve a copy of such sworn statement and bond upon the judgment creditor or his or her attorney;

(4) Deliver or mail to the insured at the latest address of the insured appealing upon the records of such insurance corporation, or other insurer, written notice that execution on such judgment to the extent that it is not covered by such insurance is not stayed in respect to the insured: Provided, That the filing of a bond by the insured or someone for him or her, conditioned upon the payment of the balance of the judgment and interest not stayed by the insured as aforesaid if the judgment is affirmed or the appeal is dismissed, shall stay execution on the balance of said judgment not covered by such insurance: Provided, however, That the filing of such statement and bond hereunder by an insurance corporation or other insurer shall not thereby make such insurance corporation or other insurer a party to such action, either in the trial court or in the appellate court.

(b) Except for bonds required under section four, article eleven-a, chapter four of this code, an appeal bond required by a court in accordance with this section may not exceed the amount of the total judgment, which includes the actual judgment, plus costs, interest and fees: Provided, That for all verdicts returned or judgments rendered on or after the first day of July, two thousand seven, in which the judgment exceeds fifty million dollars, the court shall require an appeal bond of no more than fifty million dollars. For purposes of this subsection, multiple judgments resulting from cases that have been consolidated or aggregated for purpose of trial proceedings shall be treated as a single judgment.

(c) If the appellee proves by a preponderance of the evidence that the appellant is dissipating or diverting assets outside the ordinary course of business, thereby impairing the appellant’s ability to pay the ultimate judgment, the court is not bound by the limitations stated in subsection (b) of this section and may
set the appeal bond at any amount not to exceed the total judgment.

(d) The maximum amount allowed for a bond under subsection (b) of this section shall be adjusted on the first day of July, two thousand twelve, by an amount to reflect the annual aggregate percentage change in the Federal Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor for the immediately preceding five years, and shall thereafter be adjusted on the first day of July every five years after that initial adjustment by an amount determined by the aggregate change in the Federal Consumer Price Index for All Urban Consumers since the previous adjustment.

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

Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.

II. Appropriations.
III. Administration.

TITLE I—GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

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

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

2 "Governor" shall mean the governor of the state of West Virginia.

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

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

9 The "fiscal year two thousand eight" shall mean the period from the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight.

12 "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. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for "BRIM Premiums" be insufficient to cover such cost, the remainder of such costs shall be transferred by each spending unit from its "personal services" line item, its "employee benefit" line item, its "unclassified" line item or any other appropriate line item to "BRIM Premiums" for payment to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments.
Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation. Such expenditures shall be considered an employee benefit.

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

Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

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

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

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

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

"Capital outlay" shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by section twelve, article three, chapter twelve of the code.
From appropriations made to the spending units of state
government, upon approval of the governor there may be
transferred to a special account an amount sufficient to match
federal funds under any federal act.

Appropriations classified in any of the above categories
shall be expended only for the purposes as defined above and
only for the spending units herein designated: Provided, That
the secretary of each department shall have the authority to
transfer within the department those general revenue funds
appropriated to the various agencies of the department:
Provided, however, That no more than five percent of the
general revenue funds appropriated to any one agency or
board may be transferred to other agencies or boards within
the department: Provided further, That the secretary of each
department and the director, commissioner, executive
secretary, superintendent, chairman or any other agency head
not governed by a departmental secretary as established by
chapter five-f of the code shall have the authority to transfer
funds appropriated to "personal services" and "employee
benefits" to other lines within the same account and no funds
from other lines shall be transferred to the "personal services"
line: And provided further, That 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

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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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§16. Appropriations for local governments.
§17. Total appropriations.
§18. General school fund.

1 Section 1. Appropriations from general revenue.—From the state fund, general revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter eleven-b of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand eight.
The appropriations for the senate for the fiscal year 2007 are to remain in full force and effect and are hereby reappropriated to June 30, 2008. Any balances so reappropriated may be transferred and credited to the fiscal year 2008 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 2008 Org 2200

1 Compensation of Members (R) . . . 003 $ 2,270,000
2 Compensation and Per Diem of Officers and Employees (R) ............ 005 700,000
3 Current Expenses and Contingent
   Fund (R) ...................... 021 4,221,162
4 Expenses of Members (R) ......... 399 1,190,000
5 BRIM Premium (R) ............... 913 28,200
6 Total ........................... $ 8,409,282

The appropriations for the house of delegates for the fiscal year 2007 are to remain in full force and effect and are hereby reappropriated to June 30, 2008. Any balances so reappropriated may be transferred and credited to the fiscal year 2008 accounts.

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

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

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

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

3—Joint Expenses
(WV Code Chapter 4)
Fund 0175 FY 2008 Org 2300

1 Joint Committee on
2 Government and Finance (R) . . . . 104 $ 6,971,393
3 Legislative Printing (R) ............. 105 800,000
4 Legislative Rule-Making
5 Review Committee (R) ............. 106 155,000
6 Legislative Computer System (R) . 107 950,000
7 Joint Standing Committee
8 on Education (R) ................. 108 88,000
9 Tax Reduction and Federal Funding
10 Increased Compliance(TRAFFIC)(R) 642 15,000,000
11 BRIM Premium (R) ................ 913 22,000
12 Total ............................. $ 23,986,393

The appropriations for the joint expenses for the fiscal
year 2007 are to remain in full force and effect and are
hereby reappropriated to June 30, 2008. Any balances so
reappropriated may be transferred and credited to the fiscal
year 2008 accounts.

Upon the written request of the clerk of the senate, with
the approval of the president of the senate, and the clerk of
the house of delegates, with the approval of the speaker of the
house of delegates, and a copy to the legislative auditor, the
auditor shall transfer amounts between items of the total
appropriation in order to protect or increase the efficiency of
the service.
The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs.

JUDICIAL
4—Supreme Court—General Judicial
Fund 0180  FY 2008  Org 2400

<table>
<thead>
<tr>
<th>Item Description</th>
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<th>Amount</th>
</tr>
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<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$ 61,193,356</td>
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<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>700,000</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>19,415,706</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>17,976,405</td>
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<tr>
<td>Judges' Retirement System (R)</td>
<td>110</td>
<td>2,533,000</td>
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<tr>
<td>Retirement Systems-Unfunded Liability</td>
<td>775</td>
<td>3,501,000</td>
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<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>374,015</td>
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<tr>
<td>Total</td>
<td></td>
<td>$105,693,482</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2006 and 2007 are to remain in full force and effect and are hereby reappropriated to June 30, 2008. Any balances so reappropriated may be transferred and credited to the fiscal year 2008 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 (activity 110) and Retirement Systems-Unfunded Liability (activity 775) are to be transferred to the consolidated public
APPROPRIATIONS

22 retirement board, in accordance with the law relating thereto,
23 upon requisition of the administrative director of the supreme
court of appeals.

EXECUTIVE

5—Governor's Office
(WV Code Chapter 5)
Fund 0101 FY 2008 Org 0100

| 1  | Personal Services               | 001 | $2,473,586 |
| 2  | Salary of Governor              | 002 | 95,000     |
| 3  | Annual Increment                | 004 | 22,350     |
| 4  | Employee Benefits               | 010 | 736,016    |
| 5  | Unclassified (R)                | 099 | 1,446,075  |
| 6  | National Governors' Association | 123 | 70,200     |
| 7  | Southern States Energy Board    | 124 | 28,732     |
| 8  | Southern Governors’ Association | 314 | 25,000     |
| 9  | Marlington Flood Wall           | 757 | 0          |
| 10 | Pharmaceutical Cost             |     |            |
| 11 | Management Council (R)          | 796 | 503,138    |
| 12 | BRIM Premium                    | 913 | 266,262    |
| 13 | P20 Jobs Cabinet                | 954 | 30,000     |
| 14 | Total                          |     | $5,696,359 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), Publication of Papers and Transition Expenses—Surplus (fund 0101, activity 359), 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.
6—Governor's Office—
Custodial Fund
(WV Code Chapter 5)
Fund 0102  FY 2008  Org 0100

1 Unclassified—Total (R) ............... 096  $ 588,733

2 Any unexpended balance remaining in the appropriation
3 for Unclassified-Total (fund 0102, activity 096) at the close
4 of the fiscal year 2007 is hereby reappropriated for
5 expenditure during the fiscal year 2008.

6 Funds are to be used for current general expenses,
7 including compensation of employees, household
8 maintenance, cost of official functions and additional
9 household expenses occasioned by such official functions.

7—Governor's Office—
Civil Contingent Fund
(WV Code Chapter 5)
Fund 0105  FY 2008  Org 0100

1 Civil Contingent Fund-Total (R) ....... 114  $ 4,000,000

2 Any unexpended balances remaining in the appropriation
3 for Stream Restoration—Surplus (fund 0105, activity 078),
4 Business and Economic Development Stimulus—Surplus
5 (fund 0105, activity 084), Civil Contingent Fund—Total
6 (fund 0105, activity 114), Civil Contingent
7 Fund—Total—Surplus (fund 0105, activity 238), Civil
8 Contingent Fund—Surplus (fund 0105, activity 263),
9 Business and Economic Development Stimulus (fund 0105,
10 activity 586), and Civil Contingent Fund (fund 0105, activity
11 614) at the close of the fiscal year 2007 are hereby
12 reappropriated for expenditure during the fiscal year 2008.
From this appropriation there may be expended, at the discretion of the governor, an amount not to exceed one thousand dollars as West Virginia's contribution to the interstate oil compact commission.

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

8—Auditor's Office—
General Administration
(WV Code Chapter 12)
Fund 0116 FY 2008 Org 1200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,198,881</td>
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<tr>
<td>Salary of Auditor</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>38,365</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>780,869</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>622,226</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>15,428</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,730,769</td>
</tr>
</tbody>
</table>

9—Treasurer's Office
(WV Code Chapter 12)
Fund 0126 FY 2008 Org 1300

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,933,992</td>
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<tr>
<td>Salary of Treasurer</td>
<td>002</td>
<td>75,000</td>
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<td>Annual Increment</td>
<td>004</td>
<td>25,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>629,979</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>849,757</td>
</tr>
<tr>
<td>Abandoned Property Program</td>
<td>118</td>
<td>296,304</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

7 Tuition Trust Fund (R) ............ 692 153,039
8 BRIM Premium ..................... 913 33,419
9 Total ............................. $ 3,996,490

10 Any unexpended balances remaining in the
11 appropriations for Unclassified (fund 0126, activity 099) and
12 Tuition Trust Fund (fund 0126, activity 692) at the close of
13 the fiscal year 2007 are hereby reappropriated for expenditure
14 during the fiscal year 2008.

10—Department of Agriculture
(WV Code Chapter 19)
Fund 0131 FY 2008 Org 1400

1 Personal Services .................. 001 $ 3,903,100
2 Salary of Commissioner .......... 002 75,000
3 Annual Increment .................. 004 88,130
4 Employee Benefits ................. 010 1,551,706
5 Animal Identification Program ... 039 203,549
6 State Farm Museum ............... 055 110,000
7 Unclassified (R) ................. 099 1,532,709
8 Gypsy Moth Program (R) ......... 119 1,192,018
9 Huntington Farmers Market .... 128 50,000
10 Black Fly Control (R) ........... 137 804,882
11 Donated Foods Program ......... 363 50,000
12 Predator Control ................. 470 260,000
13 Logan Farmers Market .......... 501 42,000
14 Bee Research ...................... 691 73,421
15 Microbiology Program (R) ...... 785 158,463
16 Moorefield Agriculture Center (R) 786 1,136,161
17 BRIM Premium ..................... 913 145,962
18 WV Food Banks ..................... 969 100,000
19 Seniors’s Farmers’ Market Nutrition
20 Coupon Program .................. 970 65,000
21 Threat Preparedness ............. 942 75,000
APPROPRIATIONS  

22 4-H Camp Improvements ........ 941 $650,000
23 Total .......................... $12,267,101

24 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

25 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.

26 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.

II—West Virginia Conservation Agency  
(WV Code Chapter 19)  
Fund 0132 FY 2008 Org 1400

1 Personal Services ............... 001 $491,254
2 Annual Increment ............... 004 10,050
3 Employee Benefits ............. 010 195,819
4 Unclassified (R) ............... 099 445,219
5 Soil Conservation Projects (R) 120 8,917,544
6 Marlinton Flood Wall .......... 757 1,500,000
7 BRIM Premium .................. 913 12,969
8 Total .......................... $11,572,855
Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

12—Department of Agriculture—
   Meat Inspection
   (WV Code Chapter 19)
   Fund 0135 FY 2008 Org 1400

   Unclassified-Total ................. 096 $ 659,917

   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 2008 Org 1400

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

14—Department of Agriculture—
   West Virginia Agricultural Land Protection Authority
   (WV Code Chapter 8A)
   Fund 0607 FY 2008 Org 1400

   Unclassified-Total ................. 096 $ 110,000
## Appropriations

**15—Attorney General**  
(WV Code Chapters 5, 14, 46A and 47)  
Fund 0150 FY 2008 Org 1500

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$2,357,915</td>
</tr>
<tr>
<td>Salary of Attorney General</td>
<td>002</td>
<td>80,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>46,284</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>851,032</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>791,716</td>
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<tr>
<td>Better Government Bureau</td>
<td>740</td>
<td>305,470</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>118,590</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,551,007</strong></td>
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</table>

Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010), and Unclassified (fund 0150, activity 099) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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.

**16—Secretary of State**  
(WV Code Chapters 3, 5 and 59)
### APPROPRIATIONS

**Fund 0155 FY 2008 Org 1600**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$665,357</td>
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<tr>
<td>2</td>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>70,000</td>
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<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>11,950</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>258,408</td>
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<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>87,325</td>
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<td>Total</td>
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</tbody>
</table>

8     Any unexpended balance remaining in the appropriation for Unclassified (fund 0155, activity 099) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

**17—State Election Commission**  
(WV Code Chapter 3)

**Fund 0160 FY 2008 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>
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### DEPARTMENT OF ADMINISTRATION

**18—Department of Administration—Office of the Secretary**  
(WV Code Chapter 5F)

**Fund 0186 FY 2008 Org 0201**

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>2,000</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>131,451</td>
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<td>4</td>
<td>Unclassified</td>
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<td>117,660</td>
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<td>5</td>
<td>Lease Rental Payments</td>
<td>516</td>
<td>16,000,000</td>
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<td>6</td>
<td>Design-Build Board</td>
<td>540</td>
<td>19,068</td>
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<td>7</td>
<td>Efficiency Savings</td>
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<td>13,171</td>
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<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$16,774,792</td>
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</tbody>
</table>
Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, activity 304) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

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 2008 Org 0205

Any unexpended balances remaining in the appropriations for Unclassified-Total-Transfer (fund 0195, activity 402) and Pension Merger Administrative Costs (fund 0195, activity 429) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

The above reappropriation for Unclassified-Total-Transfer (fund 0195, fiscal year 2007, activity 402) shall be transferred to the Consolidated Public Retirement Board-West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

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.
### APPROPRIATIONS

**20—Division of Finance**  
(WV Code Chapter 5A)  
Fund 0203 FY 2008 Org 0209

<table>
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<tr>
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<td>GAAP Project (R)</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 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

**21—Division of General Services**  
(WV Code Chapter 5A)  
Fund 0230 FY 2008 Org 0211

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<td>Fire Service Fee</td>
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<td>6</td>
<td>Veterans Memorial Fund</td>
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<td>7</td>
<td>BRIM Premium</td>
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<td>Total</td>
<td></td>
<td>$2,934,969</td>
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**22—Division of Purchasing**  
(WV Code Chapter 5A)  
Fund 0210 FY 2008 Org 0213

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<tr>
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APPROPRIATIONS

<table>
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<tr>
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<th>Amount</th>
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</thead>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>12,228</td>
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<td>3 Employee Benefits</td>
<td>010</td>
<td>296,940</td>
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<td>4 Unclassified</td>
<td>099</td>
<td>279,712</td>
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<td>5 BRIM Premium</td>
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<td>6,167</td>
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<td>6 Total</td>
<td></td>
<td>$1,516,344</td>
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</table>

7 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 2008 Org 0217

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096</td>
<td>$40,000</td>
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</table>

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

-Education and State Employees Grievance Board
(WV Code Chapter 18)
Fund 0220 FY 2008 Org 0219

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
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<td>4 Unclassified</td>
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<td>5 BRIM Premium</td>
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<td>$0</td>
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<td>6 Total</td>
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24-West Virginia Public Employees Grievance Board
(WV Code Chapter 6C)
Fund FY 2008 Org 0219

<table>
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<tr>
<th>Item</th>
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<th>Amount</th>
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140
### APPROPRIATIONS

<table>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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#### 25-Ethics Commission
**(WV Code Chapter 6B)**

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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
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<td>Total</td>
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#### 26-Public Defender Services
**(WV Code Chapter 29)**

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>6,850</td>
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<td>Unclassified</td>
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<td>308,712</td>
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<tr>
<td>5</td>
<td>Appointed Counsel Fees and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Public Defender Corporations</td>
<td>127</td>
<td>30,513,353</td>
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<td>7</td>
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<td>Total</td>
<td></td>
<td>$31,592,972</td>
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</table>

9 Any unexpended balances remaining in the above appropriations for Public Defender Corporations (fund 0226, fiscal year 2007, activity 352), Appointed Counsel-Public Defender Conflicts (fund 0226, activity 568), and Appointed Counsel Fees (fund 0226, fiscal year 2007, activity 788) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.
27-Committee for the Purchase of Commodities and Services from the Handicapped
(WV Code Chapter 5A)
Fund 0233 FY 2008 Org 0224

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

28-Public Employees Insurance Agency
(WV Code Chapter 5)
Fund 0200 FY 2008 Org 0225

1 Any unexpended balance remaining in the above appropriation for Employees Subsidy (fund 0200, activity 922) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

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 2008 Org 0228

1 Forensic Medical Examinations (R) ........ 683 $ 143,027
2 Federal Funds/Grant Match (R) ......... 749 83,665
3 Total .................................... $ 226,692

4 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.
Ch. 12] APPROPRIATIONS

30-Children’s Health Insurance Agency
(WV Code Chapter 5)
Fund 0588 FY 2008 Org 0230

1 Unclassified-Total ................. 096 $ 10,968,995

31-West Virginia Retiree Health Benefit Trust Fund
(WV Code Chapter 5)
Fund 0611 FY 2008 Org 0232

1 Unclassified-Total-Transfer ....... 402 $ 39,674,000

2 The above appropriation for Unclassified-Total-Transfer
3 (fund 0611, activity 402) shall be transferred to the OPEB
4 Benefit Contribution Accumulation Fund (fund 2541, org
5 0232).

32-Real Estate Division
(WV Code Chapter 5A)
Fund 0610 FY 2008 Org 0233

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

DEPARTMENT OF COMMERCE
33-Division of Tourism
(WV Code Chapter 5B)
Fund 0246 FY 2008 Org 0304

1 Hatfield McCoy Recreational Trail-Total 937 $ 500,000

2 Any unexpended balances remaining in the
3 appropriations for Tourism Special Projects-Surplus (fund
4 0246, activity 293) and Tourism-Special Projects (fund 0246,
5 activity 859) at the close of the fiscal year 2007 are hereby
6 reappropriated for expenditure during the fiscal year 2008.
From the above appropriation in Fund 0246, $50,000 is to be used for the relocation of the Hatfield McCoy Recreational Trail access.

34-Division of Forestry
(WV Code Chapter 19)
Fund 0250 FY 2008 Org 0305

1 Personal Services .............. 001 $ 2,734,265
2 Annual Increment .............. 004 94,250
3 Employee Benefits ............ 010 1,232,144
4 Unclassified .................. 099 366,528
5 BRIM Premium ................ 913 155,511
6 Total ..................... $ 4,582,698

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

35-Geological and Economic Survey
(WV Code Chapter 29)
Fund 0253 FY 2008 Org 0306

1 Personal Services .............. 001 $ 1,285,279
2 Annual Increment .............. 004 33,122
3 Employee Benefits ............ 010 447,898
4 Unclassified .................. 099 203,313
5 Mineral Mapping System (R) ... 207 1,582,300
6 Geoscience Education Program .. 541 25,000
7 BRIM Premium ................ 913 33,752
8 Total ..................... $ 3,610,664

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.
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.

### 36-West Virginia Development Office
(WV Code Chapter 5B)
(Fund 0256 FY 2008 Org 0307)

<table>
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<tr>
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<th>Code</th>
<th>FY 2008</th>
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<td>Annual Increment</td>
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<td>67,718</td>
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<td>Employee Benefits</td>
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<td>1,207,840</td>
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<td>ARC-WV Home of Your Own Alliance</td>
<td>048</td>
<td>40,000</td>
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<tr>
<td>Southern WV Career Center</td>
<td>071</td>
<td>191,750</td>
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<tr>
<td>Unclassified</td>
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<td>1,576,681</td>
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<tr>
<td>Partnership Grants (R)</td>
<td>131</td>
<td>1,950,000</td>
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<tr>
<td>National Youth Science Camp</td>
<td>132</td>
<td>200,000</td>
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<tr>
<td>Local Economic Development</td>
<td></td>
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<tr>
<td>Partnerships (R)</td>
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<td>1,870,000</td>
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<tr>
<td>ARC Assessment</td>
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<td>Institute for Software Research</td>
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<tr>
<td>Mid-Atlantic Aerospace Complex (R)</td>
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<td>176,783</td>
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<tr>
<td>Guaranteed Work Force Grant (R)</td>
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<td>2,247,000</td>
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<tr>
<td>Mingo County Surface Mine Project</td>
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<td>Robert C. Byrd Institute for Advanced/</td>
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<td></td>
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</tr>
<tr>
<td>Flexible Manufacturing-Technology</td>
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<td></td>
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<td>Outreach and Programs for</td>
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<tr>
<td>Environmental and</td>
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<tr>
<td>Advanced Technologies</td>
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<td>519,800</td>
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<tr>
<td>Advantage Valley</td>
<td>389</td>
<td>74,300</td>
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<tr>
<td>Chemical Alliance Zone</td>
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<td>WV High Tech Consortium</td>
<td>391</td>
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<td>Charleston Farmers Market</td>
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<td>100,000</td>
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<td>Industrial Park Assistance (R)</td>
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<td>International Offices (R)</td>
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<td>Appropriations</td>
<td>Amount</td>
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<tr>
<td>28 Small Business Development</td>
<td>703 423,187</td>
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<tr>
<td>29 WV Manufacturing Extension</td>
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<tr>
<td>30 Partnership</td>
<td>731 144,000</td>
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<td>31 Polymer Alliance</td>
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<td>32 Regional Councils</td>
<td>784 440,000</td>
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<td>33 Mainstreet Program</td>
<td>794 200,000</td>
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<td>34 National Institute of Chemical Studies</td>
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<td>35 Local Economic Development</td>
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<tr>
<td>36 Assistance (R)</td>
<td>819 6,600,000</td>
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<td>37 I-79 Development Council</td>
<td>824 50,000</td>
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<tr>
<td>38 BRIM Premium</td>
<td>913 26,096</td>
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<td>39 Hardwood Alliance Zone</td>
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<td>40 Total</td>
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</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, activity 266), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), International Offices (fund 0256, activity 593), Local Economic Development Assistance (fund 0256, activity 819), and Economic Development Assistance (fund 0256, activity 900) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

The above appropriation to Local Economic Development Partnerships (activity 133) 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.

### 37-Division of Labor
(WV Code Chapters 21 and 47)
Fund 0260 FY 2008 Org 0308

<table>
<thead>
<tr>
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<th>Code</th>
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<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>47,521</td>
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<td>Total</td>
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<td>$3,342,615</td>
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### 38-Division of Natural Resources
(WV Code Chapter 20)
Fund 0265 FY 2008 Org 0310

<table>
<thead>
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<th>Item Description</th>
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<th>Amount</th>
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<tr>
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<td>Annual Increment</td>
<td>004</td>
<td>229,840</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,343,547</td>
</tr>
<tr>
<td>Gypsy Moth Suppression Program – Wildlife Management Areas</td>
<td>014</td>
<td>42,997</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>9,173</td>
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<tr>
<td>Litter Control Conservation Officers</td>
<td>564</td>
<td>157,051</td>
</tr>
<tr>
<td>Upper Mud River Flood Control</td>
<td>654</td>
<td>181,892</td>
</tr>
<tr>
<td>Law Enforcement</td>
<td>806</td>
<td>953,315</td>
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</tbody>
</table>
10  BRIM Premium .................. 913  $308,815
11  Total .......................... $12,995,957

12  Any unexpended balance remaining in the above
13  appropriation for Fish Hatchery Improvements (fund 0265,
14  activity 825) at the close of the fiscal year 2007 is hereby
15  reappropriated for expenditure during the fiscal year 2008.

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

### 39-Division of Miners’ Health, Safety and Training
(WV Code Chapter 22)
Fund 0277  FY 2008  Org 0314

| 1  | Personal Services .................. 001 | $5,740,650 |
| 2  | Annual Increment ................... 004 | 67,450     |
| 3  | Employee Benefits ................ 010 | 2,140,882  |
| 4  | Unclassified (R) ................... 099 | 2,193,837  |
| 5  | WV Diesel Equipment Commission ...... 712 | 38,034     |
| 6  | BRIM Premium ....................... 913 | 76,848     |
| 7  | Total ............................... $10,257,701 |

8  Any unexpended balance remaining in the above
9  appropriation for Unclassified (fund 0277, fiscal year 2006,
10  activity 099) at the end of the fiscal year 2007 is hereby
11  reappropriated for expenditure during the fiscal year 2008.

12  The appropriation above for Unclassified (fund 0277,
13  fiscal year 2006, activity 099) shall be used in developing,
14  procuring and/or deploying, technologies to assist in locating
15  and communicating with trapped miners, supporting life,
16  transporting rescue personnel and rescued individuals
through underground mines and otherwise assist with mine rescue operations.

40-Board of Coal Mine Health and Safety
(WV Code Chapter 22)
Fund 0280 FY 2008 Org 0319

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>118,479</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>32,160</td>
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<td>Unclassified</td>
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<td>27,217</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td>178,656</td>
</tr>
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</table>

41-Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)
Fund 0285 FY 2008 Org 0320

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>63,352</td>
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<tr>
<td>Coal Forum</td>
<td>664</td>
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<td><strong>Total</strong></td>
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<td>88,352</td>
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42-Department of Commerce-
Office of the Secretary
(WV Code Chapter 19)
Fund 0606 FY 2008 Org 0327

<table>
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<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>409,680</td>
</tr>
<tr>
<td>Unclassified-Transfer</td>
<td>482</td>
<td>250,000</td>
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<tr>
<td>Efficiency Savings</td>
<td>799</td>
<td>0</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td>659,680</td>
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</table>
The above appropriation for Unclassified-Transfer (activity 482) shall be transferred to the fund for marketing and communications within the department of commerce.

**43-Division of Energy**
(WV Code Chapter 5H)
Fund FY 2008 Org 0320

1 Unclassified-Total ............... 096 $ 306,000

**DEPARTMENT OF EDUCATION**
44-State Department of Education-School Lunch Program
(WV Code Chapters 18 and 18A)
Fund 0303 FY 2008 Org 0402

1 Personal Services ............... . 001 $ 234,514
2 Annual Increment ............... 004 3,825
3 Employee Benefits ............. . 010 86,225
4 Unclassified .................. . 099 2,082,473
5 Total .......................... $ 2,407,037

45-State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)
Fund 0306 FY 2008 Org 0402

1 Personal Services ............... . 001 $ 604,914
2 Annual Increment ............... 004 15,818
3 Employee Benefits ............. . 010 250,729
4 Unclassified .................. . 099 142,825
5 BRIM Premium .................. 913 38,987
6 Total ......................... $ 1,053,273

46-State Department of Education
(WV Code Chapters 18 and 18A)
Fund 0313 FY 2008 Org 0402
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
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<tr>
<td>1</td>
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<td>2</td>
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<td>35,826</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,068,624</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>3,400,000</td>
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<tr>
<td>5</td>
<td>34/1000 Waiver</td>
<td>139</td>
<td>400,000</td>
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<td>6</td>
<td>Increased Enrollment</td>
<td>140</td>
<td>10,700,000</td>
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<td>7</td>
<td>Safe Schools</td>
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<tr>
<td>8</td>
<td>Teacher Mentor (R)</td>
<td>158</td>
<td>600,000</td>
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<td>9</td>
<td>National Teacher Certification (R)</td>
<td>161</td>
<td>1,000,000</td>
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<tr>
<td>10</td>
<td>Allowance for County Transfers</td>
<td>264</td>
<td>480,337</td>
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<td>11</td>
<td>Technology Repair and Modernization</td>
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<td>12</td>
<td>HVAC Technicians</td>
<td>355</td>
<td>477,481</td>
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<td>13</td>
<td>Early Retirement Notification</td>
<td>366</td>
<td>300,000</td>
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<td>14</td>
<td>Teacher Reimbursement</td>
<td>573</td>
<td>300,000</td>
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<td>15</td>
<td>Hospitality Training</td>
<td>600</td>
<td>415,101</td>
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<td>16</td>
<td>Low Student Enrollment Allowance</td>
<td>615</td>
<td>1,000,000</td>
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<tr>
<td>17</td>
<td>HI-Y Youth in Government</td>
<td>616</td>
<td>100,000</td>
<td></td>
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<tr>
<td>18</td>
<td>Foreign Student Education (R)</td>
<td>636</td>
<td>87,348</td>
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<tr>
<td>19</td>
<td>State Teacher of the Year</td>
<td>640</td>
<td>41,359</td>
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<tr>
<td>20</td>
<td>Principals Mentorship</td>
<td>649</td>
<td>80,000</td>
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<tr>
<td>21</td>
<td>Pilot Program of Structured in-school Alternatives</td>
<td>826</td>
<td>100,000</td>
<td></td>
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<tr>
<td>22</td>
<td>21st Century Learners (R)</td>
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<td>3,120,081</td>
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<tr>
<td>23</td>
<td>BRIM Premium</td>
<td>913</td>
<td>372,457</td>
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<tr>
<td>24</td>
<td>High Acuity Health Care</td>
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<td></td>
<td></td>
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<tr>
<td>25</td>
<td>Needs Program</td>
<td>920</td>
<td>1,000,000</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>School Nurse Funding</td>
<td>921</td>
<td>1,500,000</td>
<td></td>
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<tr>
<td>27</td>
<td>21st Century Assessment and Professional Development</td>
<td>931</td>
<td>4,500,000</td>
<td></td>
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<tr>
<td>28</td>
<td>Regional Education Service Agencies</td>
<td>972</td>
<td>4,200,000</td>
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<tr>
<td>29</td>
<td>Sparse Population Allocation</td>
<td>973</td>
<td>525,000</td>
<td></td>
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</tbody>
</table>
APPROPRIATIONS

33 School Access Safety ........... 978 10,000,000
34 Educational Program Allowance .. 996 250,000
35 WV Commission on Holocaust Education ................. 935 15,000
36 Allowance for Extraordinary Sustained Growth ........... 943 771,626
37 Total ..................... $ 53,193,814

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 (fund 0313, activity 099), Teacher Mentor (fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), Foreign Student Education (fund 0313, activity 636), 21st Century Learners (fund 0313, activity 886), and Educational Enhancements-Surplus (fund 0313, activity 927) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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 (activity 615), 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.

The above appropriation for School Access Safety (activity 978) shall be transferred to the School Access Safety Fund (fund 3516).

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 2007 is hereby reappropriated for expenditure during the fiscal year 2008.
14. 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.

19. From the above appropriation for Education of Institutionalized Juveniles and Adults (activity 472), an additional $250,000 shall be provided for the Burlington Center-Mineral County.

23. 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.

48-State Department of Education- State Aid to Schools
(WV Code Chapters 18 and 18A)
Fund 0317 FY 2008 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Current Expenses</td>
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<td>$140,964,341</td>
</tr>
<tr>
<td>Professional Educators</td>
<td>151</td>
<td>832,307,759</td>
</tr>
<tr>
<td>Service Personnel</td>
<td>152</td>
<td>269,157,414</td>
</tr>
<tr>
<td>Fixed Charges</td>
<td>153</td>
<td>101,334,796</td>
</tr>
<tr>
<td>Transportation</td>
<td>154</td>
<td>63,126,522</td>
</tr>
<tr>
<td>Administration</td>
<td>155</td>
<td>3,096,005</td>
</tr>
<tr>
<td>21st Century Strategic Technology</td>
<td>936</td>
<td>1,137,057</td>
</tr>
<tr>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>34,137,057</td>
</tr>
<tr>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,445,260,951</td>
</tr>
<tr>
<td>Less Local Share</td>
<td></td>
<td>(353,129,003)</td>
</tr>
<tr>
<td>Total Basic State Aid</td>
<td></td>
<td>$1,092,131,948</td>
</tr>
<tr>
<td>Public Employees’ Insurance</td>
<td></td>
<td></td>
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<tr>
<td>Matching</td>
<td>012</td>
<td>191,812,331</td>
</tr>
</tbody>
</table>
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**APPROPRIATIONS**

15 Teachers’ Retirement System ........ 019 67,262,050  
16 School Building Authority ............ 453 23,361,520  
17 Retirement Systems-Unfunded Liability .................. 775 300,000,000  
18 Total ............................................. $ 1,674,567,849  

From the above appropriation to Retirement Systems-Unfunded Liability (activity 775), $286,227,557 is to fund the FY2008 amortization of unfunded liabilities. The remaining amount of $13,772,443 is to first be applied toward the repayment of any investment accruals which may have been erroneously deposited in the general revenue of the State in prior fiscal years and any subsequent investment accruals which might have compounded therefrom. Any amount in excess of that which may be required to compensate for the aforementioned errors is to be applied against the general unfunded liability of the Teachers’ Retirement System.

---

**49-State Board of Education-Vocational Division**  
(WV Code Chapters 18 and 18A)  
Fund 0390 FY 2008 Org 0402

1 Personal Services ................. 001 $ 986,595  
2 Annual Increment .................. 004 16,873  
3 Employee Benefits ............... 010 361,690  
4 Unclassified ....................... 099 1,210,000  
5 Wood Products-Forestry Vocational Program ........... 146 56,220  
6 Albert Yanni Vocational Program .... 147 124,263  
7 Vocational Aid ..................... 148 16,468,592  
8 Adult Basic Education ............. 149 3,693,116  
9 Program Modernization ............ 305 850,000  
10 Technical and Secondary Program Improvement Staff ........... 330 279,219  

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## Appropriations

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>GED Testing</td>
<td></td>
<td>339</td>
</tr>
<tr>
<td>Aquaculture Support</td>
<td></td>
<td>769</td>
</tr>
<tr>
<td>FFA Grant Awards</td>
<td></td>
<td>839</td>
</tr>
<tr>
<td>Pre-Engineering Academy Program</td>
<td></td>
<td>840</td>
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<tr>
<td>Total</td>
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<td>$24,755,413</td>
</tr>
</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0573</td>
<td>2008</td>
<td>0402</td>
<td>Personal Services</td>
<td>001</td>
<td>$410,105</td>
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<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>3,600</td>
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<td></td>
<td></td>
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<td>Employee Benefits</td>
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<td>176,640</td>
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<td></td>
<td>Total</td>
<td></td>
<td>$702,484</td>
</tr>
</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0320</td>
<td>2008</td>
<td>0403</td>
<td>Personal Services</td>
<td>001</td>
<td>$7,831,748</td>
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<td></td>
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<td>Annual Increment</td>
<td>004</td>
<td>6,350</td>
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<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,110,567</td>
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<tr>
<td></td>
<td></td>
<td></td>
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<td>BRIM Premium</td>
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<td>81,347</td>
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<td>Total</td>
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<td>$12,639,944</td>
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</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0294</td>
<td>2008</td>
<td>0431</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$840,094</td>
</tr>
</tbody>
</table>

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2 Center for Professional Development (R) ............ 115  
3 Governor’s Honor Academy (R) .......... 478  
5 Professional Development Collaborative ............. 629  
7 Efficiency Savings ............................. 799  
8 Energy Express ................................. 861  
9 BRIM Premium ................................. 913  
10 Total ........................................ $ 5,918,847

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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

53-Division of Culture and History  
(WV Code Chapter 29)  
Fund 0293 FY 2008 Org 0432

1 Personal Services ......................... 001  $ 2,480,773
2 Annual Increment .............................. 004  49,030
3 Employee Benefits ............................ 010  1,025,011
4 Unclassified ................................. 099  626,664
5 Capital Outlay Repairs and Equipment (R) .......... 589  2,599,000
7 Culture and History Programming ............ 732  292,945
8 Capital Outlay and Maintenance (R) .......... 755  200,000
9 Independence Hall ............................ 812  1,247,000
10 Historical Highway Marker
11 Program (R) ................................. 844  75,000
Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0293, activity 589), Capital Outlay, Repairs and Equipment—Surplus (fund 0293, activity 677), Capital Outlay and Maintenance (fund 0293, activity 755), and Historical Highway Marker Program (fund 0293, activity 844) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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.

54-Library Commission
(WV Code Chapter 10)
Fund 0296 FY 2008 Org 0433

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Budget Amount</th>
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<td>Personal Services</td>
<td>001</td>
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<td>$372,876</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$228,087</td>
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<tr>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>$182,645</td>
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<td>BRIM Premium</td>
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<td>$29,772</td>
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<tr>
<td>Total</td>
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<td>$1,818,499</td>
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### 55-Educational Broadcasting Authority
(WV Code Chapter 10)
Fund 0300 FY 2008 Org 0439

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>$3,102,870</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>56,000</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,089,056</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,042,966</td>
</tr>
<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 (R)</td>
<td>755</td>
<td>100,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>71,856</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$5,762,748</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0300, activity 099) and Capital Outlay and Maintenance (fund 0300, activity 755) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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

### 56-State Board of Rehabilitation- Division of Rehabilitation Services
(WV Code Chapter 18)
Fund 0310 FY 2008 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$7,495,120</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>134,049</td>
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<tr>
<td>3</td>
<td>Independent Living Services</td>
<td>009</td>
<td>24,000</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,870,492</td>
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<td>5</td>
<td>Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
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<td>6</td>
<td>Supported Employment</td>
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<td>7</td>
<td>Extended Services</td>
<td>206</td>
<td>119,032</td>
</tr>
<tr>
<td>8</td>
<td>Ron Yost Personal Assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Fund (R)</td>
<td>407</td>
<td>340,000</td>
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</table>
APPROPRIATIONS

10 Employment Attendant Care Program 598 179,000
11 Capital Outlay and Maintenance (R) . . 755 200,000
12 BRIM Premium . . . . . . . . . . . . 913 67,033
13 Total . . . . . . . . . . . . . . . . . . $ 13,244,875

14 Any unexpended balances remaining in the appropriations for Ron Yost Personal Assistance Fund (fund 0310, activity 407), Capital Outlay, Repairs and Equipment-Surplus (fund 0310, activity 677), and Capital Outlay and Maintenance (fund 0310, activity 755) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

15 Any unexpended balance remaining in the appropriation for Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) is hereby reappropriated for expenditure during the fiscal year 2008 and may be transferred to a special account for the purpose of disbursement or loan.

16 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
57-Environmental Quality Board
(WV Code Chapter 20)
Fund 0270 FY 2008 Org 0311

1 Personal Services . . . . . . . . . . . . . . . . 001 $ 72,834
### 58-Division of Environmental Protection
(WV Code Chapter 22)
Fund 0273 FY 2008 Org 0313

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<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>$1,222,702</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$844,613</td>
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<tr>
<td>5</td>
<td>Dam Safety</td>
<td>$207,105</td>
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<tr>
<td>6</td>
<td>West Virginia Stream Partners</td>
<td>$77,396</td>
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<tr>
<td>7</td>
<td>Program</td>
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<td>8</td>
<td>WV Contribution to River</td>
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<td>9</td>
<td>Commissions</td>
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<tr>
<td>10</td>
<td>Efficiency Savings</td>
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<tr>
<td>11</td>
<td>Office of Water Resources</td>
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</tr>
<tr>
<td>12</td>
<td>Non-Enforcement Activity</td>
<td>$1,141,267</td>
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<tr>
<td>13</td>
<td>BRIM Premium</td>
<td>$56,802</td>
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<td>14</td>
<td>Welch DEP Office Continuing</td>
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<td>15</td>
<td>Operation</td>
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<td>16</td>
<td>Total</td>
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</table>

### 59-Air Quality Board
(WV Code Chapter 16)
Fund 0550 FY 2008 Org 0325

<table>
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<tr>
<td>1</td>
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<td>BRIM Premium</td>
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<td>Total</td>
<td>$98,211</td>
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</table>
### Appropriations

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*60-Department of Health and Human Resources - Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2008 Org 0501

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$400,185</td>
</tr>
<tr>
<td>2</td>
<td>Women’s Commission (R)</td>
<td>191</td>
<td>139,457</td>
</tr>
<tr>
<td>3</td>
<td>Commission for the Deaf</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>and Hard of Hearing</td>
<td>704</td>
<td>274,074</td>
</tr>
<tr>
<td>5</td>
<td>Efficiency Savings</td>
<td>799</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$813,716</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, activity 191) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

From the above appropriation for unclassified, is for the West Virginia University Center for Excellence in Women’s Health.

### 61-Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2008 Org 0506

<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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<td>$7,570,163</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>164,981</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,090,748</td>
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<tr>
<td>4</td>
<td>Level 1, 2 and 3 Trauma Centers</td>
<td>013</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Chief Medical Examiner</td>
<td>045</td>
<td>3,464,708</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>099</td>
<td>4,902,046</td>
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<tr>
<td>7</td>
<td>Safe Drinking Water Program</td>
<td>187</td>
<td>517,798</td>
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### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
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<tbody>
<tr>
<td>8 Women, Infants and Children</td>
<td>$65,000</td>
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<tr>
<td>9 Basic Public Health Services Support</td>
<td>$3,348,475</td>
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<tr>
<td>10 Early Intervention</td>
<td>$3,307,043</td>
</tr>
<tr>
<td>11 Cancer Registry</td>
<td>$284,587</td>
</tr>
<tr>
<td>12 ABCA Tobacco Retailer Education</td>
<td></td>
</tr>
<tr>
<td>13 Program-Transfer</td>
<td>$200,000</td>
</tr>
<tr>
<td>14 CARDIAC Project</td>
<td>$470,000</td>
</tr>
<tr>
<td>15 State EMS Technical Assistance</td>
<td>$1,424,858</td>
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<tr>
<td>16 EMS Program for Children</td>
<td>$50,686</td>
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<tr>
<td>17 Statewide EMS Program Support (R)</td>
<td>$940,286</td>
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<tr>
<td>18 Primary Care Centers-Mortgage</td>
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</tr>
<tr>
<td>19 Finance</td>
<td>$796,718</td>
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<tr>
<td>20 Black Lung Clinics</td>
<td>$198,646</td>
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<tr>
<td>21 Center for End of Life</td>
<td>$250,000</td>
</tr>
<tr>
<td>22 Women’s Right to Know</td>
<td>$40,000</td>
</tr>
<tr>
<td>23 Pediatric Dental Services</td>
<td>$150,000</td>
</tr>
<tr>
<td>24 Vaccine for Children</td>
<td>$438,437</td>
</tr>
<tr>
<td>25 Adult Influenza Vaccine</td>
<td>$65,000</td>
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<tr>
<td>26 Tuberculosis Control</td>
<td>$255,640</td>
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<tr>
<td>27 Maternal and Child Health Clinics,</td>
<td></td>
</tr>
<tr>
<td>28 Clinicians and Medical Contracts</td>
<td></td>
</tr>
<tr>
<td>29 and Fees (R)</td>
<td>$6,505,371</td>
</tr>
<tr>
<td>30 Epidemiology Support</td>
<td>$1,143,401</td>
</tr>
<tr>
<td>31 Primary Care Support</td>
<td>$7,708,557</td>
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<tr>
<td>32 State Aid to Local Health Departments</td>
<td>$11,700,718</td>
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<tr>
<td>33 Health Right Free Clinics</td>
<td>$2,749,336</td>
</tr>
<tr>
<td>34 Healthy Lifestyles</td>
<td>$68,000</td>
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<tr>
<td>35 Emergency Response Entities</td>
<td></td>
</tr>
<tr>
<td>36 Special Projects</td>
<td>$800,000</td>
</tr>
<tr>
<td>37 Assistance to Primary Health Care</td>
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</tr>
<tr>
<td>38 Centers Community Health</td>
<td></td>
</tr>
<tr>
<td>39 Foundation (R)</td>
<td>$1,400,000</td>
</tr>
<tr>
<td>40 Osteoporosis and Arthritis Prevention</td>
<td>$284,027</td>
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<tr>
<td>41 Tobacco Education Program</td>
<td>$5,663,018</td>
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<tr>
<td>42 BRIM Premium</td>
<td>$211,214</td>
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</tbody>
</table>
State Trauma and Emergency Care System .............. 918  789,429
Antiviral Vaccine Purchases ............... 955  1,420,000
Total ......................................... $ 72,438,891

Any unexpended balances remaining in the appropriations for Statewide EMS Program Support (fund 0407, activity 383), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575), and Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, activity 845) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

Included in above appropriation for State Trauma and Emergency Care Systems (activity 918), is $100,000 to initiate the consolidation of medical command centers.

From the Unclassified line item (activity 099), $50,000 shall be expended for the West Virginia Aids Coalition. Also included in the above appropriation for Unclassified, is an additional $100,000 for Human Papillomavirus (HPV) Education.

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.

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.
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.; $30,000 for the mortgage payment for the Tug River Health Association, Inc.; $48,000 for the mortgage payment for the Primary Care Systems (Clay); $20,000 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 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 (activity 702) $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 distribution 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 additional funding for salary
increases in amounts consistent with those provided to state
employees under appropriations made for that purpose in this
act.

From the above appropriation for Unclassified (activity
099), $50,000 is for Hospital Hospitality House of
Huntington.

62-Consolidated Medical Service Fund
(WV Code Chapter 16)
Fund 0525 FY 2008 Org 0506

<table>
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<th>Amount</th>
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<td>Annual Increment</td>
<td>004</td>
<td>11,991</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>263,561</td>
</tr>
<tr>
<td>Special Olympics</td>
<td>208</td>
<td>26,074</td>
</tr>
<tr>
<td>Behavioral Health Program-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>219</td>
<td>52,779,562</td>
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<tr>
<td>Institutional Facilities Operations (R)</td>
<td>335</td>
<td>75,150,320</td>
</tr>
<tr>
<td>Capital Outlay (R)</td>
<td>511</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>2,000,000</td>
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<tr>
<td>Colin Anderson Community</td>
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<td></td>
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<tr>
<td>Placement (R)</td>
<td>803</td>
<td>1,164,000</td>
</tr>
<tr>
<td>Renaissance Program</td>
<td>804</td>
<td>194,000</td>
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</table>

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### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>BRIM Premium</td>
<td>913 $1,088,070</td>
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</table>

Any unexpended balances remaining in the appropriations for Behavioral Health Program-Unclassified (fund 0525, activity 219), Institutional Facilities Operations (fund 0525, activity 335), Capital Outlay (fund 0525, activity 511), Capital Outlay and Maintenance (fund 0525, activity 755), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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.

Included in the above appropriation for Behavioral Health Program - Unclassified (fund 0525, activity 219) is $100,000 for the Four Angels Substance Abuse Treatment Project development.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health-hospital services revenue account (fund 5156, activity 335), on July 1, 2007, 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 5156, fiscal year 2008, organization 0506, for the operation of the
in 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.

**63-Division of Health - West Virginia Drinking Water Treatment**
(WV Code Chapter 16)
Fund 0561 FY 2008 Org 0506

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

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

**64-Human Rights Commission**
(WV Code Chapter 5)
Fund 0416 FY 2008 Org 0510

1 Personal Services . . . . . . . . . . . . . . . . . . . . . . . 001 $ 717,375
2 Annual Increment . . . . . . . . . . . . . . . . . . . . . . . 004 16,000
3 Employee Benefits . . . . . . . . . . . . . . . . . . . . . . . 010 228,277
4 Unclassified . . . . . . . . . . . . . . . . . . . . . . . . . . . 099 261,293
5 BRIM Premium . . . . . . . . . . . . . . . . . . . . . . . . . 913 19,326
6 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $ 1,242,271

**65-Division of Human Services**
(WV Code Chapters 9, 48 and 49)
Fund 0403 FY 2008 Org 0511
<table>
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<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>16,283,546</td>
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<tr>
<td>Child Care Development</td>
<td>144</td>
<td>1,263,713</td>
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<tr>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>183</td>
<td>2,335,469</td>
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<tr>
<td>Medical Services (R)</td>
<td>189</td>
<td>393,705,687</td>
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<td>Medical Services Administrative Costs</td>
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<td>Social Services</td>
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<td>Family Preservation Program</td>
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<td>1,565,000</td>
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<td>Family Resource Networks (R)</td>
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<td>Domestic Violence Legal Services Fund</td>
<td>384</td>
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<tr>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
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<td>Child Protective Services Case Workers</td>
<td>468</td>
<td>16,253,617</td>
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<tr>
<td>Medical Services Trust Fund Transfer</td>
<td>512</td>
<td>5,000,000</td>
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<td>OSCAR and RAPIDS</td>
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<td>WV Teaching Hospitals Tertiary/Safety Net</td>
<td>547</td>
<td>4,856,000</td>
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<td>Child Welfare System</td>
<td>603</td>
<td>2,635,958</td>
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<td>Child Support Enforcement</td>
<td>705</td>
<td>6,320,428</td>
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<td>Medicaid Auditing</td>
<td>706</td>
<td>602,589</td>
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<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
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<td>Child Care Maintenance of Effort Match</td>
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<td>Child and Family Services</td>
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<td>2,850,000</td>
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<tr>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>1,500,000</td>
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<td>Indigent Burials (R)</td>
<td>851</td>
<td>1,700,000</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>834,187</td>
</tr>
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</table>
APPROPRIATIONS [Ch. 12

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>Rural Hospitals Under 150 Beds</td>
<td>2,596,000</td>
</tr>
<tr>
<td>37</td>
<td>Children’s Trust Fund-Transfer</td>
<td>300,000</td>
</tr>
<tr>
<td>38</td>
<td>Total</td>
<td>$629,778,148</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

In addition to the $390,705,687 that the governor requested for the 2008 budget for Medical Services (fund 0403, activity 189), an additional three million dollars has been provided to be dispersed in the following manner: one million dollars shall be used to draw down additional funding to increase reimbursement to behavioral health providers and two million dollars shall be used to draw down additional funding to create slots for the mr/dd waiver program in order to serve persons currently on the waiting list.

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

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

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

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.
The above appropriation for Children’s Trust Fund-Transfer (activity 951) shall be transferred to the Children’s Fund (fund 1011, org 0100).

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
66-Department of Military Affairs and Public Safety-
Office of the Secretary
(WV Code Chapter 5F)
Fund 0430 FY 2008 Org 0601

<table>
<thead>
<tr>
<th>Item</th>
<th>Category</th>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$525,129</td>
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<tr>
<td>2</td>
<td>Efficiency Savings</td>
<td>799</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>BRIM Premium</td>
<td>913</td>
<td>11,416</td>
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<tr>
<td>4</td>
<td>Homeland State Security Administrative Agency</td>
<td>953</td>
<td>568,672</td>
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<tr>
<td>5</td>
<td>WV Fire and EMS Survivor Benefit</td>
<td>939</td>
<td>150,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$1,255,217</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, activity 099) and Capital Outlay (fund 0430, activity 511) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

67-Adjutant General-
State Militia
(WV Code Chapter 15)
Fund 0433 FY 2008 Org 0603

<table>
<thead>
<tr>
<th>Item</th>
<th>Category</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,565,822</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>30,750</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>551,095</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>16,759,718</td>
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<tr>
<td>5</td>
<td>Mountaineer ChalleNGe Academy</td>
<td>709</td>
<td>1,200,000</td>
</tr>
</tbody>
</table>
Ch. 12] APPROPRIATIONS

6 BRIM Premium .................. 913 $ 50,161
7 Total .......................... $ 20,157,546

8 Any unexpended balances remaining in the
9 appropriations for Unclassified (fund 0433, activity 099),
10 College Education Fund (fund 0433, activity 232), and
11 Armory Capital Improvements—Surplus (fund 0433, activity
12 325) at the close of the fiscal year 2007 are hereby
13 reappropriated for expenditure during the fiscal year 2008.

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

68-Adjutant General-
Military Fund
(WV Code Chapter 15)
Fund 0605 FY 2008 Org 0603

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

69-West Virginia Parole Board
(WV Code Chapter 62)
Fund 0440 FY 2008 Org 0605

1 Personal Services .................. 001 $ 165,669
2 Annual Increment .................. 004 1,744
3 Employee Benefits ................. 010 215,226
4 Unclassified ........................ 099 188,806
5 Salaries of Members of West Virginia
6 Parole Board ...................... 227 455,000
7 BRIM Premium .................. 913 16,310
8 Total .......................... $ 1,042,755

173
### 70-Division of Homeland Security and Emergency Management
(WV Code Chapter 15)

**Fund 0443 FY 2008 Org 0606**

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$420,453</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$6,500</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$165,880</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$300,000</td>
</tr>
<tr>
<td>Radiological Emergency Preparedness</td>
<td>554</td>
<td>$30,000</td>
</tr>
<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>749</td>
<td>$742,344</td>
</tr>
<tr>
<td>Mine and Industrial Accident Rapid Response Center</td>
<td>781</td>
<td>$741,739</td>
</tr>
<tr>
<td>Early Warning Flood System (R)</td>
<td>877</td>
<td>$516,264</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$35,158</td>
</tr>
<tr>
<td>Disaster Mitigation</td>
<td>952</td>
<td>$100,000</td>
</tr>
<tr>
<td>WVU Charleston Poison Control Hotline</td>
<td>944</td>
<td>$596,100</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$3,654,438</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Flood Reparations (fund 0443, activity 400), Homeland Security Over Obligation-Surplus (fund 0443, activity 693), Federal Funds/Grant Match (fund 0443, activity 749), 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

### 71-Division of Corrections-Central Office
(WV Code Chapters 25, 28, 49 and 62)

**Fund 0446 FY 2008 Org 0608**
Ch. 12] APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$389,381</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,775</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>125,071</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>97,594</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$617,821</td>
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</table>

6 Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

72-Division of Corrections-
Correctional Units
(WV Code Chapters 25, 28, 49 and 62)
Fund 0450 FY 2008 Org 0608

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$356,824</td>
</tr>
<tr>
<td>2</td>
<td>Childrens Protection Act (R)</td>
<td>090</td>
<td>927,500</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>099</td>
<td>1,622,204</td>
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<tr>
<td>4</td>
<td>Charleston Work Release</td>
<td>456</td>
<td>1,304,857</td>
</tr>
<tr>
<td>5</td>
<td>Beckley Correctional Center</td>
<td>490</td>
<td>925,129</td>
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<tr>
<td>6</td>
<td>Huntington Work Release</td>
<td>495</td>
<td>850,188</td>
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<td>7</td>
<td>Anthony Center</td>
<td>504</td>
<td>4,446,264</td>
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<tr>
<td>8</td>
<td>Huttonsville Correctional Center</td>
<td>514</td>
<td>19,625,356</td>
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<tr>
<td>9</td>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>6,475,203</td>
</tr>
<tr>
<td>10</td>
<td>Inmate Medical Expenses (R)</td>
<td>535</td>
<td>22,364,267</td>
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<tr>
<td>11</td>
<td>Pruntytown Correctional Center</td>
<td>543</td>
<td>6,349,786</td>
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<tr>
<td>12</td>
<td>Payments to Federal, County and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Regional Jails</td>
<td>555</td>
<td>17,168,500</td>
</tr>
<tr>
<td>14</td>
<td>Corrections Academy</td>
<td>569</td>
<td>1,380,222</td>
</tr>
<tr>
<td>15</td>
<td>Martinsburg Correctional Center</td>
<td>663</td>
<td>3,118,916</td>
</tr>
<tr>
<td>16</td>
<td>Parole Services</td>
<td>686</td>
<td>2,159,630</td>
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<tr>
<td>17</td>
<td>Special Services</td>
<td>687</td>
<td>2,216,904</td>
</tr>
<tr>
<td>18</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>2,000,000</td>
</tr>
<tr>
<td>19</td>
<td>Stephens Correctional Facility</td>
<td>791</td>
<td>5,724,500</td>
</tr>
</tbody>
</table>

175
20  St. Mary’s Correctional Facility  ...  881  12,411,656
21  Denmar Correctional Facility  ...  882  4,025,739
22  Ohio County Correctional Facility  ...  883  1,417,771
23  Mt. Olive Correctional Facility  ...  888  18,849,472
24  Lakin Correctional Facility  ...  896  7,950,905
25  BRIM Premium  ..............  913  1,135,659
26  Total  . . . . . . . . . . . . .  $  144,807,452

27  Any unexpended balances remaining in the
28  appropriations for Children’s Protection Act (fund 0450,
29  activity 090), Unclassified Surplus (fund 0450, activity 097),
30  Inmate Management Information System (fund 0450, activity
31  398), Capital Outlay (fund 0450, activity 511), Inmate
32  Medical Expenses (fund 0450, activity 535), Capital Outlay
33  and Maintenance (fund 0450, activity 755), and Inmate
34  Medical Expenses—Surplus (fund 0450, activity 846) at the
35  close of the fiscal year 2007 are hereby reappropriated for
36  expenditure during the fiscal year 2008.

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

45  The commissioner of corrections shall also have the
46  authority to transfer between line items appropriated to the
47  individual correctional units above and may transfer funds
48  from the individual units to Payments to Federal, County
49  and/or Regional Jails (fund 0450, activity 555) or Inmate
50  Medical Expenses (fund 0450, activity 535).
From the above appropriation to Unclassified, on July 1, 2007, 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.

73-West Virginia State Police
(WV Code Chapter 15)
Fund 0453 FY 2008 Org 0612

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$40,122,800</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>197,050</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>8,716,466</td>
</tr>
<tr>
<td>Childrens Protection Act</td>
<td>090</td>
<td>910,759</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>8,587,778</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
<td>440,088</td>
</tr>
<tr>
<td>Communications and Other Equipment (R)</td>
<td>558</td>
<td>1,013,285</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>3,826,778</td>
</tr>
<tr>
<td>Retirement Systems-Unfunded Liability</td>
<td>775</td>
<td>2,850,000</td>
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<tr>
<td>Handgun Administration Expense</td>
<td>747</td>
<td>76,612</td>
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<tr>
<td>Capital Outlay and Maintenance (R)</td>
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<td>500,000</td>
</tr>
<tr>
<td>Automated Fingerprint</td>
<td>898</td>
<td>3,635,334</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>6,043,110</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$78,920,060</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558), Barracks Maintenance and Construction-Surplus (fund 0453, activity 669), Capital...
24 Outlay and Maintenance (fund 0453, activity 755), and Law Enforcement-Special Projects (fund 0453, activity 787) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

28 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.

35 From the above appropriation for Personal Services, 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.

74-Division of Veterans' Affairs
(WV Code Chapter 9A)
Fund 0456 FY 2008 Org 0613

1 Personal Services ............... 001 $ 1,045,779
2 Annual Increment ............... 004 35,250
3 Employee Benefits ............... 010 422,063
4 Unclassified ............... 099 164,847
5 Veterans’ Field Offices ........ 228 175,985
6 Veterans’ Nursing Home (R) .... 286 5,459,518
7 Veterans’ Toll Free Assistance Line .. 328 5,000
8 Veterans’ Reeducation Assistance (R) 329 211,604
9 Veterans’ Grant Program (R) .... 342 150,000
10 Memorial Day Patriotic Exercise .. 697 20,000
11 Educational Opportunities for
12 Children of Deceased Veterans (R) 854 100,000
13 BRIM Premium ............... 913 23,860
14 Total ............... $ 7,813,906
Any unexpended balances remaining in the appropriations for Veterans’ Nursing Home (fund 0456, activity 286), Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), Veterans’ Bonus (fund 0456, activity 483), and Educational Opportunities for Children of Deceased Veterans (fund 0456, activity 854) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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

75-Division of Veterans’ Affairs-
Veterans’ Home
(WV Code Chapter 9A)
Fund 0460 FY 2008 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$719,842</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$18,650</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$335,076</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$31,369</td>
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<tr>
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<td>Total</td>
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76-Fire Commission
(WV Code Chapter 29)
Fund 0436 FY 2008 Org 0619

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified Total</td>
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77-Division of Criminal Justice Services
(WV Code Chapter 15)
Fund 0546 FY 2008 Org 0620

179
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,645</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$83,353</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$129,583</td>
</tr>
<tr>
<td>Community Corrections (R)</td>
<td>561</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Statistical Analysis Program</td>
<td>597</td>
<td>$50,142</td>
</tr>
<tr>
<td>Grants Program</td>
<td>694</td>
<td>$500,000</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$1,660</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,017,774</strong></td>
</tr>
</tbody>
</table>

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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

#### 78-Division of Juvenile Services

*(WV Code Chapter 49)*

**Fund 0570 FY 2008 Org 0621**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Robert L. Shell Juvenile Center (R)</td>
<td>267</td>
<td>$1,958,077</td>
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<tr>
<td>Central Office (R)</td>
<td>701</td>
<td>$2,115,945</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>$500,000</td>
</tr>
<tr>
<td>Southern WV Youth Diagnostic Center (R)</td>
<td>792</td>
<td>$123,463</td>
</tr>
<tr>
<td>Gene Spadaro Juvenile Center (R)</td>
<td>793</td>
<td>$1,959,073</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$113,016</td>
</tr>
<tr>
<td>WV Industrial Home for Youth (R)</td>
<td>979</td>
<td>$10,645,253</td>
</tr>
<tr>
<td>Davis Center (R)</td>
<td>980</td>
<td>$2,795,636</td>
</tr>
<tr>
<td>Eastern Juvenile Center (R)</td>
<td>981</td>
<td>$2,040,760</td>
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<tr>
<td>Northern Juvenile Center (R)</td>
<td>982</td>
<td>$1,110,465</td>
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<tr>
<td>North Central Juvenile Center (R)</td>
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<td>$1,731,867</td>
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<tr>
<td>Southern Juvenile Center (R)</td>
<td>984</td>
<td>$1,793,896</td>
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<tr>
<td>Tiger Morton Juvenile Center (R)</td>
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<td>$1,941,126</td>
</tr>
<tr>
<td>Donald Kuhn Juvenile Center (R)</td>
<td>986</td>
<td>$3,721,772</td>
</tr>
</tbody>
</table>

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Ch. 12]  APPROPRIATIONS

16 J.M. "Chick" Buckbee
17 Juvenile Center (R) ............. 987 1,875,417
18 Salem Canine (R) ............... 988 2,400
19 Davis Canine (R) ............... 989 7,200
20 The Academy (R) ............... 990 95,422
21 Total ................................ $34,530,788

22 Any unexpended balances remaining in the appropriations for Robert L. Shell Juvenile Center (fund 0570, activity 267), Central Office (fund 0570, activity 701), Capital Outlay and Maintenance (fund 0570, activity 755), 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 981), Eastern Regional Juvenile Center (fund 0570, activity 982), North Central Regional Juvenile Center (fund 0570, activity 983), Southern Regional Juvenile Center (fund 0570, activity 984), Tiger Morton Center (fund 0570, activity 985), Donald R. Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick" Buckbee Juvenile Center (fund 0570, activity 987), Salem Canine (fund 0570, activity 988), Davis Canine (fund 0570, activity 989), and The Academy (fund 0570, activity 990) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008, with the exception of fund 0570, fiscal year 2002, activity 099 ($1,519.36); fund 0570, fiscal year 2005, activity 267 ($570,628.14); fund 0570, fiscal year 2006, activity 267 ($100,000); Fund 0570 fiscal year 2005, activity 283 ($151,408.02); fund 0570, fiscal year 2004, activity 701 ($13,675.39); fund 0570, fiscal year 2005, activity 701 ($239.04); fund 0570, fiscal year 2006, activity 701 ($53,875.33); fund 0570, fiscal year 2006, activity 793 ($75,000); fund 0570, fiscal year 2004, activity 979 ($11,672.66); fund 0570, fiscal year 2005, activity 979
The director 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 expenditures made for personal services, annual increment, current expenses, repairs and alterations, and equipment.
From the above appropriations, on July 1, 2007, the sum of fifty thousand dollars shall be transferred to the department of agriculture-land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

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

79-Division of Protective Services
(WV Code Chapter 5F)
Fund 0585 FY 2008 Org 0622

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Line</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,057,511</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$19,650</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$411,965</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$423,951</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$7,707</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,920,784</td>
</tr>
</tbody>
</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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

DEPARTMENT OF REVENUE
80-Office of the Secretary
(WV Code Chapter 11)
Fund 0465 FY 2008 Org 0701

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Line</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$852,292</td>
</tr>
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</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Revenue Shortfall Reserve</td>
<td>590</td>
<td>0</td>
</tr>
<tr>
<td>Fund-Transfer</td>
<td>799</td>
<td>0</td>
</tr>
<tr>
<td>Efficiency Savings</td>
<td></td>
<td>590</td>
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<tr>
<td>Total</td>
<td></td>
<td>$852,292</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified—Total (fund 0465, activity 096) and Unclassified (fund 0465, activity 099) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

### 81-Tax Division
(WV Code Chapter 11)
Fund 0470 FY 2008 Org 0702

<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>$13,149,281</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>259,060</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>4,682,680</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>7,510,469</td>
</tr>
<tr>
<td>GIS Development Project (R)</td>
<td>562</td>
<td>150,000</td>
</tr>
<tr>
<td>Remittance Processor (R)</td>
<td>570</td>
<td>381,015</td>
</tr>
<tr>
<td>Multi State Tax Commission</td>
<td>653</td>
<td>77,958</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>14,420</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$26,224,883</td>
</tr>
</tbody>
</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), GIS Development Project (fund 0470, activity 562), and Remittance Processor (fund 0470, activity 570) at
the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

82-State Budget Office  
(WV Code Chapter 11B)  
Fund 0595 FY 2008 Org 0703

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,117,787</td>
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<tr>
<td>Pay Equity Reserve</td>
<td>364</td>
<td>250,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>6,000</td>
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<tr>
<td>Public Employee Pay Raise</td>
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<tr>
<td>Total</td>
<td></td>
<td>1,373,787</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, activity 099) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

83-West Virginia Office of Tax Appeals  
(WV Code Chapter 11)  
Fund 0593 FY 2008 Org 0709

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>669,738</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0593, activity 096) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

84-Division of Professional and Occupational Licenses- 
State Athletic Commission  
(WV Code Chapter 29)  
Fund 0523 FY 2008 Org 0933

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>89,500</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

DEPARTMENT OF TRANSPORTATION

85-State Rail Authority
(WV Code Chapter 29)
Fund 0506 FY 2008 Org 0804

1 Unclassified ................. 099 $ 2,611,121
2 BRIM Premium ............... 913 $ 253,309
3 Total ......................... $ 2,864,430

From the above appropriation for Unclassified (activity 099), $30,000 shall be expended for improvements at the Duffield Station.

86-Division of Public Transit
(WV Code Chapter 17)
Fund 0510 FY 2008 Org 0805

1 Unclassified (R) .............. 099 $ 1,258,342
2 Federal Funds/Grant Match (R) 749 $ 1,765,000
3 Total ......................... $ 3,023,342

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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

87-Public Port Authority
(WV Code Chapter 17)
Fund 0581 FY 2008 Org 0806

1 Unclassified (R) .............. 099 $ 431,551
2 BRIM Premium ............... 913 $ 6,654
3 Total ......................... $ 438,205
4 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

88-Aeronautics Commission
(WV Code Chapter 29)
Fund 0582 FY 2008 Org 0807

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$ 1,312,068</td>
</tr>
<tr>
<td>2</td>
<td>Civil Air Patrol</td>
<td>234</td>
<td>$ 163,258</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$ 1,475,326</td>
</tr>
</tbody>
</table>

4 Any unexpended balances remaining in the appropriations for Unclassified-Surplus (fund 0582, activity 097) and Unclassified (fund 0582, activity 099) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

9 From the above appropriation for Unclassified, the sum of $120,000 shall be distributed equally to each of the twelve local Civil Air Patrol Squadrons.

HIGHER EDUCATION
89-West Virginia Council for Community and Technical College Education- Control Account
(WV Code Chapter 18B)
Fund 0596 FY 2008 Org 0420

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 1,700,000</td>
</tr>
<tr>
<td>2</td>
<td>New River Community and Technical College</td>
<td>358</td>
<td>4,801,282</td>
</tr>
<tr>
<td>3</td>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>713,360</td>
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</tbody>
</table>
APPROPRIATIONS

6 Eastern West Virginia Community and Technical College ........ 412 2,021,567
7 West Virginia State Community and Technical College ........... 445 3,418,827
8 Southern West Virginia Community and Technical College .......... 446 8,386,234
9 West Virginia Northern Community and Technical College ........ 447 7,009,680
10 West Virginia University-Parkersburg ..................... 471 8,953,448
11 West Virginia University Institute for Technology Community and Technical College .......... 486 3,404,908
12 Marshall Community and Technical College .................... 487 5,711,590
13 Community College Workforce Development (R) ..... 878 1,000,000
14 Blue Ridge Community and Technical College .................... 885 2,871,929
15 College Transition Program (R) .................... 887 333,500
16 West Virginia Advance Workforce Development (R) .......... 893 3,000,000
17 Technical Program Development (R) .... 894 2,000,000
18 Pierpont Community and Technical College ........ 930 8,114,815
19 Total .................................................. $ 63,441,140

32 Any unexpended balances remaining in the appropriations for the West Virginia Council for Community and Technical Education (fund 0596, activity 392), Community College Workforce Development (fund 0420, activity 878), College Transition Program (fund 0420, activity 887), West Virginia Advance Workforce Development (fund 0420, activity 893), and Technical Program Development (fund 0420, activity 894) at the close
of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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.

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.

90-Higher Education Policy Commission—Administration—Control Account
(WV Code Chapter 18B)
Fund 0589 FY 2008 Org 0441

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>FY 2008</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,043,565</td>
<td></td>
</tr>
<tr>
<td>Higher Education Grant Program</td>
<td>164</td>
<td>$28,366,209</td>
<td></td>
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<tr>
<td>WVNET</td>
<td>169</td>
<td>$1,915,008</td>
<td></td>
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<tr>
<td>Research Challenge</td>
<td>502</td>
<td>$10,000,000</td>
<td></td>
</tr>
<tr>
<td>VISTA E-Learning (R)</td>
<td>519</td>
<td>$300,000</td>
<td></td>
</tr>
<tr>
<td>PROMISE Scholarship—Transfer</td>
<td>800</td>
<td>$13,800,000</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$57,419</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$56,482,201</td>
</tr>
</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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.
The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by chapter eighteen-c, article five, section three.

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.

The above appropriation for Research Challenge (activity 502), FY 2008, shall be allocated to the state’s research and doctoral degree-granting public institutions of higher education as defined in 18B-2A-6 and in a manner consistent with the research challenge program as defined in 18B-1B-12. Each institution shall receive no more than one-half of this appropriation. Prior to the first day of June, 2007 and prior to the expenditure of any funds from this account, each institution shall submit a plan detailing the proposed expenditure of these funds and the relevance of this plan to the state’s research and economic development goals to the state director of the experimental program to stimulate competitive research. The state director shall conduct a merit review of these plans and recommend funding allocations no later than the first day of July, 2007. The state director and representatives of the institutions shall report to the Legislative Oversight Commission on Educational Accountability no later than the first day of August, 2008, on how the funds were expended and the results and benefits obtained from the expenditures.

91-Higher Education Policy Commission-System-Control Account
(WV Code Chapter 18B)
<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>$0</td>
</tr>
<tr>
<td>2</td>
<td>WVU School of Health Science-Eastern Division</td>
<td>056</td>
<td>2,560,785</td>
</tr>
<tr>
<td>3</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>7,234,347</td>
</tr>
<tr>
<td>4</td>
<td>Marshall Medical School</td>
<td>173</td>
<td>9,500,216</td>
</tr>
<tr>
<td>5</td>
<td>WVU—School of Health Sciences</td>
<td>174</td>
<td>14,264,652</td>
</tr>
<tr>
<td>6</td>
<td>WVU School of Health Sciences-Charleston Division</td>
<td>175</td>
<td>2,514,117</td>
</tr>
<tr>
<td>7</td>
<td>Primary Health Education Medical</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>School Program Support (R)</td>
<td>177</td>
<td>2,171,528</td>
</tr>
<tr>
<td>9</td>
<td>School of Osteopathic School</td>
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<td></td>
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<tr>
<td>10</td>
<td>BRIM Subsidy</td>
<td>403</td>
<td>174,475</td>
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<tr>
<td>11</td>
<td>Bluefield State College</td>
<td>408</td>
<td>5,323,156</td>
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<tr>
<td>12</td>
<td>Concord University</td>
<td>410</td>
<td>9,720,063</td>
</tr>
<tr>
<td>13</td>
<td>Fairmont State University</td>
<td>414</td>
<td>12,166,895</td>
</tr>
<tr>
<td>14</td>
<td>Glenville State College</td>
<td>428</td>
<td>6,095,707</td>
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<tr>
<td>15</td>
<td>Shepherd University</td>
<td>432</td>
<td>10,708,896</td>
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<tr>
<td>16</td>
<td>West Liberty State College</td>
<td>439</td>
<td>8,886,241</td>
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<td>17</td>
<td>West Virginia State University</td>
<td>441</td>
<td>9,699,020</td>
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<tr>
<td>18</td>
<td>Marshall University</td>
<td>448</td>
<td>46,603,887</td>
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<td>19</td>
<td>Marshall University Medical School</td>
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<td></td>
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<td>20</td>
<td>BRIM Subsidy</td>
<td>449</td>
<td>1,015,462</td>
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<td>21</td>
<td>West Virginia University</td>
<td>459</td>
<td>110,103,306</td>
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<td>22</td>
<td>West Virginia University School of Medicine BRIM Subsidy</td>
<td>460</td>
<td>1,400,038</td>
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<td>23</td>
<td>West Virginia University Institute</td>
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<td>24</td>
<td>WVUIT-ABET Accreditation</td>
<td>479</td>
<td>8,272,205</td>
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<tr>
<td>25</td>
<td>State Priorities-Brownfield Professional Development (R)</td>
<td>531</td>
<td>801,440</td>
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<tr>
<td>26</td>
<td>Rural Health Initiative-Medical</td>
<td>581</td>
<td>463,862</td>
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</table>
APPROPRIATIONS

<table>
<thead>
<tr>
<th>Institution</th>
<th>Grant Match</th>
<th>WVU-Potomac State</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia State University</td>
<td>956</td>
<td>994</td>
<td>956</td>
</tr>
<tr>
<td>Grant Match</td>
<td>1,908,000</td>
<td>4,346,826</td>
<td>5,304,826</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>5,304,826</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0586, activity 177), Jackson’s Mill (fund 0586, activity 461), State Priorities-Brownfield Professional Development (fund 0586, activity 531), and Jackson’s Mill-Surplus (fund 0586, activity 842) at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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 approval of 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 $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, $550,000 for the Davis College
of Forestry Agriculture and Consumer Sciences various
improvements, $200,000 for Reedsville Arena, Meat Labs,
and outreach activities, $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.

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 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.

92-Higher Education Policy Commission—Legislative-Funding Priorities
Control Account
(WV Code Chapter 18B)
Fund 0591 FY 2008 Org 0441

Any unexpended balances remaining in the appropriations for Higher Education—Special Projects (fund 0591, activity 488), Independently Accredited Community and Technical College Development (fund 0591, activity 491), and Research Challenge (fund 0591, activity 502) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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 $3,775,934,728
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 eight.

DEPARTMENT OF TRANSPORTATION
93-Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
Fund 9007 FY 2008 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$14,879,095</td>
</tr>
<tr>
<td>004 Annual Increment</td>
<td>$272,285</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>$6,587,717</td>
</tr>
<tr>
<td>099 Unclassified</td>
<td>$12,742,935</td>
</tr>
<tr>
<td>Total</td>
<td>$34,482,032</td>
</tr>
</tbody>
</table>

94-Division of Highways
(WV Code Chapters 17 and 17C)
Fund 9017 FY 2008 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>040 Debt Service</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>237 Maintenance</td>
<td>$260,288,000</td>
</tr>
<tr>
<td>237 Maintenance, Contract Paving and</td>
<td></td>
</tr>
<tr>
<td>272 Secondary Road Maintenance</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>273 Bridge Repair and Replacement</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>275 Inventory Revolving</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>276 Equipment Revolving</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>277 General Operations</td>
<td>$47,797,584</td>
</tr>
<tr>
<td>278 Interstate Construction</td>
<td>$100,000,000</td>
</tr>
<tr>
<td>Line</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>10</td>
<td>Other Federal Aid Programs</td>
</tr>
<tr>
<td>11</td>
<td>Appalachian Programs</td>
</tr>
<tr>
<td>12</td>
<td>Nonfederal Aid Construction</td>
</tr>
<tr>
<td>13</td>
<td>Highway Litter Control</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
</tr>
</tbody>
</table>

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

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

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

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.
From the above appropriation, $125,000 is for King Coal Highway Authority; $125,000 is for Coal Field Expressway Authority; $100,000 is Coal Heritage Highway Authority; $100,000 is for Coal Heritage Area Authority; $50,000 is for Little Kanawha River Parkway; $90,000 is for Midland Trail Scenic Highway Association; $57,000 is for Shawnee Parkway Authority; $100,000 is for Corridor G Highway Authority; $75,000 is for Corridor H Authority; and $100,000 is for the enhancement of the median area along U.S. Rt. 22.

Additionally, the department shall assist with the removal of utility poles and lines along Rt. 2 in the city of Weirton.

Total TITLE II, Section 2-
State Road Fund $1,112,582,940

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 eight.

LENSLATIVE
95-Crime Victims Compensation Fund
(WV Code Chapter 14)
Fund 1731 FY 2008 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ................. 001</td>
<td>$ 286,000</td>
</tr>
<tr>
<td>2 Annual Increment ................. 004</td>
<td>5,000</td>
</tr>
<tr>
<td>3 Employee Benefits ................. 010</td>
<td>109,200</td>
</tr>
<tr>
<td>4 Unclassified ................. 099</td>
<td>135,603</td>
</tr>
<tr>
<td>5 Economic Loss Claim Payment</td>
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</table>
## APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Fund (R)</th>
<th>334</th>
<th>$3,597,775</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$4,133,578</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

## EXECUTIVE

**96-Auditor's Office-Land Operating Fund**

(WV Code Chapters 11A, 12 and 36)

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>001</th>
<th>$263,775</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,500</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>128,655</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>676,054</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,075,984</td>
</tr>
</tbody>
</table>

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

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

**97-Auditor's Office-Securities Regulation Fund**

(WV Code Chapter 32)

<table>
<thead>
<tr>
<th></th>
<th>Fund</th>
<th>FY 2008</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1225</td>
<td></td>
<td>1200</td>
</tr>
</tbody>
</table>
### Appropriations

1. **Personal Services** .............. 001 $ 1,109,959
2. **Annual Increment** .............. 004 14,700
3. **Employee Benefits** ............. 010 455,755
4. **Unclassified** ............ 099 1,391,122
5. **Total** ................... $ 2,971,536

### 98-Auditor’s Office-
**Technology Support and Acquisition Fund**
(WV Code Chapter 12)
Fund 1233 FY 2008 Org 1200

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

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

### 99-Auditor’s Office-
**Purchasing Card Administration Fund**
(WV Code Chapter 12)
Fund 1234 FY 2008 Org 1200

1. Unclassified-Total ........... 096 $ 3,122,874

### 100-Auditor’s Office-
**Office of the Chief Inspector**
(WV Code Chapter 6)
Fund 1235 FY 2008 Org 1200

1. **Personal Services** .............. 001 $ 1,979,425
2. **Annual Increment** .............. 004 31,500
3. **Employee Benefits** ............. 010 694,872
4. **Unclassified** ............ 099 622,315
5. **Total** ................... $ 3,328,112
### Appropriations

#### 101 - Treasurer's Office -
**College Prepaid Tuition and Savings Program**
*Administrative Account*
(WV Code Chapter 18)
Fund 1301 FY 2008 Org 1300

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$1,401,952</td>
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</table>

#### 102 - Treasurer's Office -
**Technology Support and Acquisition Fund**
(WV Code Chapter 12)
Fund 1329 FY 2008 Org 1300

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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<td>$475,000</td>
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</table>

#### 103 - Department of Agriculture -
**Agriculture Fees Fund**
(WV Code Chapter 19)
Fund 1401 FY 2008 Org 1400

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,182,637</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>16,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>454,580</td>
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<td>Unclassified</td>
<td>099</td>
<td>992,586</td>
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<tr>
<td>Total</td>
<td></td>
<td>$2,645,803</td>
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</tbody>
</table>

#### 104 - Department of Agriculture -
**West Virginia Rural Rehabilitation Program**
(WV Code Chapter 19)
Fund 1408 FY 2008 Org 1400

<table>
<thead>
<tr>
<th>Category</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>850</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>15,510</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td><strong>975,996</strong></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td><strong>$1,044,880</strong></td>
</tr>
</tbody>
</table>

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200
Ch. 12] APPROPRIATIONS

105-Department of Agriculture-
General John McCausland Memorial Farm
(WV Code Chapter 19)
Fund 1409 FY 2008 Org 1400

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

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

106-Department of Agriculture-
Farm Operating Fund
(WV Code Chapter 19)
Fund 1412 FY 2008 Org 1400

1 Unclassified-Total ................. 096  $  1,503,330

107-Department of Agriculture-
Donated Food Fund
(WV Code Chapter 19)
Fund 1446 FY 2008 Org 1400

1 Unclassified-Total ................. 096  $  4,520,480

108-Department of Agriculture-
Integrated Predation Management Fund
(WV Code Chapter 7)
Fund 1465 FY 2008 Org 1400

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

109-Attorney General-
Antitrust Enforcement
(WV Code Chapter 47)
Fund 1507 FY 2008 Org 1500

201
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,965</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$77,837</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$138,055</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$474,110</td>
</tr>
</tbody>
</table>

---

**110-Attorney General—Preneed Burial Contract Regulation Fund**
(WV Code Chapter 47)
Fund 1513 FY 2008 Org 1500

|   | Unclassified-Total               | 096  | $234,887   |

---

**111-Attorney General—Preneed Guarantee Fund**
(WV Code Chapter 47)
Fund 1514 FY 2008 Org 1500

|   | Unclassified-Total               | 096  | $775,000   |

---

**112-Secretary of State—Service Fees and Collection Account**
(WV Code Chapters 3, 5, and 59)
Fund 1612 FY 2008 Org 1600

|   | Personal Services               | 001  | $1,167,897 |
|   | Annual Increment                 | 004  | $10,300    |
|   | Employee Benefits                | 010  | $338,804   |
|   | Unclassified                     | 099  | $1,055,406 |
| 5 | Total                            |      | $2,572,407 |

---

**113-Secretary of State—State Election Fund**
(WV Code Chapter 3)
Fund 1614 FY 2008 Org 1600

---

202
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 1614, activity 096) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

DEPARTMENT OF ADMINISTRATION
114-Division of Information Services and Communications
(WV Code Chapter 5A)
Fund 2220 FY 2008 Org 0210

1 Personal Services ................. 001 $ 19,409,013
2 Annual Increment .................. 004 274,530
3 Employee Benefits ............... 010 6,341,853
4 Unclassified ..................... 099 11,394,644
5 Total .......................... $ 37,420,040

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

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

115-Division of Personnel
(WV Code Chapter 29)
Fund 2440 FY 2008 Org 0222

1 Personal Services ................. 001 $ 2,706,966
2 Annual Increment .................. 004 58,190
3 Employee Benefits ............... 010 956,624
4 Unclassified ..................... 099 1,374,811
5 Total .......................... $ 5,096,591
The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.

116-WV Prosecuting Attorneys Institute
(WV Code Chapter 7)
Fund 2521 FY 2008 Org 0228

1 Unclassified-Total (R) ............. 096 $ 548,625

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 2521, activity 096) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

117-Office of Technology-
Chief Technology Officer Administration Fund
(WV Code Chapter 5A)
Fund 2531 FY 2008 Org 0231

1 Unclassified-Total ............... 096 $ 2,041,988

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
118-Division of Forestry
(WV Code Chapter 19)
Fund 3081 FY 2008 Org 0305

1 Personal Services ............... 001 $ 194,793
2 Annual Increment ............... 004 5,350
3 Employee Benefits ............... 010 86,772
4 Unclassified ..................... 099 541,459
5 Total .................. $ 828,374
### 119-Division of Forestry-Timbering Operations Enforcement Fund
(WV Code Chapter 19)
Fund 3082 FY 2008 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
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<td>$141,750</td>
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</table>

### 120-Division of Forestry-Severance Tax Operations
(WV Code Chapter 11)
Fund 3084 FY 2008 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$2,071,622</td>
</tr>
</tbody>
</table>

### 121-Geological and Economic Survey
(WV Code Chapter 29)
Fund 3100 FY 2008 Org 0306

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$44,233</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>584</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>15,378</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>157,099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$217,294</td>
</tr>
</tbody>
</table>

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

### 122-West Virginia Development Office-Energy Assistance
(WV Code Chapter 5B)
Fund 3144 FY 2008 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Energy Assistance—Total</td>
<td>647</td>
<td>$300,000</td>
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</tbody>
</table>

205
Any unexpended balance remaining in the appropriation for Energy Assistance-Total (fund 3144, activity 647) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

123-West Virginia Development Office-Office of Coal Field Community Development
(WV Code Chapter 5B)
Fund 3162 FY 2008 Org 0307

1 Unclassified-Total (R) ............... 096 $ 698,240

Any unexpended balance remaining in the above appropriation for Unclassified-Total (fund 3162, activity 096) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

124-Division of Labor-Contractor Licensing Board Fund
(WV Code Chapter 21)
Fund 3187 FY 2008 Org 0308

1 Personal Services ................. 001 $ 1,097,826
2 Annual Increment ................. 004 14,280
3 Employee Benefits ............... 010 505,204
4 Unclassified .................. 099 471,987
5 Total .................. $ 2,089,297

125-Division of Labor-Elevator Safety Act
(WV Code Chapter 21)
Fund 3188 FY 2008 Org 0308

1 Personal Services ............... 001 $ 78,371
2 Annual Increment ............... 004 723

206
### APPROPRIATIONS

3 Employee Benefits ............... 010 32,335  
4 Unclassified .................... 099 69,868  
5 Total ................................ $ 181,297

**126-Division of Labor-**  
**Crane Operator Certification Fund**  
(WV Code Chapter 21)  
Fund 3191 FY 2008 Org 0308

1 Unclassified-Total ............... 096 $ 113,837

**127-Division of Labor-**  
**Amusement Rides and Amusement Attraction Safety Fund**  
(WV Code Chapter 21)  
Fund 3192 FY 2008 Org 0308

1 Unclassified-Total ............... 096 $ 104,598

**128-Division of Labor-**  
**State Manufactured Housing Administration Fund**  
(WV Code Chapter 21)  
Fund 3195 FY 2008 Org 0308

1 Personal Services ................ 001 $ 99,897  
2 Annual Increment ................ 004 1,646  
3 Employee Benefits ............... 010 46,280  
4 Unclassified .................... 099 27,349  
5 BRIM Premium ................... 913 3,404  
6 Total ............................ $ 178,576

**129-Division of Labor-**  
**Weights and Measures Fund**  
(WV Code Chapter 47)  
Fund 3196 FY 2008 Org 0308

1 Unclassified-Total ............... 096 $ 50,000
130-Division of Natural Resources
(WV Code Chapter 20)
Fund 3200 FY 2008 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wildlife Resources</td>
<td>023</td>
<td>$7,366,881</td>
</tr>
<tr>
<td>2</td>
<td>Administration</td>
<td>155</td>
<td>1,971,572</td>
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<td>3</td>
<td>Capital Improvements and Capital Improvements and (R)</td>
<td>248</td>
<td>1,603,157</td>
</tr>
<tr>
<td>4</td>
<td>Law Enforcement</td>
<td>806</td>
<td>7,381,592</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$18,323,202</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Point of Sales Licensing System (fund 3200, activity 043), Capital Improvements and Land Purchase (fund 3200, activity 248), and DEP-Compliance Mandate-Fish Hatchery (fund 3200, activity 668) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008 with the exception of fund 3200, fiscal year 2003, activity 248 ($1,000,000) which shall expire on June 30, 2007.

131-Division of Natural Resources-
Game, Fish and Aquatic Life Fund
(WV Code Chapter 20)
Fund 3202 FY 2008 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

132-Division of Natural Resources-
Nongame Fund
(WV Code Chapter 20)
### APPROPRIATIONS

**Fund 3203** FY 2008 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$651,363</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$9,250</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>$446,250</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$1,353,745</strong></td>
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</table>

133-Division of Natural Resources-
Planning and Development Division
(WV Code Chapter 20)

**Fund 3205** FY 2008 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$6,400</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$92,234</td>
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<td>$167,052</td>
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<td><strong>Total</strong></td>
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<td><strong>$509,001</strong></td>
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</table>

134-Division of Natural Resources-
Whitewater Study and Improvement Fund
(WV Code Chapter 20)

**Fund 3253** FY 2008 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$209,720</td>
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</table>

135-Division of Natural Resources-
Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)

**Fund 3256** FY 2008 Org 0310

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<td>$20,000</td>
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136-Miners' Health, Safety and Training Fund
(WV Code Chapter 22A)

**Fund 3355** FY 2008 Org 0314

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</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
APPROPRIATIONS

1 Personal Services ................. 001 $ 90,000
2 Employee Benefits .................. 010 27,000
3 WV Mining Extension Service ... 026 150,000
4 Unclassified ...................... 099 548,000
5 Total ................................ $ 815,000

DEPARTMENT OF EDUCATION
137-State Board of Education-
Strategic Staff Development
(WV Code Chapter 18)
Fund 3937 FY 2008 Org 0402

1 Unclassified-Total (R) ............. 096 $ 504,680

2 Any unexpended balance remaining in the appropriation
3 for Unclassified-Total (fund 3937, activity 096) at the close
4 of the fiscal year 2007 is hereby reappropriated for
5 expenditure during the fiscal year 2008.

138-State Department of Education-
School Building Authority
(WV Code Chapter 18)
Fund 3959 FY 2008 Org 0402

1 Personal Services ................. 001 $ 684,719
2 Annual Increment ................. 004 6,550
3 Employee Benefits ............... 010 240,154
4 Unclassified ...................... 099 266,715
5 Total ................................ $ 1,198,138

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

139-State Department of Education-
FFA-FHA Camp and Conference Center
(WV Code Chapter 18)
Fund 3960 FY 2008 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services $001 $857,689</td>
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<td>2</td>
<td>Annual Increment $004 $9,950</td>
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<td>3</td>
<td>Employee Benefits $010 $297,998</td>
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<td>4</td>
<td>Unclassified $099 $705,590</td>
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<tr>
<td>5</td>
<td>Total $1,871,227</td>
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</table>

DEPARTMENT OF EDUCATION AND THE ARTS
140-Office of the Secretary-
Lottery Education Fund Interest Earnings-
Control Account
(WV Code Chapter 29)
Fund 3508 FY 2008 Org 0431

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 EPSCoR</td>
<td>$571 $355,539</td>
</tr>
<tr>
<td>2 Educational Enhancements</td>
<td>$695 $600,000</td>
</tr>
<tr>
<td>3 Total</td>
<td>$955,539</td>
</tr>
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</table>

4 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

141-Division of Culture and History—
Public Records and Preservation Revenue Account
(WV Code Chapter 5A)
Fund 3542 FY 2008 Org 0432

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>$096 $936,570</td>
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</table>
**APPROPRIATIONS**

### 142-State Board of Rehabilitation
- **Division of Rehabilitation Services**
- **West Virginia Rehabilitation Center**
- **Special Account**
  (WV Code Chapter 18)
  Fund **8664** FY **2008** Org **0932**

<table>
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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

### 143-Solid Waste Management Board
  (WV Code Chapter 22C)
  Fund **3288** FY **2008** Org **0312**

<table>
<thead>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$608,227</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>190,868</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td><strong>1,755,180</strong></td>
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<td>5</td>
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<td><strong>2,558,275</strong></td>
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### 144-Division of Environmental Protection
- **Environmental Management Fund**
  (WV Code Chapter 22)
  Fund **3001** FY **2008** Org **0313**

<table>
<thead>
<tr>
<th></th>
<th>Description</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>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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### 145-Division of Environmental Protection
- **Hazardous Waste Management Fund**

212
### 146-Division of Environmental Protection
#### Air Pollution Education and Environment Fund
(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$309,222</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,850</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$117,538</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$160,202</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$588,812</strong></td>
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</table>

### 147-Division of Environmental Protection
#### Special Reclamation Fund
(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$409,432</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,750</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$117,209</td>
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<td>Unclassified</td>
<td>099</td>
<td>$469,110</td>
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<td><strong>Total</strong></td>
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<td><strong>$998,501</strong></td>
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</table>

### 148-Division of Environmental Protection
#### Oil and Gas Reclamation Fund
(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$442,325</td>
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</table>

213
<table>
<thead>
<tr>
<th>Fund</th>
<th>Description</th>
<th>Org</th>
<th>FY 2008</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>149</td>
<td>Division of Environmental Protection-Oil and Gas Operating Permit and Processing Fund (WV Code Chapter 22)</td>
<td>3323</td>
<td>FY 2008</td>
<td>214</td>
</tr>
<tr>
<td>150</td>
<td>Division of Environmental Protection-Mining and Reclamation Operations Fund (WV Code Chapter 22)</td>
<td>3324</td>
<td>FY 2008</td>
<td>214</td>
</tr>
<tr>
<td>151</td>
<td>Division of Environmental Protection-Underground Storage Tank Administrative Fund (WV Code Chapter 22)</td>
<td>3325</td>
<td>FY 2008</td>
<td>214</td>
</tr>
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</table>
### 152-Division of Environmental Protection - Hazardous Waste Emergency Response Fund
(WV Code Chapter 22)
Fund 3331 FY 2008 Org 0313

<table>
<thead>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$489,302</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>189,715</td>
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<td>4</td>
<td>Unclassified</td>
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<td>834,243</td>
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<td>Total</td>
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</table>

### 153-Division of Environmental Protection - Solid Waste Reclamation and Environmental Response Fund
(WV Code Chapter 22)
Fund 3332 FY 2008 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$746,648</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>11,900</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>226,988</td>
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<td>Unclassified</td>
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<td>3,775,631</td>
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<td>Total</td>
<td></td>
<td>$4,761,167</td>
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### 154-Division of Environmental Protection - Solid Waste Enforcement Fund
(WV Code Chapter 22)
Fund 3333 FY 2008 Org 0313

<table>
<thead>
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<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
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<td>38,968</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>766,661</td>
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<td>1,038,183</td>
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</table>
### Appropriations

**155-Division of Environmental Protection - Air Pollution Control Fund**  
(WV Code Chapter 22)  
Fund 3336 FY 2008 Org 0313

<table>
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<th>Item</th>
<th>Code</th>
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<tr>
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<td>2 Annual Increment</td>
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<td>44,162</td>
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<td>3 Employee Benefits</td>
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<td>1,348,392</td>
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<td>2,013,604</td>
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**156-Division of Environmental Protection - Environmental Laboratory Certification Fund**  
(WV Code Chapter 22)  
Fund 3340 FY 2008 Org 0313

<table>
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<th>Code</th>
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<tr>
<td>1 Personal Services</td>
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<td>3 Employee Benefits</td>
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<td>56,805</td>
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<td>145,075</td>
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**157-Division of Environmental Protection - Stream Restoration Fund**  
(WV Code Chapter 22)  
Fund 3349 FY 2008 Org 0313

<table>
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<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>$945,000</td>
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**158-Division of Environmental Protection - Litter Control Fund**  
(WV Code Chapter 22)  
Fund 3486 FY 2008 Org 0313

<table>
<thead>
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<th>Item</th>
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<tr>
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<td>$40,000</td>
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### 159-Division of Environmental Protection - Recycling Assistance Fund
(WV Code Chapter 22)
Fund 3487 FY 2008 Org 0313

<table>
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<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$399,493</td>
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<td>$3,500</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$138,771</td>
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<td>Unclassified (R)</td>
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<td>$2,218,337</td>
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<td>Total</td>
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<td>$2,760,101</td>
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</tbody>
</table>

Any unexpended balance remaining in Unclassified (fund 3487, activity 099) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

### 160-Division of Environmental Protection - Mountaintop Removal Fund
(WV Code Chapter 22)
Fund 3490 FY 2008 Org 0313

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>010</td>
<td>$289,089</td>
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</table>

### 161-Oil and Gas Conservation Commission — Special Oil and Gas Conservation Fund
(WV Code Chapter 22C)
Fund 3371 FY 2008 Org 0315

<table>
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<th>Description</th>
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<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$154,769</td>
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<td>3</td>
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<td>010</td>
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APPROPRIATIONS

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>4</td>
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<td>33,206</td>
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</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

162-Board of Barbers and Cosmetologists
(WV Code Chapters 16 and 30)
Fund 5425 FY 2008 Org 0505

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>251,340</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>108,747</td>
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<td>4</td>
<td>Unclassified</td>
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<td>101,366</td>
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<td>5</td>
<td>Total</td>
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<td>467,664</td>
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</table>

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

163-WV Board of Medicine
(WV Code Chapter 30)
Fund 5106 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>1,207,477</td>
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</table>

164-Division of Health-
Tobacco Settlement Expenditure Fund
(WV Code Chapter 4)
Fund 5124 FY 2008 Org 0506

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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</thead>
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<td>1</td>
<td>Any unexpended balances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>remaining in the above</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>appropriations for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Operations (fund 5124,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>activity 335) and Tobacco</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Education Program (fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>5124, activity 906) at the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>close of the fiscal year 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>are hereby reappropriated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>for expenditure during the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>fiscal year 2008.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Ch. 12] APPROPRIATIONS

165-Division of Health-
Vital Statistics
(WV Code Chapter 16)
Fund 5144 FY 2008 Org 0506

1 Personal Services .................. 001 $ 385,064
2 Annual Increment .................... 004 9,003
3 Employee Benefits ................... 010 163,386
4 Unclassified ......................... 099 570,788
5 Total .............................. $ 1,128,241

166-Division of Health-
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)
Fund 5156 FY 2008 Org 0506

1 Debt Service (R) .................... 040 $ 2,420,000
2 Institutional Facilities
3 Operations (R) ...................... 335 38,674,129
4 Medical Services Trust Fund-
5 Transfer (R) ....................... 512 25,300,000
6 Total ............................... $ 66,394,129

Any unexpended balance remaining in the appropriation
for hospital services revenue account at the close of the fiscal
year 2007 is hereby reappropriated for expenditure during the
fiscal year 2008, except for fund 5156, activity 040 (fiscal

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 2008, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) on July 1, 2007, 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.

**167-Division of Health-Laboratory Services**
(WV Code Chapter 16)
Fund 5163 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$528,772</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$11,060</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$211,345</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$116,530</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$867,707</strong></td>
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</table>
Ch. 12] APPROPRIATIONS

168-Division of Health-
Health Facility Licensing
(WV Code Chapter 16)
Fund 5172 FY 2008 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
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<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$209,232</td>
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<td>2. Annual Increment</td>
<td>004</td>
<td>$3,200</td>
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<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>$76,803</td>
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<td>4. Unclassified</td>
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<td>$93,313</td>
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<td>5. Total</td>
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<td>$382,548</td>
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169-Division of Health-
Hepatitis B Vaccine
(WV Code Chapter 16)
Fund 5183 FY 2008 Org 0506

<table>
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<th>Item</th>
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<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$59,539</td>
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<td>2. Annual Increment</td>
<td>004</td>
<td>$1,530</td>
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<td>3. Employee Benefits</td>
<td>010</td>
<td>$22,390</td>
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<td>4. Unclassified</td>
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<td>$2,996,007</td>
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<td>5. Total</td>
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170-Division of Health-
Lead Abatement Fund
(WV Code Chapter 16)
Fund 5204 FY 2008 Org 0506

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<th>Item</th>
<th>Code</th>
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<tr>
<td>1. Unclassified-Total</td>
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<td>$20,090</td>
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171-Division of Health-
West Virginia Birth to Three Fund
(WV Code Chapter 16)
Fund 5214 FY 2008 Org 0506

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<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$525,743</td>
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## Appropriations

<table>
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<th>Amount</th>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,750</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>204,910</td>
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<td>Unclassified</td>
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<td>24,141,165</td>
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<td>Total</td>
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<td>$24,876,568</td>
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</table>

### 172-Division of Health-Tobacco Control Special Fund
(WV Code Chapter 16)
Fund 5218 FY 2008 Org 0506

<table>
<thead>
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<th>Code</th>
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<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$15,000</td>
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</table>

### 173-West Virginia Health Care Authority—Health Care Cost Review Fund
(WV Code Chapter 16)
Fund 5375 FY 2008 Org 0507

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>001</td>
<td>$2,257,028</td>
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<td>Annual Increment</td>
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<td>25,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>695,875</td>
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<td>4</td>
<td>Hospital Assistance</td>
<td>025</td>
<td>600,000</td>
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<td>5</td>
<td>Unclassified</td>
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<td>3,089,545</td>
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<td>6</td>
<td>Total</td>
<td></td>
<td>$6,667,448</td>
</tr>
</tbody>
</table>

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

The Health Care Authority is authorized to transfer up to $1,400,000 from this fund to the West Virginia Health Information Network Account (fund 5380) as authorized per §16-29G-4.
15 The Health Care Authority is authorized to transfer up to
16 $6,000,000 from this fund to the West Virginia Health Care
17 Authority Revolving Loan Fund as established per §16-291-4.

174-West Virginia Health Care Authority-
West Virginia Health Information Network Account
(WV Code Chapter 16)
Fund 5380 FY 2008 Org 0507

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

175-Division of Human Services-
Health Care Provider Tax
(WV Code Chapter 11)
Fund 5090 FY 2008 Org 0511

1 Medical Services ................. 189 $173,816,000
2 Medical Services Administrative Costs 789 404,722
3 Total ........................... $174,220,722

4 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).

176-Division of Human Services-
Child Support Enforcement
(WV Code Chapter 48A)
Fund 5094 FY 2008 Org 0511

1 Unclassified-Total (R) ........... 096 $ 35,216,458
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 5094, activity 096) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008, except for fund 5094, activity 096, fiscal year 2005 which shall expire on June 30, 2007.

### 177-Division of Human Services-Medical Services Trust Fund
(WV Code Chapter 9)
Fund 5185 FY 2008 Org 0511

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>189</td>
<td>30,556,594</td>
</tr>
<tr>
<td>Medical Services Administrative Costs</td>
<td>789</td>
<td>514,950</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>31,071,544</td>
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</table>

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.

### 178-Division of Human Services-James “Tiger” Morton Catastrophic Illness Fund
(WV Code Chapter 16)
Fund 5454 FY 2008 Org 0511

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>1,609,004</td>
</tr>
</tbody>
</table>
179—Family Protection Services Board—Domestic Violence Legal Services Fund  
(WV Code Chapter 48)  
Fund 5455 FY 2008 Org 0511

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
180—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 2008 Org 0601

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

181—State Armory Board—General Armory Fund  
(WV Code Chapter 15)  
Fund 6057 FY 2008 Org 0603

1 Unclassified-Total ............... 096 $ 1,459,901

182—Division of Homeland Security and Emergency Management—West Virginia Interoperable Radio Project  
(WV Code Chapter 24)  
Fund 6295 FY 2008 Org 0606

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

2 Any unexpended balance remaining in the appropriation
3 for Unclassified-Total (fund 6295, activity 096) at the close
of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

183-West Virginia Division of Corrections-Parolee Supervision Fees
(WV Code Chapter 62)
Fund 6362 FY 2008 Org 0608

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2008 Org 0608</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 267,098</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>1,651</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>92,558</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>371,204</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$ 732,511</td>
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</tbody>
</table>

184-West Virginia State Police-Motor Vehicle Inspection Fund
(WV Code Chapter 17C)
Fund 6501 FY 2008 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2008 Org 0612</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 736,494</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>24,500</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>305,568</td>
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<td>4</td>
<td>Unclassified</td>
<td>357,770</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>302,432</td>
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<tr>
<td>6</td>
<td>Total</td>
<td>$ 1,726,764</td>
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</tbody>
</table>

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.

185-West Virginia State Police-Drunk Driving Prevention Fund
(WV Code Chapter 15)
Fund 6513 FY 2008 Org 0612
1. 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.

### 186-West Virginia State Police-Surplus Real Property Proceeds Fund
(WV Code Chapter 15)
Fund 6516 FY 2008 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
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<td>$444,980</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$77,222</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$522,202</td>
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</table>

### 187-West Virginia State Police-Surplus Transfer Account
(WV Code Chapter 15)
Fund 6519 FY 2008 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
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<td>$312,002</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$54,063</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$366,065</td>
</tr>
</tbody>
</table>

4. 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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.
188-West Virginia State Police-
Central Abuse Registry Fund
(WV Code Chapter 15)
Fund 6527 FY 2008 Org 0612

1 Unclassified ................. 099 $ 236,365
2 BRIM Premium .............. 913 18,524
3 Total .................... $ 254,889

189-West Virginia State Police-
Bail Bond Enforcer Fund
(WV Code Chapter 15)
Fund 6532 FY 2008 Org 0612

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

190-Division of Veterans' Affairs-
Veterans' Facilities Support Fund
(WV Code Chapter 9A)
Fund 6703 FY 2008 Org 0613

1 Unclassified-Total ........... 096 $ 900,000

191-Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
Fund 6675 FY 2008 Org 0615

1 Personal Services ............ 001 $ 1,300,648
2 Annual Increment ............. 004 17,600
3 Employee Benefits ........... 010 423,478
4 Debt Service .................. 040 9,000,000
5 Unclassified .................. 099 545,235
6 Total ......................... $ 11,286,961
192-Division of Veterans' Affairs-
Veterans' Home
(WV Code Chapter 9A)
Fund 6754 FY 2008 Org 0618

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

193-Fire Commission-
Fire Marshal Fees
(WV Code Chapter 29)
Fund 6152 FY 2008 Org 0619

1 Personal Services ............... 001 $ 1,967,058
2 Annual Increment ............... 004 25,000
3 Employee Benefits ........... 010 685,421
4 Unclassified .................. 099 460,062
5 BRIM Premium .................. 913 58,013
6 Total ...................... $ 3,195,554

Any unexpended cash balance remaining in fund 6152 at
the close of the fiscal year 2007 is hereby available for
expenditure as part of the fiscal year 2008 appropriation.

194-Division of Criminal Justice Services-
WV Community Corrections Fund
(WV Code Chapter 62)
Fund 6386 FY 2008 Org 0620

1 Unclassified-Total ............... 096 $ 2,006,439

195-Criminal Justice Services-
Court Security Fund
(WV Code Chapter 51)
Fund 6804 FY 2008 Org 0620
## Appropriations

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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</tr>
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<tbody>
<tr>
<td>096</td>
<td>Unclassified-Total</td>
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### Department of Revenue

#### 196-Division of Banking

(WV Code Chapter 31A)

Fund 3041  FY 2008  Org 0303

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<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>16,500</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>538,555</td>
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#### 197-Tax Division-

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071  FY 2008  Org 0702

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<thead>
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<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<tr>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>7,772</td>
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#### 198-Tax Division-

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073  FY 2008  Org 0702

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<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<tr>
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<td>Personal Services</td>
<td>876,400</td>
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<td>004</td>
<td>Annual Increment</td>
<td>18,600</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>327,512</td>
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<td>099</td>
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<td>229,847</td>
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<td>1,452,359</td>
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230
### 199-Tax Division-
**Special District Excise Tax Administration Fund**
(WV Code Chapter 11)
Fund 7086 FY 2008 Org 0702

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096 $ 50,000</td>
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### 200-State Budget Office-
**Public Employees Insurance Reserve Fund**
(WV Code Chapter 11B)
Fund 7400 FY 2008 Org 0703

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Public Employees Insurance Reserve</td>
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<tr>
<td>2</td>
<td>Fund—Transfer</td>
<td>903 $ 6,500,000</td>
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<tr>
<td>3</td>
<td>The above appropriation for Public Employees Insurance Reserve Fund—Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.</td>
<td></td>
</tr>
</tbody>
</table>

### 201-Insurance Commissioner-
**Examination Revolving Fund**
(WV Code Chapter 33)
Fund 7150 FY 2008 Org 0704

<table>
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<tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010 159,635</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099 486,389</td>
</tr>
<tr>
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<td>Total</td>
<td>$ 1,222,154</td>
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### 202-Insurance Commissioner-
**Consumer Advocate**
(WV Code Chapter 33)
Fund 7151 FY 2008 Org 0704

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001 $ 466,479</td>
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</table>
### Appropriations

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<th>Amount</th>
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<td>Employee Benefits</td>
<td>010</td>
<td>147,288</td>
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<td>Unclassified</td>
<td>099</td>
<td>157,792</td>
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<td><strong>Total</strong></td>
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</table>

**203-Insurance Commissioner**  
(WV Code Chapter 33)  
Fund 7152 FY 2008 Org 0704

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$17,950,138</td>
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<td>Annual Increment (R)</td>
<td>004</td>
<td>246,582</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>6,878,158</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>11,665,259</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$36,740,137</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

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.

**204-Insurance Commissioner–**  
Workers’ Compensation Old Fund  
(WV Code Chapter 23)  
Fund 7162 FY 2008 Org 0704

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$550,000,000</td>
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</table>

**205-Insurance Commissioner–**  
Workers’ Compensation Uninsured Employers’ Fund  
(WV Code Chapter 23)  
Fund 7163 FY 2008 Org 0704
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1  Unclassified-Total.................  096 $ 27,000,000

206-Insurance Commissioner--
Self-Insured Employer Guaranty Risk Pool
(WV Code Chapter 23)
Fund 7164 FY 2008 Org 0704

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

207-Insurance Commissioner--
Self-Insured Employer Security Risk Pool
(WV Code Chapter 23)
Fund 7165 FY 2008 Org 0704

1  Unclassified-Total.................  096 $ 10,000,000

208-Insurance Commissioner--
Private Carrier Guaranty Fund
(WV Code Chapter 23)
Fund 7166 FY 2008 Org 0704

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

209-Insurance Commissioner--
Assigned Risk Fund
(WV Code Chapter 23)
Fund 7167 FY 2008 Org 0704

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

210-Lottery Commission--
Revenue Center Construction Fund
(WV Code Chapter 29)
Fund 7209 FY 2008 Org 0705

1  Unclassified-Total.................  096 $ 20,000,000
### Appropriations [Ch. 12]

#### 211-Municipal Bond Commission
(WV Code Chapter 13)
Fund 7253 FY 2008 Org 0706

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$169,062</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,300</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$65,996</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$76,101</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$315,459</strong></td>
</tr>
</tbody>
</table>

#### 212-Racing Commission-Relief Fund
(WV Code Chapter 19)
Fund 7300 FY 2008 Org 0707

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

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.

#### 213-Racing Commission-Administration and Promotion
(WV Code Chapter 19)
Fund 7304 FY 2008 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$120,457</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$32,477</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$82,161</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$236,095</strong></td>
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</table>
### Appropriations

#### 214-Racing Commission- General Administration  
(WV Code Chapter 19)  
Fund 7305 FY 2008 Org 0707

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,079,947</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>500,457</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>380,728</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,981,382</td>
</tr>
</tbody>
</table>

#### 215-Racing Commission- Administration, Promotion and Education Fund  
(WV Code Chapter 19)  
Fund 7307 FY 2008 Org 0707

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

#### 216-Alcohol Beverage Control Administration- Wine License Special Fund  
(WV Code Chapter 60)  
Fund 7351 FY 2008 Org 0708

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$238,144</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>97,811</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>113,069</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$453,324</td>
</tr>
</tbody>
</table>

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

#### 217-Alcohol Beverage Control Administration  
(WV Code Chapter 60)  
Fund 7352 FY 2008 Org 0708

235
<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,877,374</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>79,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,672,956</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>2,307,048</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$7,936,378</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 7352, activity 099) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

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**

218-Division of Motor Vehicles-
Motor Vehicle Fees Fund
(WV Code Chapter 17B)
Fund 8223 FY 2008 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Unclassified-Total</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>$3,884,259</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

Fund 8220 FY 2008 Org 0802

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

220-Division of Highways-
A. James Manchin Fund
(WV Code Chapter 17)
Fund 8319 FY 2008 Org 0803

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

221-Public Port Authority-
Special Railroad and Intermodal Enhancement Fund
(WV Code Chapter 17)
Fund ___ FY 2008 Org 0806

1 Unclassified-Total ................. 096 $ 2,150,000

HIGHER EDUCATION

222-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 2008 Org 0442

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

4 Any unexpended balances remaining in the
5 appropriations at the close of fiscal year 2007 are hereby
6 reappropriated for expenditure during the fiscal year 2008,
7 except for fund 4902, activity 306 (fiscal year 2004) which
8 shall expire on June 30, 2007.
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.

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

#### Control Account

(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Fund 4903 FY 2008 Org 0442</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)............</td>
<td>040</td>
</tr>
<tr>
<td>General Capital Expenditures (R)</td>
<td>306</td>
</tr>
<tr>
<td>Facilities Planning and Administration (R)</td>
<td>386</td>
</tr>
<tr>
<td>Total .....................</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008, except for fund 4903, activity 040 (fiscal year 2006), and fund 4903, activity 537 (fiscal year 2000) which shall expire on June 30, 2007.

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.

224-Higher Education Policy Commission-
1977 State System Registration Fee Refund Revenue
Construction Fund
(WV Code Chapters 18 and 18B)
Fund 4905 FY 2008 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

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.

225-Higher Education Policy Commission-
Tuition Fee Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)
Fund 4906 FY 2008 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.
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.

226-Health Sciences-
West Virginia University Health Sciences Center
(WV Code Chapters 18 and 18B)
Fund 4179 FY 2008 Org 0463

1 Unclassified-Total (R) ............ 096 $ 15,611,300

Any unexpended balance remaining in the appropriation at the close of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

MISCELLANEOUS BOARDS AND COMMISSIONS
227-Hospital Finance Authority
(WV Code Chapter 16)
Fund 5475 FY 2008 Org 0509

1 Personal Services ................. 001 $ 47,224
2 Annual Increment .................. 004 850
3 Employee Benefits ................. 010 18,308
4 Unclassified ....................... 099 30,622
5 Total .......................... $ 97,004

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.
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228-WV State Board of Examiners for Licensed Practical Nurses
(WV Code Chapter 30)
Fund 8517 FY 2008 Org 0906

1 Unclassified-Total 096 $373,072

229-WV Board of Examiners for Registered Professional Nurses
(WV Code Chapter 30)
Fund 8520 FY 2008 Org 0907

1 Unclassified-Total 096 $907,847

230-Public Service Commission
(WV Code Chapter 24)
Fund 8623 FY 2008 Org 0926

1 Personal Services 001 $8,245,210
2 Annual Increment 004 130,000
3 Employee Benefits 010 2,749,181
4 Unclassified 099 2,810,395
5 PSC Weight Enforcement 345 4,280,967
6 Debt Payment/Capital Outlay 520 350,000
7 BRIM Premium 913 128,000
8 Total 913 $18,693,753

The total amount of this appropriation shall be paid from a special revenue fund out of collection for special license fees from public service corporations 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 (fund
15 8625, org 0926) due to the amendment and reenactment of
16 §24A-3-1 by Enrolled House Bill Number 2715, Regular

231-Public Service Commission-
Gas Pipeline Division—
Public Service Commission Pipeline Safety Fund
(WV Code Chapter 24B)
Fund 8624 FY 2008 Org 0926

1 Personal Services ................. 001  $ 159,293
2 Annual Increment ................. 004  5,556
3 Employee Benefits ............... 010  54,000
4 Unclassified ..................... 099  85,946
5 Total ........................... $ 304,795

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.

232-Public Service Commission-
Motor Carrier Division
(WV Code Chapter 24A)
Fund 8625 FY 2008 Org 0926

1 Personal Services ................. 001  $ 1,649,373
2 Annual Increment ................. 004  40,000
3 Employee Benefits ............... 010  555,687
4 Unclassified ..................... 099  579,790
5 Total ........................... $ 2,824,850

The total amount of this appropriation shall be paid from
a special revenue fund out of receipts collected for or by the
Ch. 12] APPROPRIATIONS

8 public service commission pursuant to and in the exercise of
9 regulatory authority over motor carriers as provided by law.

233-Public Service Commission-
Consumer Advocate
(WV Code Chapter 24)
Fund 8627 FY 2008 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$521,477</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,700</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$162,990</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$264,911</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>$3,978</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$960,056</td>
</tr>
</tbody>
</table>

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

234-Real Estate Commission
(WV Code Chapter 30)
Fund 8635 FY 2008 Org 0927

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$410,504</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$7,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$132,535</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$236,486</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$786,625</td>
</tr>
</tbody>
</table>

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

235-WV Board of Examiners for Speech-Language
Pathology and Audiology
(WV Code Chapter 30)
Fund 8646 FY 2008 Org 0930

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>$93,233</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

236-WV Board of Respiratory Care
(WV Code Chapter 30)
Fund 8676 FY 2008 Org 0935

1 Unclassified-Total ............... 096 $ 108,513

237-WV Board of Licensed Dietitians
(WV Code Chapter 30)
Fund 8680 FY 2008 Org 0936

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

238-Massage Therapy Licensure Board
(WV Code Chapter 30)
Fund 8671 FY 2008 Org 0938

1 Unclassified-Total ............... 096 $ 93,573

239-Board of Treasury Investments
(WV Code Chapter 12)
Fund 9152 FY 2008 Org 0950

1 Unclassified-Total ............... 096 $ 1,153,855

2 There is hereby appropriated from this fund, in addition
to the above appropriation, the amount of funds necessary for
the Board of Treasury Investments to pay the fees and
expenses of custodians, fund advisors and fund managers for
the Consolidated fund of the State as provided in Chapter 12,
Article 6C of the West Virginia Code.
8 The total amount of the appropriation shall be paid from
9 the special revenue fund out of fees and collections as
10 provided by law.

11 Total TITLE II, Section 3-
Other Funds ......................... $ 1,304,123,345

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

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

240-Education, Arts, Sciences and Tourism-
Debt Service Fund
(WV Code Chapter 5)
Fund 2252 FY 2008 Org 0211

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service-Total</td>
<td>310 $ 10,000,000</td>
</tr>
</tbody>
</table>
### 241-West Virginia Development Office - Division of Tourism
(WV Code Chapter 5B)
Fund 3067 FY 2008 Org 0304

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tourism-Telemarketing Center</td>
<td>463</td>
<td>$90,000</td>
</tr>
<tr>
<td>2</td>
<td>WV Film Office</td>
<td>498</td>
<td>$356,295</td>
</tr>
<tr>
<td>3</td>
<td>Tourism-Advertising (R)</td>
<td>618</td>
<td>$3,156,803</td>
</tr>
<tr>
<td>4</td>
<td>Tourism-Unclassified (R)</td>
<td>662</td>
<td>$4,339,585</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$7,942,683</strong></td>
</tr>
</tbody>
</table>

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 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

### 242-Division of Natural Resources
(WV Code Chapter 20)
Fund 3267 FY 2008 Org 0310

<table>
<thead>
<tr>
<th></th>
<th>Appropriation</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gypsy Moth Suppression</td>
<td>017</td>
<td>$42,997</td>
</tr>
<tr>
<td>2</td>
<td>Program for State Parks (R)</td>
<td>017</td>
<td>$42,997</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$2,252,896</td>
</tr>
<tr>
<td>4</td>
<td>Pricketts Fort State Park</td>
<td>324</td>
<td>$120,000</td>
</tr>
<tr>
<td>5</td>
<td>Non-Game Wildlife (R)</td>
<td>527</td>
<td>$431,169</td>
</tr>
<tr>
<td>6</td>
<td>State Parks and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Recreation Advertising (R)</td>
<td>619</td>
<td>$589,402</td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,436,464</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund 0310), Pricketts Fort State Park, Non-Game Wildlife (R), Recreation Advertising (R), and State Parks are hereby reappropriated for expenditure during the fiscal year 2008.
12 Appropriations

12 3267, activity 099), Capital Outlay-Parks (fund 3267, activity
13 288), Non-Game Wildlife (fund 3267, activity 527), State
14 Parks and Recreation Advertising (fund 3267, activity 619),
15 West Virginia Stream Partners Program (fund 3267, activity
16 637), and State Parks-Special Projects (fund 3267, activity
17 860) at the close of the fiscal year 2007 are hereby
18 reappropriated for expenditure during the fiscal year 2008.

243-State Department of Education
(WV Code Chapters 18 and 18A)
Fund 3951 FY 2008 Org 0402

1 Unclassified .................. 099 4,200,000
2 Technology Infrastructure
3 Network (R) .................. 351 $ 0
4 READS Program ............... 365 300,000
5 MATH Program ............... 368 400,000
6 FBI Checks ................... 372 107,049
7 Vocational Education
8 Equipment Replacement ...... 393 819,750
9 Assessment Program (R) .... 396 6,454,777
10 21st Century Technology Infrastructure
11 Network Tools and Support ... 933 22,969,663
12 Total ....................... $ 35,251,239

13 Any unexpended balances remaining in the
14 appropriations for Unclassified (fund 3951, activity 099),
15 Technology Infrastructure Network (fund 3951, activity 351),
16 Assessment Program (fund 3951, activity 396), Technology
17 Demonstration Project (fund 3951, activity 639), and
18 Computer Study (fund 3951, activity 998) at the close of the
19 fiscal year 2007 are hereby reappropriated for expenditure
20 during the fiscal year 2008.

21 The above appropriation for Technology Infrastructure
22 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.

244-State Department of Education-
School Building Authority-
Debt Service Fund
(WV Code Chapter 18)
Fund 3963 FY 2008 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 2008 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service-Total</td>
<td>310</td>
<td>$18,000,000</td>
</tr>
</tbody>
</table>

245-Department of Education and the Arts-
Office of the Secretary-
Control Account-
Lottery Education Fund
(WV Code Chapter 5F)
Fund 3508 FY 2008 Org 0431

<table>
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<th>Item Description</th>
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<th>FY 2008 Org 0431</th>
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<td>Special Olympic Games</td>
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<td>Total</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Arts Programs (fund 3508, activity 500), College Readiness (fund 3508, activity 579), and Literacy Project (fund 3508, activity 899), and other programs in the field that will benefit the Counties.
Ch. 12] APPROPRIATIONS

activity 899) at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

246-Division of Culture and History-
Lottery Education Fund
(WV Code Chapter 29)
Fund 3534 FY 2008 Org 0432

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<td>Fairs and Festivals</td>
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<td>George Tyler Moore Center for the Study of the Civil War</td>
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<td>Marshall Artists Series</td>
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Any unexpended balances remaining in the appropriations for Archeological Curation/Capital
Appropriations

27 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), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

Included in the above appropriation for Fairs and Festivals (fund 3534, 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, Angus Beef and Cattle Show (Lewis) 1,500, Annual Labor Day Observance (Randolph) 2,000, Antique Market Fair (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 New Deal Festival (Preston) 5,000, Arts Monongahela (Monongalia) 20,000, Athens Town Fair (Mercer) 2,000, Augusta Fair (Randolph) 5,000, Barbour County Arts & Humanities Council 1,500, Barbour County Fair 25,000, 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 Town Fair (Kanawha) 4,500, Bergoo Down Home Days (Webster) 250
Ch. 12]  APPROPRIATIONS

61  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) 6,000, Black Walnut Festival (Roane) 10,000, Blue-Gray Reunion (Barbour) 3,500, Boone County Fair 6,500, Boone County Labor Day Celebration 4,000, Bradshaw Fall Festival (McDowell) 2,000, Bramwell Street Fair (Mercer) 1,500, Braxton County Arts and Crafts Fair 500, Braxton County Fairs and Festivals Association 11,500, Brooke County Fair 2,500, 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 (Gilmer) 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 Area Alliance 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, City of Chester 100th Anniversary Celebration 5,000, City of Dunbar
APPROPRIATIONS

96  Critter Dinner 10,000, City of Pleasant Valley Celebration
97  (Marion) 2,500, Civil War Horse Cavalry Race (Barbour)
98  1,000, Clay Co. Agriculture Youth Fair 1,500, Clay County
99  Golden Delicious Festival 5,000, Coal Field Jamboree
100 (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis
101 P. Huntington Railroad Historical Society 10,000, Country
102 Roads Festival (Fayette) 2,000, Cowen Railroad Festival
103 (Webster) 3,500, Craigsville Fall Festival 3,500, Cross Lanes
104 Annual Festival (Kanwaha) 8,000, Delbarton Homecoming
105 (Mingo) 2,000, Doddridge County Fair 5,200, Dunlow Fall
106 Festival 2,000, Durbin Days (Pocahontas) 5,000,
107 Elbert/Filbert Reunion Festival (McDowell) 1,500,
108 Elizabethtown Festival (Marshall) 4,000, Ellenboro Glass
109 Festival (Ritchie) 3,000, Fairview 4th of July Celebration
110 (Marion) 1,000, Farm Safety Day (Preston) 2,000, Fayette
111 American Legion 4th of July 1,000, Fellows ville Firemen's
112 Festival (Preston) 1,000, FestivALL Charleston 20,000, First
113 Stage Children's Theater Company (Cabell) 2,000, Flanagan
114 Murrell House (Summers) 10,000, Flatwood Days (Braxton)
115 1,000, Flemington Day Fair and Festival (Taylor) 3,500,
116 Follansbee Community Days (Brooke) 7,250, Fort Ashby
117 Fort (Mineral) 1,500, Fort Gay Mountain Heritage Days
118 (Wayne) 5,000, Fort New Salem (Harrison) 3,700, Fort
119 Randolph (Mason) 5,000, Frankford Autumnfest (Greenbrier)
120 3,000, Franklin Fishing Derby (Greenbrier) 7,500, Freedom
121 Festival (Logan) $5,000, Friends Auxiliary of W.R. Sharpe
122 Hospital 5,000, Frontier Fest/Canaan Valley (Taylor County)
123 5,000, Fund for the Arts-Wine & All that Jazz Festival 2,500,
124 Gassaway Days Celebration (Braxton) 5,000, General Adam
125 Stephen Memorial Foundation 18,525, Gilbert Kiwanis
126 Harvest Festival 3,000, Gilbert Spring Fling (Mingo) 5,000,
127 Gilmer County Farm Show 3,500, Grafton Mother's Day
128 Shrine Committee (Taylor) 8,500, Grant County Arts Council
129 2,000, Grape Stomping Wine Festival (Nicholas) 2,000,
130 Greater Quinwood Days (Greenbrier) 2,000, Green Spring
Ch. 12] APPROPRIATIONS

131 Days (Hampshire) 1,000, Greenbrier Valley Theater 50,000,
132 Guyandotte Civil War Days (Cabell) 10,000, Hamlin 4th of
133 July Celebration (Lincoln) 5,000, Hampshire Civil War
134 Celebration Days 1,000, Hampshire County Fair 6,000,
135 Hampshire County French & Indian War Celebration 1,000,
136 Hampshire Herbs & Arts Festival 1,000, Hampshire Heritage
137 Days 3,000, Hancock County Oldtime Fair $5,000, Hardy
138 County Commission - 4th of July 10,000, Hardy County Tour
139 and Crafts Association 20,000, Harts Community Celebration
140 (Lincoln) 1,000, Hatfield McCoy Trail National ATV and
141 Dirt Bike Weekend (Wyoming) 5,000, Heritage Craft Center
142 of the Eastern Panhandle 7,000, Heritage Craft Festival
143 (Monroe) 1,000, Heritage Days Festival (Roane) 1,500,
144 Heritage Farm Museum & Village (Cabell) $50,000, Hicks
145 Festival (Tucker) 2,000, Hilltop Festival (Huntington) 1,000,
146 Hinton Railroad Days (Summers) 5,500, Historic Fayette
147 Theater (Fayette) 5,500, Historic Middleway Conservancy
148 (Jefferson) 1,000, Holly River Festival (Webster) 1,500,
149 Hundred 4th of July (Wetzel) 7,250, Hundred American
150 Legion Earl Kiger Post Bluegrass Festival (Wetzel) 2,000,
151 Huntington Outdoor Theater (Cabell) 2,000, Huntington
152 Youth and Music Project 5,000, Iaeger Lions Club Annual
153 Golf Show (McDowell) 1,500, Iaeger Town Fair (McDowell)
154 1,500, Indian Mound Cemetery (Hampshire) 2,000,
155 International Ramp Cook-Off (Randolph) 2,000, Irish
156 Heritage Festival of WV (Raleigh) 5,000, Irish Spring
157 Festival (Lewis) 1,000, Italian Heritage Festival-Clarksburg
158 25,000, Jackson County Fair $5,000, Jacksonburg
159 Homecoming (Wetzel) 1,000, Jane Lew Arts and Crafts Fair
160 (Lewis) 1,000, Jefferson Co. Black History Preservation
161 Society 5,000, Jefferson Co. Historical Landmark
162 Commission 8,000, Jefferson County African American
163 Heritage Festival 5,000, Jefferson County Fair Association
164 25,000, Jersey Mountain Ruritan Pioneer Days (Hampshire)
165 1,000, John Henry Days Festival (Monroe) 5,000, Johnnie
APPROPRIATIONS

166 Johnson Blues and Jazz Festival (Marion) $5,000, Johnstown
167 Community Fair (Harrison) 2,500, Junior Heifer Preview
168 Show (Lewis) 2,000, Kanawha Coal Riverfest-St. Albans
169 July 5,000, Kay Ford Reunion (Kanawha) 2,500, Kenova Fall
170 Festival (Wayne) 5,000, Kermit Fall Festival (Mingo) 3,000,
171 Keyser Old Fashioned 4th of July Celebration 1,000, King
172 Coal Festival (Mingo) 4,000, Kingwood Downtown Street
173 Fair and Heritage Days 2,000, Lady of Agriculture (Preston)
174 1,000, Lamb and Steer Show 9,000, Larry Joe Harless Center
175 Octoberfest Hatfield McCoy Trail (Mingo) 5,000, Last Blast
176 of Summer (McDowell) 5,000, Laurel Mt. Re-enactment
177 Committee (Barbour) 3,250, Levels VFD Lawn Association
178 (Hampshire) 1,000, Lewis County Fair Association 3,500,
179 Lewisburg Shanghai (Greenbrier) 2,000, Lincoln County Fall
180 Festival 8,000, Lincoln County Winterfest 5,000, Lincoln
181 District Fair (Marion) 2,500, Lindside 4th of July (Monroe)
182 500, Little Birch Days Celebration (Braxton) 500, Little
183 Levels Heritage Festival 2,000, Logan County Arts and
184 Crafts Fair 4,000, Lost Creek Community Festival 6,000,
185 Maddie Carroll House (Cabell) 7,500, Mannington District
186 Fair (Marion) 6,000, Maple Syrup Festival (Randolph) 1,000,
187 Marion County FFA Farm Fest 2,500, Marmet Annual Labor
188 Day Celebration (Kanawha) 2,000, Marshall County Antique
189 Power Show 2,500, Marshall County Fair 7,500, Marshall
190 County Historical Society 8,500, Marshall County Riverfront
191 Festival 2,500, Mason County Fair 5,000, Mason Dixon
192 Festival (Monongalia) 7,000, Matewan Massacre
193 Reenactment (Mingo) $5,000, Matewan-Magnolia Fair
194 (Mingo) 20,000, McARTS-McDowell County 20,000,
195 McCoy Theater (Hardy) 20,000, McDowell County Fair
196 2,500, McGrew House History Day 2,000, McNeill’s
197 Rangers (Mineral) 8,000, Meadow Bridge Hometown
198 Festival (Fayette) 1,250, Meadow River Days Festival 3,000,
199 Mercer Bluestone Valley Fair 2,000, Mercer County Fair
200 2,000, Mid Ohio Valley Antique Engine Festival (Wood)
APPROPRIATIONS

201 $3,000, Milton Christmas in the Park (Cabell) $2,500, Milton
202 Fourth of July Celebration (Cabell) $2,500, Mineral County
203 Fair 1,750, Mineral County Veterans Day Parade 1,500,
204 Molasses Festival (Calhoun) 2,000, Moncove Lake Festival
205 (Monroe) 2,000, Monroe County Farmer’s Day - Union
206 2,000, Monroe County Harvest Festival 2,000, Morgantown
207 Theater Company 20,000, Mothers’ Day Festival (Randolph)
208 2,500, Moundsville Bass Festival 4,000, Moundsville July
209 4th Celebration (Marshall) 5,000, Mount Liberty Fall Festival
210 (Barbour) 2,500, Mountain Fest $20,000, Mountain Festival
211 (Mercer) 4,625, Mountain Heritage Arts and Crafts Festival
212 (Jefferson) 5,000, Mountain Music Festival 2,500, Mountain
213 State Apple Harvest Festival (Berkeley) 7,500, Mountain
214 State Arts Crafts Fair Cedar Lakes (Jackson) 5,000,
215 Mountaineer Boys' State (Lewis) 10,000, Mountaineer Hot
216 Air Balloon Festival 4,000, Mud River Festival (Lincoln)
217 8,000, Mullens Dogwood Festival (Wyoming) 6,000, Multi-
218 Cultural Festival of West Virginia 20,000, Museum in the
219 Community (Putnam) 45,000, Music Hall of Fame (Marion)
220 5,000, New Cumberland Fourth of July Fireworks (Hancock)
221 $5,000, New River Bridge Day Festival (Fayette) 35,000,
222 Newburg Volunteer Fireman's Field Day (Preston) 1,000,
223 Newell Annual Clay Festival (Hancock) 3,000, Nicholas
224 County Potato Festival 3,500, Nicholas Old Main Foundation
225 (Nicholas) 2,000, Norman Dillon Farm Museum (Berkeley)
226 10,000, North Preston Farmers Club - Civil War Times
227 1,000, North River Valley Festival (Hampshire) 1,000,
228 Northern Preston Mule Pull and Farmers Days 4,000, Oak
229 Leaf Festival (Fayette) 4,000, Oceana Heritage Festival
230 (Wyoming) 6,000, Oglebay City Park - Festival of Lights
231 (Ohio) 75,000, Oglebay Festival (Ohio) 5,000, Ohio County
232 Fair 8,500, Ohio Valley Beef Association (Wood) 2,500, Old
233 Central City Fair (Huntington) 5,000, Old Opera House
234 Theater Company (Jefferson) 15,000, Old Tyme Christmas
235 (Jefferson) 2,400, Paden City Labor Day Festival (Wetzel)
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<td>236</td>
<td>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, Pax 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 Street 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, Randolph County Fair $7,000, Ranson Christmas Festival 5,000, Ranson Festival 5,000, Ravenswood Octoberfest 5,000, Ravenswood Ohio River Festival $3,000, 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 Fair and Exposition 2,000, 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</td>
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<td>Appropriations</td>
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<tr>
<td>271</td>
<td>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, Soldiers’ Memorial Theater (Raleigh) 10,000, Southern WV Veterans’ Museum (Summers) 4,500, Spirit of Grafton Celebration (Taylor) $7,000, Spring Fest (Pendleton) 2,500, 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, Sumner-Ramer Heritage, Inc (Berkeley) 3,000, Sylvester July 4th Celebration (Boone) 2,500, Taylor County Fair 5,500, Terra Alta VFD 4th of July Celebration (Preston) 1,000, Those Who Served War Museum (Mercer) 4,000, Three Rivers Avian Center (Summers) 15,000, Three Rivers Coal Festival (Marion) 7,750, Thunder on the Tygart - Mothers’ Day Celebration 5,000, Town of Delbarton 4th of July Celebration 3,000, Town of Matoka-annual Hog Roast (Mercer) 1,000, Treasure Mountain Festival (Pendleton) 25,000, Tri-County Fair (Grant) 15,000, Tucker County Arts Festival and Celebration 18,000, Tucker County Fair 4,750, Tucker County Health Fair 2,000, Tug Valley Arts Council (Mingo) 5,000, Tug Valley Chamber of Commerce Coal House (Mingo) 2,000, 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</td>
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<td>306</td>
<td>7,000, Valley District Fair- Reedsville (Preston)</td>
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<td>307</td>
<td>Volcano Days at Mountwood Park (Wood)</td>
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<td>Homecoming Fall Festival 1,500, Wardensville Fall Festival</td>
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<td>5,000, Wayne County Fair 5,000, Wayne County Fall Festival</td>
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<td>Festival 5,000, Webb Chapel Cemetery Association Event</td>
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<td>(Preston) 2,000, Webster County Woodchopping Festival</td>
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<td>4,500, Webster Wild Water Weekend 2,000, Weirton July 4th</td>
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<td>Celebration (Hancock) 3,000, Wellsburg 4th of July</td>
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<td>Celebration (Brooke) 6,500, Wellsburg Apple Festival</td>
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<td>Brooke County 5,000, West Virginia Autumn Festival</td>
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<td>(Burnsville) 2,500, West Virginia Blackberry Festival 5,000, West Virginia</td>
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<td>West Virginia Coal Festival (Boone) 7,000, West Virginia</td>
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<td>Dairy Cattle Show 10,000, West Virginia Days - Hinton</td>
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<td>(Summers) 2,000, West Virginia Fair and Exposition (Wood)</td>
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<td>8,100, West Virginia Fireman's Rodeo (Fayette) 2,500, West Virginia</td>
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<td>Virginia Highland Games &amp; Celtic Festival 3,000, West Virginia</td>
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<td>Virginia Honey Festival (Wood) 2,000, West Virginia</td>
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<td>Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas Festival (Tyler) 11,000, West Virginia Polled Hereford 1,500, West Virginia Poultry Festival (Hardy) 5,000, West Virginia Pumpkin Festival (Cabell) 7,500, West Virginia Roundhouse Rail Days (Berkeley) 25,000, West Virginia State Folk Festival 4,500, West Virginia Water Festival - City of Hinton 16,000, West Virginia Wine &amp; Jazz Festival (Monongalia) 9,000, West Virginia Wine and Arts Festival (Berkeley) 5,000, Weston Carp Festival &amp; Fishing Tournament 4,000, Weston VFD 4th of July Firemen Festival (Lewis) 2,000, Wetzel County Autumnfest 5,000, 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, Wheeling Vintage Raceboat Regatta (Ohio) 20,000, 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</td>
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341 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, World Galic Games one time (Harrison) $25,000, WV Music Hall Fame (Kanawha) 3,000, WV State Monarch Butterfly Festival (Brooke) $5,000, WV Strawberry Festival (horse pull) 2,500, YMCA Camp Horseshoe 100,000, Youth Museum of Southern WV (Raleigh) 12,000, Youth Stockman Beef Expo. (Lewis) 2,000, and the 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.

247-Library Commission-
Lottery Education Fund
(WV Code Chapter 10)
Fund 3559 FY 2008 Org 0433

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<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Books and Films</td>
<td>179</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>Services to Libraries</td>
<td>180</td>
<td>500,000</td>
</tr>
<tr>
<td>Grants to Public Libraries</td>
<td>182</td>
<td>7,348,884</td>
</tr>
<tr>
<td>Digital Resources</td>
<td>309</td>
<td>219,992</td>
</tr>
<tr>
<td>Libraries-Special Projects</td>
<td>625</td>
<td>800,000</td>
</tr>
<tr>
<td>Infomine Network</td>
<td>884</td>
<td>1,169,301</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 10,538,177</td>
</tr>
</tbody>
</table>

248-Bureau of Senior Services-
Lottery Senior Citizens Fund
(WV Code Chapter 29)
Fund 5405 FY 2008 Org 0508

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 135,156</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,600</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>59,198</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

4 Unclassified .......................... 099 348,881
5 Local Programs Service
6 Delivery Costs ....................... 200 2,475,250
7 Silver Haired Legislature ........... 202 15,000
8 Area Agencies Administration ....... 203 78,685
9 Senior Citizen Centers and Programs (R) ..... 462 2,600,000
11 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens ........ 539 23,822,578
14 Roger Tompkins Alzheimers
15 Respite Care ......................... 643 1,795,000
16 Regional Aged and Disabled
17 Resource Center ...................... 767 1,000,000
18 Senior Services Medicaid Transfer ... 871 10,300,000
19 Legislative Initiatives for the Elderly 904 10,000,000
20 Long Term Care Ombudsman .......... 905 321,325
21 BRIM Premium ....................... 913 7,243
22 West Virginia Elder Watch .......... 934 150,000
23 In-Home Services and Nutrition
for Senior Citizens ................. 917 5,700,000
25 Total ............................... 58,810,916

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

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

249-Higher Education Policy Commission-
Lottery Education-
## APPROPRIATIONS

### Higher Education Policy Commission-Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2008 Org 0441

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Marshall Medical School-RHI Program and Site Support (R)</td>
<td>033</td>
<td>$450,949</td>
</tr>
<tr>
<td>2 WVU Health Sciences RHI Program and Site Support (R)</td>
<td>035</td>
<td>$1,215,640</td>
</tr>
<tr>
<td>3 RHI Program and Site Support-District Consortia (R)</td>
<td>036</td>
<td>$2,410,172</td>
</tr>
<tr>
<td>4 RHI Program and Site Support-RHEP Program Administration (R)</td>
<td>037</td>
<td>$183,058</td>
</tr>
<tr>
<td>5 RHI Program and Site Support-Grad Med Ed and Fiscal Oversight (R)</td>
<td>038</td>
<td>$102,087</td>
</tr>
<tr>
<td>6 Higher Education Grant Program (R)</td>
<td>164</td>
<td>$4,633,791</td>
</tr>
<tr>
<td>7 Tuition Contract Program (R)</td>
<td>165</td>
<td>$1,020,548</td>
</tr>
<tr>
<td>8 Minority Doctoral Fellowship (R)</td>
<td>166</td>
<td>$150,000</td>
</tr>
<tr>
<td>9 Underwood-Smith Scholarship Program-Student Awards (R)</td>
<td>167</td>
<td>$141,142</td>
</tr>
<tr>
<td>10 School of Osteopathic Medicine (R)</td>
<td>172</td>
<td>$0</td>
</tr>
<tr>
<td>11 Health Sciences Scholarship (R)</td>
<td>176</td>
<td>$149,908</td>
</tr>
<tr>
<td>12 School of Osteopathic Medicine BRIM Subsidy (R)</td>
<td>403</td>
<td>$0</td>
</tr>
<tr>
<td>13 Rural Health Initiative-Medical Schools Support (R)</td>
<td>581</td>
<td>$0</td>
</tr>
<tr>
<td>14 Vice Chancellor for Health Sciences—Rural Health Residency Program (R)</td>
<td>601</td>
<td>$266,842</td>
</tr>
<tr>
<td>15 MA Public Health Program and Health Science Technology (R)</td>
<td>623</td>
<td>$60,010</td>
</tr>
<tr>
<td>16 Marshall University Graduate College Writing Project (R)</td>
<td>807</td>
<td>$25,000</td>
</tr>
<tr>
<td>17 HEAPS Grant Program (R)</td>
<td>867</td>
<td>$5,002,319</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

<table>
<thead>
<tr>
<th>Program (R)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 WV Engineering, Science, and Technology Scholarship</td>
<td>868 470,473</td>
</tr>
<tr>
<td>33 Health Sciences Career Opportunities Program (R)</td>
<td>869 369,207</td>
</tr>
<tr>
<td>34 HSTA Program (R)</td>
<td>870 1,500,000</td>
</tr>
<tr>
<td>35 Center for Excellence in Disabilities (R)</td>
<td>967 150,000</td>
</tr>
<tr>
<td>36 WV Autism Training Center</td>
<td>932 1,050,000</td>
</tr>
<tr>
<td>37 Total</td>
<td>$19,351,146</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by chapter eighteen-c, article five, section three.

The above appropriation for Underwood-Smith Scholarship Program-Student Awards (activity 167) shall be transferred to the Underwood-Smith Teacher Scholarship Fund (fund 4922, org 0441) established by chapter eighteen-c, article four, section one.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (activity 868) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by chapter eighteen-c, article six, section one.
Ch. 12]  

<table>
<thead>
<tr>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>58 Total TITLE II, Section 4-</td>
</tr>
<tr>
<td>59 Lottery Revenue</td>
</tr>
</tbody>
</table>

**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.

250-Lottery Commission-
Refundable Credit
Fund 7207 FY 2008 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total-Transfer . . . . . . 402</td>
<td>$8,600,000</td>
</tr>
</tbody>
</table>
| 2 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.

251-Lottery Commission-
General Purpose Account
Fund 7206 FY 2008 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total-Transfer . . . . . . 402</td>
<td>$65,000,000</td>
</tr>
</tbody>
</table>
| 2 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.
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.

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.
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total-Transfer</td>
<td>402</td>
<td>$ 40,000,000</td>
</tr>
</tbody>
</table>

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.

#### 256-Higher Education Improvement Fund

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Year</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>4297</td>
<td>2008</td>
<td>0441</td>
</tr>
</tbody>
</table>

#### 257-State Park Improvement Fund

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Year</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>3277</td>
<td>2008</td>
<td>0310</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

#### 258-Lottery Commission-Excess Lottery Revenue Fund Surplus

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Year</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capitol Complex-Capital Outlay</td>
<td>7208</td>
<td>2008</td>
<td>0705</td>
</tr>
</tbody>
</table>

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 Capitol Complex-Capital Outlay (fund 7208, activity 417) shall be transferred to the Capitol Dome and Capital Improvements Fund (fund 2257)
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 Capitol Complex-Capital Outlay (activity 417) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Capitol Dome and Capital Improvement Fund (fund 2257).

259—Joint Expenses
(WV Code Chapter 4)
Fund 1736 FY 2008 Org 2300

Any unexpended balance remaining in the appropriation for Tax Reduction and Federal Funding Increased Compliance (TRAFFIC)-Lottery Surplus (fund 1736, activity 929) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

260—Governor’s Office
(WV Code Chapter 5)
Fund 1046 FY 2008 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 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

261—Office of Technology
(WV Code Chapter 5A)
Fund 2532 FY 2008 Org 0231
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1 Any unexpended balances remaining in the appropriations for Network Monitoring-Lottery Surplus (fund 2532, activity 919) and Unclassified-Lottery Surplus (fund 2532, activity 928) at the close of the fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

262—West Virginia Development Office
(WV Code Chapter 5B)
Fund 3170 FY 2008 Org 0307

1 Any unexpended balance remaining in the appropriation for Connectivity Research and Development-Lottery Surplus (fund 3170, activity 923) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

6 The above appropriation to Connectivity Research and Development-Lottery Surplus 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.

263—Division of Health—
Central Office
(WV Code Chapter 16)
Fund 5219 FY 2008 Org 0506

1 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 2007 is hereby reappropriated for expenditure during the fiscal year 2008.
Any unexpended balance remaining in the appropriation for Helicopter Purchase (fund 6394, activity 063) at the close of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

Any unexpended balance remaining in the appropriation for Remittance Processor—Lottery Surplus (fund 7082, activity 054) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

Total TITLE II, Section 5-
Excess Lottery Funds $226,500,000

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 eight.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>$ 1,314,969</td>
</tr>
<tr>
<td>096</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>096</td>
<td>$ 32,261,134</td>
</tr>
<tr>
<td>096</td>
<td>$ 5,670,146</td>
</tr>
<tr>
<td>096</td>
<td>$ 14,004,369</td>
</tr>
<tr>
<td>096</td>
<td>$ 4,284,470</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

272-Department of Agriculture-
Meat Inspection
(WV Code Chapter 19)
Fund 8737 FY 2008 Org 1400

1 Unclassified-Total . . . . . . . . . . . . . 096 $ 852,868

273-Department of Agriculture-
State Conservation Committee
(WV Code Chapter 19)
Fund 8783 FY 2008 Org 1400

1 Unclassified-Total . . . . . . . . . . . . . 096 $ 1,814,314

274-Secretary of State-
State Election Fund
(WV Code Chapter 3)
Fund 8854 FY 2008 Org 1600

1 Unclassified-Total . . . . . . . . . . . . . 096 $ 832,378

DEPARTMENT OF ADMINISTRATION

275-West Virginia Prosecuting Attorney’s Institute
(WV Code Chapter 7)
Fund 8834 FY 2008 Org 0228

1 Unclassified-Total . . . . . . . . . . . . . 096 $ 79,140

276-Children’s Health Insurance Agency
(WV Code Chapter 5)
Fund 8838 FY 2008 Org 0230

1 Unclassified-Total . . . . . . . . . . . . . 096 $ 37,937,367

DEPARTMENT OF COMMERCE

277-Division of Forestry
(WV Code Chapter 19)
Fund 8703 FY 2008 Org 0305

270
## APPROPRIATIONS

<table>
<thead>
<tr>
<th>Code</th>
<th>Agency Name</th>
<th>Fund Code</th>
<th>Fiscal Year</th>
<th>Organization Code</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>278</td>
<td>Geological and Economic Survey</td>
<td>8704</td>
<td>FY 2008</td>
<td>0306</td>
<td>$486,072</td>
</tr>
<tr>
<td>279</td>
<td>West Virginia Development Office</td>
<td>8705</td>
<td>FY 2008</td>
<td>0307</td>
<td>$10,665,868</td>
</tr>
<tr>
<td>280</td>
<td>Division of Labor</td>
<td>8706</td>
<td>FY 2008</td>
<td>0308</td>
<td>$557,951</td>
</tr>
<tr>
<td>281</td>
<td>Division of Natural Resources</td>
<td>8707</td>
<td>FY 2008</td>
<td>0310</td>
<td>$8,625,587</td>
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<tr>
<td>282</td>
<td>Division of Miners' Health, Safety and Training</td>
<td>8709</td>
<td>FY 2008</td>
<td>0314</td>
<td>$755,552</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

283-Bureau of Employment Programs
(WV Code Chapter 23)
Fund 8835 FY 2008 Org 0323

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099 $512,657</td>
</tr>
<tr>
<td>2</td>
<td>Reed Act 2002—Unemployment</td>
<td>622 2,850,000</td>
</tr>
<tr>
<td>3</td>
<td>Compensation</td>
<td>630 1,650,000</td>
</tr>
<tr>
<td>4</td>
<td>Reed Act 2002—Employment Services</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$5,012,657</td>
</tr>
</tbody>
</table>

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

284-State Department of Education
(WV Code Chapters 18 and 18A)
Fund 8712 FY 2008 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096 $255,078,637</td>
</tr>
</tbody>
</table>

285-State Department of Education-
School Lunch Program
(WV Code Chapters 18 and 18A)
Fund 8713 FY 2008 Org 0402

272
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1 Unclassified-Total ............... 096 $106,017,566

286-State Board of Education-Vocational Division
(WV Code Chapters 18 and 18A)
Fund 8714 FY 2008 Org 0402

1 Unclassified-Total ............... 096 $16,525,179

287-State Department of Education-Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Fund 8715 FY 2008 Org 0402

1 Unclassified-Total ............... 096 $107,045,241

DEPARTMENT OF EDUCATION AND THE ARTS
288-Department of Education and the Arts-Office of the Secretary
(WV Code Chapter 5F)
Fund 8841 FY 2008 Org 0431

1 Unclassified-Total ............... 096 $325,000

289-Division of Culture and History
(WV Code Chapter 29)
Fund 8718 FY 2008 Org 0432

1 Unclassified-Total ............... 096 $1,398,144

290-Library Commission
(WV Code Chapter 10)
Fund 8720 FY 2008 Org 0433

1 Unclassified-Total ............... 096 $1,944,778
APPROPRIATIONS

291-Educational Broadcasting Authority
(WV Code Chapter 10)
Fund 8721 FY 2008 Org 0439

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

292-State Board of Rehabilitation-
Division of Rehabilitation Services
(WV Code Chapter 18)
Fund 8734 FY 2008 Org 0932

1 Unclassified-Total ............... 096 $ 26,818,444

293-State Board of Rehabilitation-
Division of Rehabilitation Services-
Disability Determination Services
(WV Code Chapter 18)
Fund 8890 FY 2008 Org 0932

1 Unclassified-Total ............... 096 $ 21,500,000

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

294-Division of Environmental Protection
(WV Code Chapter 22)
Fund 8708 FY 2008 Org 0313

1 Unclassified-Total ............... 096 $ 138,554,420

DEPARTMENT OF HEALTH AND HUMAN
RESOURCES

295-Consolidated Medical Service Fund
(WV Code Chapter 16)
Fund 8723 FY 2008 Org 0506

1 Unclassified-Total ............... 096 $ 7,319,512
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296-Division of Health-
Central Office
(WV Code Chapter 16)
Fund 8802 FY 2008 Org 0506

1 Unclassified-Total ................. 096 $ 86,317,720

297-Division of Health-
West Virginia Safe Drinking Water Treatment
(WV Code Chapter 16)
Fund 8824 FY 2008 Org 0506

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

298-West Virginia Health Care Authority
(WV Code Chapter 16)
Fund 8851 FY 2008 Org 0507

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

299-Human Rights Commission
(WV Code Chapter 5)
Fund 8725 FY 2008 Org 0510

1 Unclassified-Total ................. 096 $ 527,846

300-Division of Human Services
(WV Code Chapters 9, 48 and 49)
Fund 8722 FY 2008 Org 0511

1 Unclassified ..................... 099 $ 138,674,030
2 Medical Services .................. 189 1,826,784,280
3 Medical Services Administrative Costs 789 48,216,452
4 Total ............................ $ 2,013,674,762

DEPARTMENT OF MILITARY AFFAIRS AND PUBLUC SAFETY
301-Office of the Secretary  
(WV Code Chapter 5F)  
Fund 8876 FY 2008 Org 0601

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

302-Adjutant General-State Militia  
(WV Code Chapter 15)  
Fund 8726 FY 2008 Org 0603

1 Unclassified-Total ................. 096 $ 96,240,750

303-Division of Homeland Security and  
Emergency Management  
(WV Code Chapter 15)  
Fund 8727 FY 2008 Org 0606

1 Unclassified-Total ................. 096 $ 32,057,274

304-Division of Corrections  
(WV Code Chapters 25, 28, 49 and 62)  
Fund 8836 FY 2008 Org 0608

1 Unclassified-Total ................. 096 $ 650,000

305-West Virginia State Police  
(WV Code Chapter 15)  
Fund 8741 FY 2008 Org 0612

1 Unclassified-Total ................. 096 $ 974,766

306-Division of Veterans’ Affairs  
(WV Code Chapter 9A)  
Fund 8858 FY 2008 Org 0613

1 Unclassified-Total ................. 096 $ 2,750,000

307-Division of Veterans' Affairs-
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Agency</th>
<th>Code</th>
<th>Fund</th>
<th>Fiscal Year</th>
<th>Organization</th>
<th>Total Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Veterans' Home</td>
<td>9A</td>
<td>8728</td>
<td>FY 2008</td>
<td>0618</td>
<td>$1,776,355</td>
<td></td>
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<tr>
<td>308</td>
<td>Division of Criminal Justice Services</td>
<td>15</td>
<td>8803</td>
<td>FY 2008</td>
<td>0620</td>
<td>$14,102,303</td>
<td></td>
</tr>
<tr>
<td>309</td>
<td>Division of Juvenile Services</td>
<td>49</td>
<td>8855</td>
<td>FY 2008</td>
<td>0621</td>
<td>$615,248</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DEPARTMENT OF REVENUE</td>
<td></td>
<td>8883</td>
<td>FY 2008</td>
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277
### Appropriations

(WV Code Chapter 17)
Fund 8830 FY 2008 Org 0806

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### Bureau of Senior Services

(WV Code Chapter 29)
Fund 8724 FY 2008 Org 0508

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### Miscellaneous Boards and Commissions

(WV Code Chapter 24A)
Fund 8743 FY 2008 Org 0926

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(WV Code Chapter 24B)
Fund 8744 FY 2008 Org 0926

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(WV Code Chapter 24E)
Fund 8868 FY 2008 Org 0940

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(WV Code Chapter 29)
Fund 8869 FY 2008 Org 0941

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278
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 2008.

320-Governor’s Office—Office of Economic Opportunity
Community Services
Fund 8799 FY 2008 Org 0100

1 Unclassified-Total .................. 096 $ 9,507,444

321-West Virginia Development Office—Community Development
Fund 8746 FY 2008 Org 0307

1 Unclassified-Total .................. 096 $ 28,340,316

322-Governor’s Workforce Investment Office
Fund 8888 FY 2008 Org 0331

1 Unclassified-Total .................. 096 $ 39,733,496

323-Division of Health—Maternal and Child Health
Fund 8750 FY 2008 Org 0506

1 Unclassified-Total .................. 096 $ 10,944,362

324-Division of Health—Preventive Health
Fund 8753 FY 2008 Org 0506

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<td><strong>Division of Health-Substance Abuse Prevention and Treatment</strong></td>
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<td>326</td>
<td><strong>Division of Health-Community Mental Health Services</strong></td>
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<td>327</td>
<td><strong>Division of Health-Abstinence Education Program</strong></td>
<td>$978,261</td>
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<td>328</td>
<td><strong>Division of Human Services-Energy Assistance</strong></td>
<td>$25,000,000</td>
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<td>329</td>
<td><strong>Division of Human Services-Social Services</strong></td>
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<td>330</td>
<td><strong>Division of Human Services-Temporary Assistance Needy Families</strong></td>
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Ch. 12]  

APPROPRIATIONS

331-Division of Human Services-
Child Care and Development
Fund 8817 FY 2008 Org 0511

1 Unclassified-Total ............... 096  $40,023,926

332-Division of Criminal Justice Services-
Juvenile Accountability Incentive
Fund 8829 FY 2008 Org 0620

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

2 Total TITLE II, Section 7-
3 Federal Block Grants            $ 317,520,244

4 Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2008, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,777,044, special revenue funds in the amount of $45,470, and state road funds in the amount of $634,324 for payment of claims against the state.

5 Sec. 9. Appropriations from general revenue surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2008 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand seven, subject to the terms and conditions set forth in this section.

6 It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand seven from the fiscal year ending the thirtieth day of June two thousand seven.
In the event that surplus revenues available on the thirty-first day of July, two thousand seven, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

EXECUTIVE

333—Governor's Office
(WV Code Chapter 5)
Fund 0101 FY 2008 Org 0100

1 Monetary Incentive-Surplus . . . . . 950 $ 0

334—Governor's Office—Custodial Fund
(WV Code Chapter 5)
Fund 0102 FY 2008 Org 0100

1 Monetary Incentive-Surplus . . . . . 950 $ 0

335—Auditor's Office—General Administration
(WV Code Chapter 12)
Fund 0116 FY 2008 Org 1200

1 Monetary Incentive-Surplus . . . . . 950 $ 0

336—Treasurer's Office
(WV Code Chapter 12)
Fund 0126 FY 2008 Org 1300

282
1 Monetary Incentive-Surplus . . . . . . 950 $ 0

337—Department of Agriculture
(WV Code Chapter 19)
Fund 0131 FY 2008 Org 1400

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

338—West Virginia Conservation Agency
(WV Code Chapter 19)
Fund 0132 FY 2008 Org 1400

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

339—Department of Agriculture—
Meat Inspection
(WV Code Chapter 19)
Fund 0135 FY 2008 Org 1400

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

340—Attorney General
(WV Code Chapters 5, 14, 46A and 47)
Fund 0150 FY 2008 Org 1500

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

341—Secretary of State
(WV Code Chapters 3, 5 and 59)
Fund 0155 FY 2008 Org 1600

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

DEPARTMENT OF ADMINISTRATION
342—Department of Administration—
Office of the Secretary
(WV Code Chapter 5F)
APPROPRIATIONS [Ch. 12

Fund 0186 FY 2008 Org 0201

1 Monetary Incentive-Surplus ........ 950 $ 0

343—Division of Finance
(WV Code Chapter 5A)
Fund 0203 FY 2008 Org 0209

1 Monetary Incentive-Surplus ........ 950 $ 0

344—Division of General Services
(WV Code Chapter 5A)
Fund 0230 FY 2008 Org 0211

1 Monetary Incentive-Surplus ........ 950 $ 0

345—Division of Purchasing
(WV Code Chapter 5A)
Fund 0210 FY 2008 Org 0213

1 Monetary Incentive-Surplus ........ 950 $ 0

346—Education and State Employees’ Grievance Board
(WV Code Chapter 18)
Fund 0220 FY 2008 Org 0219

1 Monetary Incentive-Surplus ........ 950 $ 0

347—Ethics Commission
(WV Code Chapter 6B)
Fund 0223 FY 2008 Org 0220

1 Monetary Incentive-Surplus ........ 950 $ 0

348—Public Defender Services
(WV Code Chapter 29)
Fund 0226 FY 2008 Org 0221
Ch. 12]  APPROPRIATIONS

1  Monetary Incentive-Surplus . . . . . 950  $  0

_349-West Virginia Prosecuting Attorneys Institute_
(WV Code Chapter 7)
Fund 0557  FY 2008  Org 0228

1  Monetary Incentive-Surplus . . . . . 950  $  0

_350-Children’s Health Insurance Agency_
(WV Code Chapter 5)
Fund 0588  FY 2008  Org 0230

1  Monetary Incentive-Surplus . . . . . 950  $  0

**DEPARTMENT OF COMMERCE**

_351-Division of Tourism_
(WV Code Chapter 5B)
Fund 0246  FY 2008  Org 0304

1  Monetary Incentive-Surplus . . . . . 950  $  0

_352-Division of Forestry_
(WV Code Chapter 19)
Fund 0250  FY 2008  Org 0305

1  Monetary Incentive-Surplus . . . . . 950  $  0

_353-Geological and Economic Survey_
(WV Code Chapter 29)
Fund 0253  FY 2008  Org 0306

1  Monetary Incentive-Surplus . . . . . 950  $  0

_354-West Virginia Development Office_
(WV Code Chapter 5B)
Fund 0256  FY 2008  Org 0307
### Appropriations

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<thead>
<tr>
<th>Code</th>
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<td>Division of Natural Resources (WV Code Chapter 20)</td>
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<td>Division of Miners' Health, Safety and Training (WV Code Chapter 22)</td>
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<td>Board of Coal Mine Health and Safety (WV Code Chapter 22)</td>
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<td>State Department of Education-School Lunch Program (WV Code Chapters 18 and 18A)</td>
<td>2008</td>
<td>0402</td>
<td>950</td>
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**DEPARTMENT OF EDUCATION**

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

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1 Monetary Incentive-Surplus ....... 950 $ 0

361-State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)
Fund 0306 FY 2008 Org 0402

1 Monetary Incentive-Surplus ....... 950 $ 0

362-State Department of Education
(WV Code Chapters 18 and 18A)
Fund 0313 FY 2008 Org 0402

1 Monetary Incentive-Surplus ....... 950 $ 0

363-State Department of Education-
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Fund 0314 FY 2008 Org 0402

1 Monetary Incentive-Surplus ....... 950 $ 0

364-State Department of Education-
State Aid to Schools
(WV Code Chapters 18 and 18A)
Fund 0317 FY 2008 Org 0402

1 Monetary Incentive-Surplus ....... 950 $ 0

365-State Board of Education-
Vocational Division
(WV Code Chapters 18 and 18A)
Fund 0390 FY 2008 Org 0402

1 Monetary Incentive-Surplus ....... 950 $ 0

366-State Board of Education-
Division of Educational Performance Audits
APPROPRIATIONS [Ch. 12
(WV Code Chapters 18 and 18A)
Fund 0573 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . 950 $ 0

367-West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Fund 0320 FY 2008 Org 0403

1 Monetary Incentive-Surplus . . . . 950 $ 0

DEPARTMENT OF EDUCATION AND THE ARTS
368-Department of Education and the Arts-
Office of the Secretary
(WV Code Chapter 5F)
Fund 0294 FY 2008 Org 0431

1 Monetary Incentive-Surplus . . . . 950 $ 0

369-Division of Culture and History
(WV Code Chapter 29)
Fund 0293 FY 2008 Org 0432

1 Monetary Incentive-Surplus . . . . 950 $ 0

370-Library Commission
(WV Code Chapter 10)
Fund 0296 FY 2008 Org 0433

1 Monetary Incentive-Surplus . . . . 950 $ 0

371-Educational Broadcasting Authority
(WV Code Chapter 10)
Fund 0300 FY 2008 Org 0439

1 Monetary Incentive-Surplus . . . . 950 $ 0

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<th>Code</th>
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**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

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<td>0433</td>
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1 Monetary Incentive-Surplus . . . . . . 950 $ 0

383-West Virginia Parole Board
(WV Code Chapter 62)
Fund 0440 FY 2008 Org 0605

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

384-Division of Homeland Security and Emergency Management
(WV Code Chapter 15)
Fund 0443 FY 2008 Org 0606

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

385-Division of Corrections-
Central Office
(WV Code Chapters 25, 28, 49 and 62)
Fund 0446 FY 2008 Org 0608

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

386-Division of Corrections-
Correctional Units
(WV Code Chapters 25, 28, 49 and 62)
Fund 0450 FY 2008 Org 0608

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

387-West Virginia State Police
(WV Code Chapter 15)
Fund 0453 FY 2008 Org 0612

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

388-Division of Veterans' Affairs
(WV Code Chapter 9A)
Fund 0456 FY 2008 Org 0613
1 Monetary Incentive-Surplus . . . . . . 950 $ 0

389-Division of Veterans' Affairs-Veterans' Home
(WV Code Chapter 9A)
Fund 0460 FY 2008 Org 0618

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

390-Fire Commission
(WV Code Chapter 29)
Fund 0436 FY 2008 Org 0619

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

391-Division of Criminal Justice Services
(WV Code Chapter 15)
Fund 0546 FY 2008 Org 0620

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

392-Division of Juvenile Services
(WV Code Chapter 49)
Fund 0570 FY 2008 Org 0621

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

393-Division of Protective Services
(WV Code Chapter 5F)
Fund 0585 FY 2008 Org 0622

1 Monetary Incentive-Surplus . . . . . . 950 $ 0

DEPARTMENT OF REVENUE
394-Office of the Secretary
(WV Code Chapter 11)
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Fund 0465 FY 2008 Org 0701

1 Monetary Incentive-Surplus ........ 950 $ 0

395-Tax Division
(WV Code Chapter 11)
Fund 0470 FY 2008 Org 0702

1 Monetary Incentive-Surplus ........ 950 $ 0

396-State Budget Office
(WV Code Chapter 11B)
Fund 0595 FY 2008 Org 0703

1 Monetary Incentive-Surplus ........ 950 $ 0

397-West Virginia Office of Tax Appeals
(WV Code Chapter 11)
Fund 0593 FY 2008 Org 0709

1 Monetary Incentive-Surplus ........ 950 $ 0

DEPARTMENT OF TRANSPORTATION

398-State Rail Authority
(WV Code Chapter 29)
Fund 0506 FY 2008 Org 0804

1 Monetary Incentive-Surplus ........ 950 $ 0

399-Public Port Authority
(WV Code Chapter 17)
Fund 0581 FY 2008 Org 0806

1 Monetary Incentive-Surplus ........ 950 $ 0

400-Aeronautics Commission
(WV Code Chapter 29)
Fund 0582 FY 2008 Org 0807

1 Monetary Incentive-Surplus ........ 950 $ 0

293
Sec. 10. Appropriations from state excess lottery revenue fund 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 2008 out of surplus funds only, as determined by the director of the lottery, accrued from the fiscal year ending the
Ch. 12] APPROPRIATIONS

7 the thirtieth day of June, two thousand seven, subject to the terms
8 and conditions set forth in this section.

9 It is the intent and mandate of the Legislature that the
10 following appropriations be payable only from surplus
11 accrued from the fiscal year ending the thirtieth day of June
12 two thousand seven.

13 In the event that surplus revenues available from the
14 fiscal year ending the thirtieth day of June, two thousand
15 seven are not sufficient to meet all the appropriations made
16 pursuant to this section, then the appropriations shall be made
17 to the extent that surplus funds are available and shall be
18 allocated first to provide the necessary funds to meet the first
19 appropriation of this section; next, to provide the funds
20 necessary for the second appropriation of this section and
21 subsequently to provide the funds necessary for each
22 appropriation in succession before any funds are provided for
23 the next subsequent appropriation.

  405-Office of Technology-
   (WV Code Chapter 5A)
   Fund 2532 FY 2008 Org 0231

1 Unclassified-Lottery Surplus ... 928 $ 2,000,000

1 Sec. 11. Special revenue appropriations.-There are
2 hereby appropriated for expenditure during the fiscal year
3 two thousand eight appropriations made by general law from
4 special revenues which are not paid into the state fund as
5 general revenue under the provisions of section two, article
6 two, chapter twelve of the code: Provided, That none of the
7 money so appropriated by this section shall be available for
8 expenditure except in compliance with and in conformity to
9 the provisions of articles two and three, chapter twelve and
10 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. 12. 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 eight, 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 eight 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. 13. 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. 14. 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. 15. 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. 16. 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. 17. 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. 18. 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.

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

Section 1. Appropriations conditional.-The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter 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 13

(S.B. 218 - By Senators Helmick, Plymale, Chafin, Prezioso, Edgell, Love, Bowman, Sypolt, Fanning, Facemyer, Boley, Sprouse and Guills)

[Passed February 5, 2007; in effect from passage.]
[Approved by the Governor on February 9, 2007.]

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 seven, to the Supreme Court of Appeals, fund 8867, fiscal year 2007, organization 2400, to the Secretary of State - State Election Fund, fund 8854, fiscal year 2007, organization 1600, and to the Department of Transportation - Division of Motor Vehicles, fund 8787, fiscal year 2007, organization 0802, by supplementing and amending the
appropriate appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established the availability of federal funds for new and continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand seven, which are hereby appropriated by the terms of this supplementary appropriation bill; 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 seven, to fund 8867, fiscal year 2007, organization 2400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

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 - Total</td>
<td>$400,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8854,
fiscal year 2007, organization 1600, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

269-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2007 Org 1600

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total 096</td>
<td>$ 2,500,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8787, fiscal year 2007, organization 0802, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF TRANSPORTATION

306-Division of Motor Vehicles

(WV Code Chapter 17B)
The purpose of this bill is to supplement and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand seven.

CHAPTER 14

(S.B. 591 - By Senators Helmick, Plymale, Prezioso, Edgell, Bowman, McCabe, Unger, Sypolt, Fanning, Boley and Guills)

[Passed February 26, 2007; in effect from passage.]
[Approved by the Governor on March 16, 2007.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2007, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated the tenth day of January, two thousand seven, which included the statement of the State Road Fund setting forth therein the cash balances and investments as of the first
day of July, two thousand six, and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand seven; and

WHEREAS, It thus appears from the Governor’s executive budget document there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand seven; therefore

Be it enacted by the Legislature of West Virginia:

1 That the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2007, organization 0803, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td></td>
<td>$8,000,000</td>
<td></td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>278</td>
<td></td>
<td>4,000,000</td>
<td></td>
</tr>
</tbody>
</table>
And that the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2007, organization 0803, be amended and increased in the line items as follows:

TITLE II--APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

92-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2007 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State</th>
<th>Road</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>Maintenance, Contract Paving</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>and Secondary Road</td>
</tr>
<tr>
<td>5</td>
<td>272</td>
<td></td>
<td>Maintenance 13,000,000</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td>Other Federal Aid Programs 50,000,000</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td>Nonfederal Aid Construction 8,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven.
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 seven, to a new item of appropriation designated to the Department of Military Affairs and Public Safety - Division of Homeland Security and Emergency Management - West Virginia Interoperable Radio Project, fund 6295, fiscal year 2007, organization 0606, supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Military Affairs and Public Safety - Division of Homeland Security and Emergency Management - West Virginia Interoperable Radio Project, fund 6295, fiscal year 2007, organization 0606, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

**TITLE II--APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*177a-Division of Homeland Security and Emergency Management-*

*West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>6295</td>
<td>2007</td>
<td>0606</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand seven, by providing for a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand seven.
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 seven, to a new item of appropriation designated to Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2007, organization 0913, supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2007, organization 0913, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

5 TITLE II--APPROPRIATIONS.

6 Sec. 6. Appropriations of federal funds.
The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending the thirtieth day of June, two thousand seven, by providing for a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand seven.

CHAPTER 17

(S.B. 594 - By Senators Helmick, Plymale, Prezioso, Edgell, Bowman, McCabe, Unger, Sypolt, Fanning, Boley and Guills)

[Passed March 2, 2007; in effect from passage.]
[Approved by the Governor on March 14, 2007.]
the Miscellaneous Boards and Commissions - Public Service Commission, fund 8623, fiscal year 2007, organization 0926, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Auditor’s Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2007, organization 1200, in the Department of Commerce - Division of Labor - Contractor Licensing Board Fund, fund 3187, fiscal year 2007, organization 0308, and in the Miscellaneous Boards and Commissions - Public Service Commission, fund 8623, fiscal year 2007, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven; 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 seven, to fund 1234, fiscal year 2007, organization 1200, be supplemented and amended by increasing an existing item of appropriation as follows:

2. TITLE II--APPROPRIATIONS.

3. Sec. 3. Appropriations from other funds.

4. EXECUTIVE

5. 97-Auditor’s Office-

6. Purchasing Card Administration Fund

7. (WV Code Chapter 12)

8. Fund 1234 FY 2007 Org 1200

9. Activity Other Funds

10. 1 Unclassified - Total ............... 096 $ 850,000
And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 3187, fiscal year 2007, organization 0308, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE

123-Division of Labor-

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2007 Org 0308

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $ 78,000</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010 $ 45,127</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8623, fiscal year 2007, organization 0926, be supplemented and amended to hereafter read as follows:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

227-Public Service Commission
<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Fund 8623 FY 2007 Org 0926</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001 $ 8,063,255</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004 130,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010 2,722,622</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099 2,813,563</td>
</tr>
<tr>
<td>5</td>
<td>Weight Enforcement Program</td>
<td>345 4,667,295</td>
</tr>
<tr>
<td>6</td>
<td>Debt Payment/Capital Outlay</td>
<td>520 350,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913 115,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></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, one thousand nine hundred ninety-eight.

The Public Service Commission is authorized to transfer up to $1,500,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to the loss of revenue related to the federal single state registration system that expired the first day of January, two thousand seven, that provided for the collection of fees from interstate for-hire carriers to help fund motor carrier safety operations.
The purpose of this supplementary appropriation bill is to supplement, amend and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand seven.

CHAPTER 18

(S.B. 758 - By Senators Helmick, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Sypolt, Fanning, Facemyer, Boley, Sprouse and Guills)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from federal funds to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2007, organization 0511, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

1 That the items of the total appropriation from the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2007, organization 0511, be amended and decreased in the existing line item as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
APPROPRIATIONS

294-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2007 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>099 $7,000,000</td>
</tr>
</tbody>
</table>

And that the items of the total appropriation to Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2007, organization 0511, be amended and increased in the existing line item as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

294-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2007 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Medical Services</td>
<td></td>
</tr>
<tr>
<td>4 Administrative Costs</td>
<td>789 $7,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, decrease and increase items of existing
34 appropriations in the aforesaid account for the designated
35 spending unit. The funds are for expenditure during the
36 fiscal year two thousand seven with no new money being
37 appropriated.

CHAPTER 19

(S.B. 759 - By Senators Helmick, Plymale, Chafin, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Sypolt, Fanning,
Facemyer, Boley, Sprouse and Guills)

[Passed March 10, 2007, in effect from passage.]
[Approved by the Governor on March 23, 2007.]

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 seven, to the Department
of Health and Human Resources - Division of Health – Hospital
Services Revenue Account, fund 5156, fiscal year 2007,
organization 0506, to the Department of Health and Human
Resources - Division of Health – West Virginia Birth-to-Three
Fund, fund 5214, fiscal year 2007, organization 0506, and to
Miscellaneous Boards and Commissions - West Virginia Board
of Examiners for Registered Professional Nurses, fund 8520,
fiscal year 2007, organization 0907, by supplementing and
amending the appropriations for the fiscal year ending the
thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established there remains an
unappropriated balance in the Department of Health and Human
Resources - Division of Health – Hospital Services Revenue
Account, fund 5156, fiscal year 2007, organization 0506, in the
Department of Health and Human Resources - Division of Health –
West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2007,
organization 0506, and in the Miscellaneous Boards and
Commissions - West Virginia Board of Examiners for Registered
Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, two thousand seven, to fund 5156, fiscal
3 year 2007, organization 0506, be supplemented and amended
4 by increasing an existing line item of appropriation as
5 follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Medical Services Trust Fund--</td>
<td></td>
</tr>
<tr>
<td>5 Transfer (R)</td>
<td>512</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand seven, to fund 5214,
fiscal year 2007, organization 0506, be supplemented and
amended by increasing an existing line item of appropriation
as follows:

TITLE II--APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN
RESOURCES

168-Division of Health-

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand seven, to fund 8520,
fiscal year 2007, organization 0907, be supplemented and
amended by increasing an existing line item of appropriation
as follows:

TITLE II--APPROPRIATIONS.

Section 3. Appropriations from Other Funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

226-WV Board of Examiners for
Registered Professional Nurses

(WV Code Chapter 30)
The purpose of this supplementary appropriation bill is to supplement, amend and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven.
ARTICLE 1B. NATIONAL GUARD.

* §15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the Army National Guard or Air National Guard who is enrolled in a course of undergraduate study or a Master’s degree program and is attending any accredited college, university, business or trade school located in West Virginia or is attending any aviation school located in West Virginia for the purpose of taking college-credit courses, may be entitled to payment of tuitions and fees at that college, university, business or trade school or aviation school during the period of his or her service in the National Guard. The Adjutant General may prescribe criteria of eligibility for payment of tuition and fees at the college, university, business or trade school or aviation school. The payment is contingent upon appropriations being made by the Legislature for this express purpose. A member may receive payment for only one Master’s degree pursuant to this section.

(b) The amount of the payment for members attending a state-supported school shall be determined by the Adjutant General and may not exceed the actual amount of tuition and fees at the school. The amount of the payment for members attending a private school shall be determined by the Adjutant General, but in any event may not exceed the highest amounts payable at any state-supported school.

(c) Any member of the Army National Guard or Air National Guard who is enrolled in a course of undergraduate study or a Master’s degree program and is attending any...
accredited college or university located in West Virginia, and
is receiving payments under a federally funded continuing
education system, may be entitled to payment of tuition and
fees at that college or university during his or her period of
service in the Army National Guard or Air National Guard:

Provided, That the sum of payments received under this
subsection and a federally funded continuing education
system may not exceed the actual amount of tuition and fees
at the school and in no event may exceed the highest amounts
payable at any state-supported school. The payments are
contingent upon appropriations being made by the
Legislature for this express purpose.

(d) The Adjutant General may, in lieu of the tuition
payment authorized by this section, pay an amount equal to
the amount of tuition which otherwise would have been paid,
directly to members of the West Virginia Army National
Guard or West Virginia Air National Guard who are
participating in the PROMISE Scholarship program provided
in article seven, chapter eighteen-c of this code.

(e) A member of the West Virginia Army National Guard
or West Virginia Air National Guard who is receiving
payments for tuition and fees under this section, and is
discharged from the military service due to wounds or
injuries received in the line of duty, may continue to receive
payments for tuition and fees under this section as if he or she
were still a member.

(f) The Adjutant General shall administer the tuition and
fee payments authorized under this section and shall propose
policies to implement the provisions of this section.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR
CHILDREN AND SPOUSES 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 and spouses 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 their war service.
(b) For the purpose of this article, there is appropriated from the State General Revenue Fund 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 and spouses while attending post-secondary education or training institutions.

(c) This benefit also shall be given to children and spouses 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.

(e) The term “spouse” as used in this article includes any spouse who remained married to the veteran prior to the veteran’s demise and who was neither the plaintiff nor defendant in any active divorce or annulment proceedings against the veteran at the time of 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 or spouse 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 or spouse 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 appropriated in this article 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 or spouse 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 or spouse 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 or spouse 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 provided in this article 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 or spouses board, room rent, books, supplies and other necessary living expenses.

(e) A member or employee of the division may not receive any additional compensation for the services required in this article.
(f) 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.

CHAPTER 21

(Com. Sub. for S.B. 121 - By Senators Tomblin, Mr. President, Minard, Barnes and Stollings)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1F-1b, relating to tolling any state licensure or registration requirement for persons on active duty in the National Guard or other reserve component of the armed services of the United States.

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 §15-1F-1b, to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1b. Tolling of the running of any licensure or registration requirement.

1 The running of any licensure or registration requirement, including, but not limited to, the payment of any license or registration fees of a licensing board or commission of the state shall be tolled during the period of absence for active
5 duty for any member of the National Guard or other reserve
6 component of the armed services of the United States until
7 sixty days after the return of the member from active duty:
8 Provided, That the service member shall be granted a period
9 of time equal to the period of active duty to fulfill any
10 continuing education requirements needed for licensure or
11 registration.

CHAPTER 22

(S.B. 405 - By Senators Bowman and Plymale)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §12-3-5 of the Code of West
Virginia, 1931, as amended, relating to electronic requisition
format approved by the Auditor; and providing that the Auditor
may set standards for archiving electronic and paper documents
related to requisitions.

Be it enacted by the Legislature of West Virginia:

That §12-3-5 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND
DEDUCTIONS.

§12-3-5. When requisition to Auditor sufficient authority for
issuing warrant.

1 (a) When an appropriation has been made by law, subject
2 to the order or payable on the requisition of a particular
3 officer, board or person, the order or written or electronic
4 requisition is sufficient authority to the Auditor to issue a
5 warrant for the same or any party thereof.

6 (b) The Auditor:

7 (1) Shall accept an electronic requisition from Marshall
8 University and West Virginia University in an unaltered
9 format approved by the Auditor;

10 (2) May accept or require an electronic requisition from
11 any entity other than Marshall University or West Virginia
12 University at his or her discretion in an unaltered format
13 approved by the Auditor; and

14 (3) May not issue a warrant for an amount that exceeds the
15 appropriation or for an expired appropriation.

CHAPTER 23

(H.B. 3073 - By Delegates Moore, White, Kominar
and Amores)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §31A-1-2 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §31A-4-13
of said code, all relating to prohibiting financial institutions, state
banks and out-of-state banks from establishing or maintaining a
branch in West Virginia on, or within one and one-half miles of,
the premises or property of an affiliate, if that affiliate engages in
commercial activity; and defining the terms “affiliate” and
“commercial activities”.

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Be it enacted by the Legislature of West Virginia:

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-4-13 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word “action”, in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The word “affiliate” means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, the word “control” shall be construed consistently with the Bank Holding Company Act, 12 U.S.C. § 1841;

(c) The words “bank” and “banking institution” mean a corporation, limited liability company or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. §1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company
facilities, functions and services so chartered or authorized to conduct such business in this state;

(d) The words “bankers’ bank” mean a banking institution, insured by the federal deposit insurance corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(e) The term “banking business” means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter and as elsewhere defined by law;

(f) The word “Board” means the West Virginia Board of Banking and Financial Institutions;

(g) The words “branch bank” mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

(1) A bank’s principal place of business;

(2) Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and

(3) Any loan origination office authorized by section twelve-c, article eight of this chapter;

(h) The words “commercial activities” mean activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.
(i) The words "Commissioner" or "Commissioner of Banking" mean the Commissioner of Banking of West Virginia;

(j) The word "community" means a city, town or other incorporated area or, where not so incorporated, a trading area;

(k) The word "department" or "division" means the Division of Banking of West Virginia;

(l) The words "Deputy Commissioner" or "Deputy Commissioner of Banking" mean the Deputy Commissioner of Banking of West Virginia;

(m) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust or responsibility;

(n) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(o) The word "officer", when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller or any other person who performs the duties appropriate to those offices and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his or her position, has both a voice in the formulation of the policy of the bank and
responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his or her title or office, being determinative of whether he or she is an “executive officer”;

(p) The words “out-of-state bank” or “out-of-state banking institution” mean a bank chartered under the laws of a state or United States territory, possession or district, other than West Virginia, or organized under federal law and having its main office located in a state, United States territory, possession or district, other than West Virginia;

(q) The words “person” or “persons” mean any individual, partnership, society, association, firm, institution, company, public or private 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;

(r) The words “safe-deposit box” mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank and the rules relating thereto apply to property or documents kept therein in the bank’s vault under the joint control of lessor and lessee;

(s) The words “state bank” or “state banking institution” mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished from either an out-of-state bank or a national banking association and is also referred to as a “West Virginia State Bank” or “West Virginia State Banking Institution”; and

(t) The words “trust business” mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term “banking business”.
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 issuance 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.

(1) No financial institution, banking institution, state bank
or out-of-state bank may establish or maintain a branch in
this state on, or within one and one-half miles of, the
premises or property of an affiliate at which the affiliate
engages in commercial activities.

CHAPTER 24

(Com. Sub. S.B. 182 - By Senators Minard, Yoder,
Barnes and Kessler)

[Passed March 5, 2007; in effect from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend and reenact §31A-2-6 of the Code of West
Virginia, 1931, as amended, relating to providing that the
Division of Banking shall employ the same frequency of
examination schedules of depository financial institutions as the
primary federal regulators of those institutions.

Be it enacted by the Legislature of West Virginia:

That §31A-2-6 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-6. Commissioner's examinations of financial
institution; reports; records; communications from commissioner to
institution; examination by federal or out-of-state agency in lieu of
commissioner's examination.
(a) The commissioner shall make a thorough examination of all the books, accounts, records and papers of every depository financial institution using the same frequency of examination schedule as the financial institution’s primary federal regulator. He or she shall carefully examine all of the assets of each institution, including its notes, drafts, checks, mortgages, securities deposited to assure the payment of debts unto it and all papers, documents and records showing, or in any manner relating to, its business affairs and shall ascertain the full amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his or her discretion, make or cause to be made an annual or periodic examination of the books, accounts, records and papers of other financial institutions under his or her supervision for the purposes of determining compliance with applicable consumer and credit lending laws and verifying information provided in any license application or annual report submitted to the commissioner. The commissioner may also make an examination of any subsidiaries or affiliates of a financial institution as he or she may consider necessary to ascertain the financial condition of the financial institution, the relations between the financial institution and its subsidiaries and affiliates and the effect of the relations upon the affairs of the financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy of it immediately mailed to the institution examined. Every institution shall retain all of its records of final entry for the period of time as required in section thirty-five, article four of this chapter for banking institutions. Unless otherwise covered by assessments or a specific provision of this code, the cost of examinations made pursuant to this section shall be borne by the financial institution at a rate of fifty dollars per each examiner hour expended.

(b) Every official communication from the commissioner to any institution, or to any officer thereof, relating to an examination or an investigation of the affairs of the institution conducted by the commissioner or containing suggestions or recommendations as to the manner of
conducting the business of the institution, shall be read by the board of directors at the next meeting after its receipt and the president, or other executive officer, of the institution shall immediately notify the commissioner in writing of the presentation and reading of the communication and of any action taken on it by the institution.

(c) The Commissioner of Banking, in his or her discretion, may: (i) Accept a copy of a reasonably current examination of any banking institution made by the Federal Deposit Insurance Corporation or the Federal Reserve System in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the Federal Deposit Insurance Corporation or the Federal Reserve System or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; (ii) accept a copy of a reasonably current examination of any out-of-state bank or any West Virginia state bank's out-of-state activities made by another state's banking regulatory authority in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the other state's banking regulatory authority or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; but nothing in this subsection shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws. The provision or exchange of examination reports and other records of financial condition and individuals pursuant to cooperative, coordinating or information-sharing agreements with other bank supervisory agencies and persons as permitted by this chapter under an agreement of confidentiality shall not constitute a violation of section four of this article.
AN ACT to amend and reenact §31A-3-1 of the Code of West Virginia, 1931, as amended, relating to providing that the per diem compensation for members of the Board of Banking and Financial Institutions shall be the same as the amount set by law for legislators attending to interim duties.

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 to read as follows:

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

(a) There is continued 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. 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 and in every instance shall serve 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 that term. Any member appointed for less than a full six-year term is 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 vacancy by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating the 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 constitutes 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
(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.

CHAPTER 26

(H.B. 2712 - By Delegates Moore, Kominar, Perry, Barker, Carmichael and Ashley)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to providing that the board of banking and financial institutions and the Commissioner of Banking shall determine whether a bank presents a significant supervisory concern or raises a significant legal or policy issue when evaluating an application to establish a bank branch.

Be it enacted by the Legislature of West Virginia:
That §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

(a) A banking institution may not engage in business in this state at any place other than at its principal office in this state, at a branch bank in this state, at a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article:

(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary affiliate, as defined in section one, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking. In addition, the conduct of activity at branch offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U.S.C. §1828, and does not constitute branch banking; nor does this activity constitute a violation of section forty-two, article four of this chapter: Provided, That a banking institution may not utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this state, or to conduct any activity that is not financially-related, as that term is defined by section two, article eight-c of this chapter;
(2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any educational institution located in the county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter: Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term "business days", for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

(3) Any banking institution which on the first day of January, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it is not necessary, for the continued operation of the branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it is unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

(c) A banking institution may establish branch banks either by:
(1) The construction, lease or acquisition of branch bank facilities within any county of this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board, by order, may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank under the provisions of this section, provide notice of the application to all banking institutions. A banking institution may, within ten days after receipt of the notice, file a petition to intervene and shall, if it files a petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank under the provisions of this section and shall collect an examination and investigation fee of five hundred dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or
merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of one hundred dollars. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of fifty dollars per examiner hour. The board shall complete the examination and investigation within ninety days from the date on which the application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution. If the board makes that request, the ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of the request and the date the additional information and disclosures are received.

(i) Upon completion of the examination and investigation with respect to the application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of hearing must be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and the hearing and the administrative procedures in connection therewith are governed by all of the provisions of article five, chapter twenty-nine-a of this code, and must be held at a time and place set by the board but may not be less than ten nor more than thirty days after the notice is given;
(2) At the hearing a party may represent himself or herself or be represented by an attorney at law admitted to practice before any circuit court of this state;

(3) After the hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the order and accompanying findings and conclusions shall be served upon all parties to the hearing, and their attorneys of record, if any.

(j) A state banking institution may not establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That a hearing is not required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish;

(2) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state;

(3) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed
branch bank in meeting the convenience and needs of the
community to be served by that proposed branch bank;

(4) The applicant state-chartered banking institution
meets a satisfactory standard of compliance with federal and
state community reinvestment act requirements as evidenced
by its most recent state or federal examination;

(5) The applicant state-chartered banking institution
meets a satisfactory standard of compliance with federal and
state consumer compliance law and regulations as evidenced
by its most recent state or federal regulatory examination;

(6) The applicant state-chartered banking institution
meets acceptable standards for investment in premises and
fixed assets as permitted by section thirteen, article four of
this chapter; and

(7) The applicant state-chartered banking institution does
not present a significant supervisory concern or raise a
significant legal or policy issue by filing the application.

(k) Any party who is adversely affected by the order of
the board is entitled to judicial review thereof in the manner
provided in section four, article five, chapter twenty-nine-a
of this code. Any such party adversely affected by a final
judgment of a circuit court following judicial review as
provided in the foregoing sentence may seek review thereof
by appeal to the Supreme Court of Appeals in the manner
provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and
with the prior written approval of the commissioner, a state
banking institution may discontinue the operation of a branch
bank upon at least thirty days prior public notice given in
such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section is a
misdemeanor offense punishable by applicable penalties as
provided in section fifteen of this article.
§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

(a) As an alternative to using the procedures established in subdivisions (g) through (j) of section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least thirty-five days prior to the date on which the proposed branch will be established accompanied by a fee of two hundred fifty dollars. The commissioner must provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the thirty-five day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner's consideration of the notice shall be extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written approval of the notice for that branch bank. The commissioner's approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:

1. Satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board, from time to time, may establish;

2. Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

3. Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;
(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(5) Does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner's decision to the board of banking and financial institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the board of banking and financial institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.

CHAPTER 27

(S.B. 454 - By Senators Bowman and Kessler)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2B-6 and §5B-2B-9 of said code; to amend and reenact §5F-2-1 of said code; and to amend and reenact §21A-1-4 of said code, all relating to the Bureau of Employment Programs; changing the agency name from the Bureau of Employment Programs to Workforce West Virginia; revising the divisional structure within the agency; and providing
that Workforce West Virginia shall provide administrative and other services to the West Virginia Workforce Investment Council.

Be it enacted by the Legislature of West Virginia:

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2B-6 and §5B-2B-9 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; and that §21A-1-4 of said code be amended and reenacted, all to read as follows:

Chapter
5F. Reorganization of the Executive Branch of State Government.
21A. Unemployment Compensation.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article
1. Department of Commerce.
2B. West Virginia Workforce Investment Act.

ARTICLE 1. DEPARTMENT OF COMMERCE.

*§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

1 The Department of Commerce consists of the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities, which are incorporated in and administered as part of the Department of Commerce:

6 (1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

*CLERKS NOTE: This section was also amended by S.B. 177 (Chapter 111), which passed prior to this act.
(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission, provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code;

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and
(8) Division of Energy provided in article one, chapter five-h of this code.

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-6. Administration of council.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

*§5B-2B-6. Administration of council.

1 (a) Workforce West Virginia shall provide administrative and other services to the council as the council requires.

3 (b) Workforce West Virginia shall facilitate the coordination of council activities and local workforce investment activities, including holding meetings with the executive directors of each local workforce investment board at least monthly. Any executive director of a local workforce investment board who participates in a meeting held pursuant to this subsection shall report to his or her board and the county commission of each county represented by the board regarding the meeting.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

1 (a) To provide ongoing attention to addressing issues that will build and continually improve the overall workforce investment system, the Workforce Investment Interagency Collaborative Team is hereby created. The team shall be the single state interagency source for addressing issues or concerns related to building and maintaining the most effective and efficient implementation of the federal Workforce Investment Act and the overall workforce development system in West Virginia. The team shall focus

*CLERKS NOTE: This section was also amended by S.B. 489 (Chapter 258), which passed prior to this act.
on how best to collaborate between and among the state agencies directly involved in workforce investment activities and shall develop a strategic plan to that end. The team shall serve as a forum for the council to seek information or recommendations in furtherance of its responsibilities under this article. Workforce West Virginia is the entity which shall convene the team at least monthly and shall provide administrative and other services to the team as the team requires.

(b) The team shall consist of members from each agency subject to the reporting provisions of section five of this article. Each agency shall appoint two representatives to the team consisting of the chief official of the department or division and the official within that department or division who is directly responsible for overseeing the workforce investment program or activities at the state level. A designee may be selected to represent a member appointed to the team: Provided, That the designee has policy-making decision authority regarding workforce investment activities including program and fiscal issues. The team members have authority to make decisions on behalf of the agency at the level required for the team to address issues and advance system improvements.

(c) The team shall coordinate the development of a self-sufficiency standard study for the State of West Virginia. The self-sufficiency standard is to measure how much income is needed for a household of a given composition in a given place to adequately meet its basic needs without public or private assistance. Beginning on the first day of November, two thousand four, and every two years thereafter, this study is to be reported to the Speaker of the House of Delegates, the President of the Senate, the Workforce Investment Council and the Legislative Oversight Commission on Workforce Investment for Economic Development.

(d) Beginning the first day of January, two thousand three, in order to lawfully continue any workforce investment activities, any agency subject to the reporting provisions of section five of this article shall enter into a memorandum of understanding with the Executive Director of Workforce West Virginia and any local workforce investment board representing an area of this state in which the agency is
engaged in workforce investment activities. To the extent permitted by federal law, the agreements are to maximize coordination of workforce investment activities and eliminate duplication of services on both state and local levels.

(e) No memorandum of understanding may be effective for more than one year without annual reaffirmation by the parties.

(f) Any state agency entering a memorandum of understanding shall deliver a copy thereof to both the West Virginia Workforce Investment Council and the legislative oversight commission.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

*§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

*Clerks Note: This section was also amended by S.B. 442 (Chapter 207), S.B. 582 (Chapter 214) and S.B. 177 (Chapter 111) which passed prior to this act.
(5) West Virginia Public Employees Grievance Board provided for in article three, chapter six-c of this code;

(6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;
(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and
(8) Division of Energy provided in article two-f, chapter five-b of this code.
(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.
(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.
(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:
(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;
(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;
(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;
(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;
(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;
(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and
(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.
(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

1. Library Commission provided in article one, chapter ten of this code;

2. Educational Broadcasting Authority provided in article five, chapter ten of this code;

3. Division of Culture and History provided in article one, chapter twenty-nine of this code;

4. Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

1. Human Rights Commission provided in article eleven, chapter five of this code;

2. Division of Human Services provided in article two, chapter nine of this code;

3. Bureau for Public Health provided in article one, chapter sixteen of this code;

4. Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

5. Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;
(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;
(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;
(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the
provisions of section two of this article, the position of
administrator and the powers, authority and duties of each
administrator and agency are not affected by the enactment
of this chapter.

(l) Except for powers, authority and duties that have been
delegated to the secretaries of the departments by the
provisions of section two of this article, the existence,
powers, authority and duties of boards and the membership,
terms and qualifications of members of the boards are not
affected by the enactment of this chapter. All boards that are
appellate bodies or are independent decisionmakers shall not
have their appellate or independent decision-making status
affected by the enactment of this chapter.

(m) Any department previously transferred to and
incorporated in a department by prior enactment of this
section means a division of the appropriate department.
Wherever reference is made to any department transferred to
and incorporated in a department created in section two,
article one of this chapter, the reference means a division of
the appropriate department and any reference to a division of
a department so transferred and incorporated means a section
of the appropriate division of the department.

(n) When an agency, board or commission is transferred
under a bureau or agency other than a department headed by
a secretary pursuant to this section, that transfer is solely for
purposes of administrative support and liaison with the Office
of the Governor, a department secretary or a bureau. Nothing
in this section extends the powers of department secretaries
under section two of this article to any person other than a
department secretary and nothing limits or abridges the
statutory powers and duties of statutory commissioners or
officers pursuant to this code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.
§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined.

(a) There is continued an agency designated Workforce West Virginia, composed of:

(1) Division of Unemployment Compensation;

(2) Division of Employment Service;

(3) Division of Workforce Development;

(4) Division of Research, Information and Analysis; and

(5) Any other divisions or units that the executive director determines are necessary.

(b) Wherever within this chapter the term "department", "bureau" or "fund" is used, it shall be taken to mean Workforce West Virginia unless otherwise indicated. Any reference in this code to the Bureau of Employment Programs means Workforce West Virginia. Any reference in this code to the Commissioner of the Bureau of Employment Programs or Employment Security means the Executive Director of Workforce West Virginia.

(c) Workforce West Virginia shall be administered pursuant to subsection (b), section one, article two, chapter five-f of this code.
AN ACT to amend and reenact §24E-1-3 and §24E-1-11 of the Code of West Virginia, 1931, as amended, all relating to the statewide addressing and mapping board; clarifying board composition; extending board members’ terms; establishing powers and duties; providing for legal counsel; providing the division with rule-making and emergency rule-making authority; requiring the board to share information; extending the termination of the board; providing for the transfer of the powers and duties of the board to the division of homeland security and emergency management.

Be it enacted by the Legislature of West Virginia:

That §24E-1-3 and §24E-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD.

§24E-1-3. West Virginia statewide addressing and mapping board; term of office; compensation and expenses of board members; transfer of data; legal counsel.

§24E-1-11. Termination of board; transfer of duties and title; legislative and emergency rules; advisory board.

§24E-1-3. West Virginia statewide addressing and mapping board; term of office; compensation and expenses of board members; transfer of data; legal counsel.
(a) The West Virginia statewide addressing and mapping board is hereby continued.

(b) Commencing on the first day of July, two thousand seven, the board is to be composed of eleven members appointed by the Governor as follows:

1. The Secretary of the Department of Military Affairs and Public Safety or his or her designee, shall serve as chairperson of the board;

2. A Commissioner of the Public Service Commission or his or her designee;

3. An official or employee of the State Geological and Economic Survey, qualified in the field of geographic information systems;

4. An official or employee of the Division of Highways;

5. A county commissioner;

6. A county assessor;

7. A mayor of a municipality or a municipal official;

8. A director of an enhanced emergency telephone system from a county with a population of thirty thousand or less as shown by the last federal census;

9. A director of an enhanced emergency telephone system from a county with a population of greater than thirty thousand as shown by the last federal census;

10. A representative of a local exchange telephone company; and

11. A member of the public at-large that may be affiliated with any of the above entities.
(c) In making appointments to the board, the Governor shall, to the extent possible, ensure representation on the board, by one or more members, of any entity providing twenty-five percent or more of funding to the statewide addressing and mapping fund created and continued under the provisions of this article.

(d) Any member serving on the board on the first day of January, two thousand seven, shall continue to serve until the first day of July, two thousand ten, or until replaced by the Governor.

(e) Members of the board are entitled to the same expense reimbursement paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the performance of official duties. Their expense reimbursement is to be paid from the West Virginia statewide addressing and mapping fund.

(f) On or before the first day of July, two thousand seven, the board, or a subcommittee of the board, will commence meetings to develop a plan to transfer a backup copy of the aerial map database, and to periodically transfer updated entries to the database to the Rahall Appalachian Transportation Institute, it shall make all nonsensitive data available to state agencies on request.

(g) On or before the first day of December, two thousand seven, and each year thereafter until its final termination and transfer to the Division of Homeland Security and Emergency Management, the board shall report to the Division of Homeland Security and Emergency Management as to its transfer of data to the Rahall Appalachian Transportation Institute.

(h) Commencing on the first day of July, two thousand seven, the board will utilize legal counsel approved by the Secretary of the Department of Military Affairs and Public Safety and the board shall pay any costs associated with legal counsel.
§24E-1-11. Termination of board; transfer of duties and title; legislative and emergency rules; advisory board.

(a) The board shall terminate on the first day of July, two thousand nine, after which it shall have one year to wind up its affairs pursuant to the provisions of article ten, chapter four of this code. Upon final termination, the board shall transfer all its right, title and interest to any maps, compilations or other works that it created as a result of the statewide addressing and mapping to the respective county commissions.

(b) Upon final termination of the board, county commissions shall maintain and update the addressing and mapping systems within their respective jurisdictions under the standards established by the board, as updated thereafter by the Division of Homeland Security and Emergency Management of the Department of Military Affairs and Public Safety under this section, and shall supply the updated information to the division in the format it establishes through its rule-making authority.

(c) Except as provided in subsection (b) of this section, upon final termination of the board, the powers and duties of the board shall be transferred to the Division of Homeland Security and Emergency Management.

(d) Prior to the final termination of the board, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which shall become effective only upon the final termination of the board. The rules shall:

(1) Maintain and update the standards for statewide addressing and mapping;

(2) Establish standard reasonable fees, based on cost, to be charged by county commissions for copies or use of any maps, compilations or other works created as a result of the statewide addressing and mapping, subject to the exemptions provided under section nine of this article;
(3) Govern centralization and interoperability of the county systems within the integrated statewide addressing and mapping system; and

(4) Ensure the public safety in any manner the division considers advisable.

(e) Upon final termination of the board, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the purposes set forth in this article.

(f) Upon final termination of the board, the division may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(g) Rules in effect as of the reenactment of this article during the two thousand seven regular session will remain in effect until amended, modified, repealed or replaced pursuant to this article.

(h) Effective the first day of July, two thousand ten, the statewide addressing and mapping board shall become an advisory board within the Division of Homeland Security and Emergency Management and will continue to be composed as set forth in this article and the members will serve at the will and pleasure of the Governor.

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CHAPTER 29

(S.B. 708 - By Senator Kessler)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, all relating to the
Be it enacted by the Legislature of West Virginia:

That §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions, donations or grants within this state or to have funds solicited or received on its behalf shall, prior to any solicitation, file a registration statement with the Secretary of State upon forms prescribed by him or her which shall be good for one full year and which shall be refilled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It is the duty of the president, chairman or principal officer of the charitable organization to file the statements required under this article. The statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;
(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization's immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: Provided, That for organizations raising more than one hundred thousand dollars per year in contributions excluding grants from governmental agencies or private foundations, the balance sheet and income and expense statement, or financial statement provided, shall be audited by an independent public accountant. Organizations are required to report the amount of money received in the state and the amount spent in the state for charitable purposes;

(7) A copy of any determination of the organization's tax exempt status under the provisions of 26 U. S. C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or grants and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;
(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided in subsection (d), section seven of this article.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the Secretary of State. An independent member agency of a federated fund-raising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the Secretary of State shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization receiving less than one million dollars during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of fifteen dollars; every charitable organization collecting more than one million dollars during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of fifty dollars; and a parent organization filing on behalf of one or

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more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the services 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.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fundraiser for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization or professional fundraiser, or both, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of twenty-five dollars: Provided, That the total amount of the additional fees for a registration statement or report required to be filed in any one year shall not exceed five hundred dollars. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the State General Revenue Fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the Office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.
§29-19-6. Certain persons and organizations exempt from registration.

The following charitable organizations are not required to file an annual registration statement with the Secretary of State:

1. Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the State Board of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the State Board of Education; and any auxiliary associations, foundations and support groups which are directly responsible to any such educational institutions;

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

3. Hospitals and licensed nursing homes which are nonprofit and charitable;

4. Organizations which solicit only within the membership of the organization by the members thereof: Provided, That the term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, such as the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of such organizations;

5. Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U. S. C. §501(c)(3) and which
qualifies as being exempt from filing an annual return under
the provisions of 26 U. S. C. §6033;

(6) Any person, firm, corporation or organization that
sponsors a single fund-raising event for the benefit of a
named charitable organization where all or part of the funds
collected are donated to the named charitable organization:
Provided, That the named charitable organization receiving
the funds is registered pursuant to this article, reports each of
these donations individually and certifies that no funds were
withheld by the organization that solicited the funds;

(7) Any charitable organization that does not employ a
professional solicitor or fundraiser and does not intend to
solicit and receive and does not actually raise or receive
contributions, donations or grants from the public in excess
of twenty-five thousand dollars during a calendar year.

Charitable organizations which do not intend to solicit and
receive contributions, donations or grants in excess of
twenty-five thousand dollars, but do receive in excess of that
amount from the public, shall file the annual registration
statement within thirty days after contributions are in excess
of twenty-five thousand dollars.

CHAPTER 30

(S.B. 388 - By Senators Prezioso, Minard, Stollings and Foster)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §48-12-101, §48-12-102 and §48-
12-103 of the Code of West Virginia, 1931, as amended, all
relating to medical support provisions in child support orders;
defining terms; establishing procedures for allocation of the
costs of medical support between the parties to a child support
order; and providing guidelines for setting medical support.
Be it enacted by the Legislature of West Virginia:

That §48-12-101, §48-12-102 and §48-12-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. MEDICAL SUPPORT.

§48-12-101. Definitions applicable to medical support enforcement.

For the purposes of this article:

1 (1) "Appropriate health insurance coverage" means insurance coverage that is reasonable in cost, comprehensive in nature and reasonably accessible to the child to be covered.

2 (2) "Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another person through employment or otherwise, or for other medical costs not covered by insurance.

3 (3) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of a child or children for whom child support is ordered.

4 (4) Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.

5 (5) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, prescription
20 pharmaceuticals, psychological, psychiatric or other health care services.

(6) "Child" means a child to whom a duty of child support is owed.

(7) "Medical care" means medical, dental, optical, prescription pharmaceuticals, psychological, psychiatric or other health care service for children in need of child support.

(8) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.

(9) "National medical support notice" means the written notice described in 29 U.S.C. §1169 (a)(5)(C) and 42 U.S.C. §666(a)(19) and issued as a means of enforcing the health care coverage provisions in a child support order for children whose parent or parents are required to provide health-care coverage through an employment-related group health plan. This notice is consider under ERISA to be a qualified medical child support order (QMSO).

(10) "Qualified medical child support order" means a medical child support order which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits from which a participant or beneficiary is eligible under a group health plan. A qualified medical child support order must include the name and the last known mailing address, if any, of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of the IV-D agency may be substituted for the
mailing address of any alternate recipient, a reasonable
description of the type of coverage provided to each alternate
recipient or the manner in which the type of coverage is
determined and the time period for which the order applies.

(11) "Reasonably accessible health insurance coverage"
means that the coverage will provide payment for the primary
health care services within a reasonable distance from the
child's primary residence.

(12) "Reasonable costs" means the child’s portion of the
medical insurance premiums not exceeding five percent of
the gross income of the parent who provides the coverage.

§48-12-102. Court-ordered medical support.

1 In every action to establish or modify an order which
2 requires the payment of child support, the court shall
3 ascertain the ability of each parent to provide medical care
4 for the children of the parties. In any temporary or final
5 order establishing an award of child support or any temporary
6 or final order modifying a prior order establishing an award
7 of child support, the court shall address the provision of
8 medical support through one or more of the following
9 methods:

10 (1) The court shall determine whether appropriate medical
11 insurance coverage as defined in section one hundred one of
12 this article is available to either parent. If such insurance
13 coverage exists, the court shall order the appropriate parent
14 to enroll the child in that coverage and the cost of providing
15 appropriate medical insurance shall be entered on line 5b of
16 worksheet A for the basic shared parenting child support
calculation as provided in section two hundred four, article
17 thirteen of this code or line 12b of worksheet B for the
18 extended shared parenting child support calculation as
19 provided in said section.
(2) If the court does not include the cost of the medical insurance in the child support calculation, the court may order the other parent to contribute to the cost of the premium through an award of medical support. If the amount of the award of child support in the order is determined using the child support guidelines, the court shall order that nonrecurring or subsequently occurring uninsured medical expenses in excess of two hundred fifty dollars per year per child shall be separately divided between the parties in proportion to their adjusted gross incomes.

(3) If neither parent currently has access to appropriate medical insurance coverage, the court shall take the following actions:

(a) The court shall order the parties to provide appropriate medical insurance coverage if it becomes available in the future; and

(b) The court shall order the payment of cash medical support by either or both parties. The amount of the cash medical support to be awarded is within the discretion of the court but the total of the cash medical support and cost of the insurance premiums shall not exceed five percent of the payor's gross income.

(c) In setting a cash medical support award, the court may consider the costs of uncovered medical expenses for the child, the relative percentages of the parties' incomes or the cost to the government to provide medical coverage for the child.

(d) If the support obligor's adjusted gross income is less than two hundred percent of the federal poverty level, the court shall set the cash medical support amount at zero.

(e) Cash medical support shall be collected and enforced in the same manner as child support payments.
(4) The order shall require the obligor to continue to provide the Bureau for Child Support Enforcement with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

§48-12-103. Cost of medical support considered in applying support guidelines.

The Bureau for Child Support Enforcement or the parties to the case may bring a petition to modify the medical support obligations upon notification of any new source of insurance coverage or any change in circumstances as set forth in section one hundred six, article fourteen of this chapter.

CHAPTER 31

(S.B. 626 - By Senators Caruth, Prezioso, Foster and Plymale)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-2 and §49-5D-3 of said code, all relating to child advocacy centers; defining terms; providing for role of child advocacy center in multidisciplinary teams; and providing for the role of a child advocacy center in multidisciplinary treatment teams.

Be it enacted by the Legislature of West Virginia:
That §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-2 and §49-5D-3 of said code be amended and reenacted, all to read as follows:

Article
1. Purposes and Definitions.
5D. Multidisciplinary Teams.

ARTICLE 1. PURPOSES AND 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) “Child advocacy center” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(1) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(2) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(3) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(4) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to
appreciate, understand and interact with members of diverse populations within the local community.

(5) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact finding nature and coordinated to avoid duplicative interviewing.

(6) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.

(7) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.

(8) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(9) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(10) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.
(g) "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.

(h) "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 this chapter and chapter forty-eight of this code.

(i) "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.

(j) (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.

(k) "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.

(l) "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.
(m) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(n) "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.

(o) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(p) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(q) "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.

(r) "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.

(s) "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.

(t) "Siblings" means children who have at least one
biological parent in common or who have been legally
adopted by the same parents or parent.

(u) "Time-limited reunification services" means
individual, group and family counseling, inpatient, residential
or outpatient substance abuse treatment services, mental
health services, assistance to address domestic violence,
services designed to provide temporary child care and
therapeutic services for families, including crisis nurseries
and transportation to or from any such services, provided
during fifteen of the most recent twenty-two months a child
has been in foster care, as determined by the earlier date of
the first judicial finding that the child is subjected to abuse or
neglect, or the date which is sixty days after the child is
removed from home.

§49-1-4. Other definitions.

As used in this chapter:

(1) "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 or any facility that provides care for
unmarried mothers and their children;

(2) "Child advocacy center" means a community-based
organization that is a member in good standing with the West
Virginia Child Abuse Network, Inc., and is working to
implement the following program components:
(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(D) Cultural competency and diversity: The child advocacy center promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature, and coordinated to avoid duplicative interviewing.

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to child advocacy center clients as part of the team response, either at the child advocacy center or through coordination and referral with other specialized medical providers.

(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the child advocacy center or through
coordination and referral with other appropriate treatment providers.

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the child advocacy center or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(J) Case tracking: Child advocacy centers must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, that a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.

(3) "Community based", when referring to a facility, program, or service, means located near the juvenile's home or family and involving community participation in planning, operation and evaluation and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education, counseling, alcoholism and any treatment and other rehabilitation services;

(4) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

(5) "Custodian" means a person who has or shares actual physical possession or care and custody of a child,
regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;

(6) "Department" or "state department" means the state Department of Health and Human Resources;

(7) "Division of Juvenile Services" means the division within the Department of Military Affairs and Public Safety pursuant to article five-e of this chapter;

(8) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding;

(9) "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult;

(10) "Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in such facility and which provides its residents access to the surrounding community with supervision;

(11) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee, the judge or judges of the circuit court may designate one or more magistrates of the county to perform the functions and duties which may be performed by a referee under this chapter;
"Secretary" means the Secretary of Health and Human Resources;

"Secure facility" means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility;

"Staff-secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents;

"Status offender" means a juvenile who has been adjudicated as one:

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the child's behavior substantially endangers the health, safety or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of such person or without good cause;

(C) Who is habitually absent from school without good cause; or
(D) Who violates any West Virginia municipal, county or state law regarding use of alcoholic beverages by minors;

(16) "Valid court order" means a court order given to a juvenile who was brought before the court and made subject to such order and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the constitutions of the United States and the State of West Virginia.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney or his or her designee and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the Department of Health and Human Resources, a local law-enforcement officer employed by a law-enforcement agency in the county, a child advocacy center representative where available and, where appropriate to the particular case under consideration and available, a representative from the licensed domestic violence program serving the county. The Department of Health and Human Resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an
agency who may contribute to the team's efforts to assist a
minor child as may be determined by the permanent members
of the team may also be appointed as a member of the team
by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary
investigative team shall refer all cases of accidental death of
any child reported to their agency and all cases when a child
dies while in the custody of the state for investigation and
review by the team. The multidisciplinary investigative team
shall meet at regular intervals at least once every calendar
month.

c) The investigative team shall be responsible for
coordinating or cooperating in the initial and ongoing
investigation of all civil and criminal allegations pertinent to
cases involving child sexual assault, child sexual abuse, child
abuse and neglect and shall make a recommendation to the
county prosecuting attorney as to the initiation or
commencement of a civil petition and/or criminal
prosecution.

d) State, county and local agencies shall provide the
multidisciplinary investigative team with any information
requested in writing by the team as allowable by law or upon
receipt of a certified copy of the circuit court's order directing
said agencies to release information in its possession relating
to the child. The team shall assure that all information
received and developed in connection with the provisions of
this article remains confidential. For purposes of this section,
the term "confidential" shall be construed in accordance with
the provisions of section one, article seven of this chapter.

§49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process
shall be established within each county of the state, either
separately or in conjunction with a contiguous county, by the
secretary of the department with advice and assistance from
the prosecutor's advisory council as set forth in section four,
article four, chapter seven of this code. 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 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, a member of a child advocacy
center when the child has been processed through the child
advocacy center program(s) 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: *Provided*, That a member of a child advocacy
center should participate in any case when appropriate to the
particular case under consideration.

(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.
AN ACT to amend and reenact §49-5-8 of the Code of West Virginia, 1931, as amended, relating to the responsibility of placing juveniles into the custody of the Division of Juvenile Services; requiring arresting agency to be responsible for transporting juveniles to Division of Juvenile Services’ facilities; and authorizing juvenile facility to refuse admittance to juveniles who are in need of medical attention until written clearance is received from a physician.

Be it enacted by the Legislature of West Virginia:

That §49-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a juvenile into custody.

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court, a juvenile referee or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the
8 health, safety and welfare of the juvenile demand such custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section eight-a of this article shall be held by the judge, juvenile referee or magistrate authorized to conduct such hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exists: (1) Grounds exist for the arrest of 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), subsection (b) of this section, 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.

(e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under arrest is responsible for the juvenile’s initial transportation to a juvenile detention center or other Division of Juvenile Services’ residential facility.

(f) Notwithstanding any other provision of this code, a juvenile detention center, or other Division of Juvenile Services’ residential facility, is not required to accept a juvenile if the juvenile appears to be in need of medical attention of a degree necessitating treatment by a physician. If a juvenile is refused pursuant to the provisions of this subsection, the juvenile detention center, or other Division of Juvenile Services’ residential facility, may not subsequently accept the juvenile for detention until the arresting or transporting officer provides the juvenile detention center, or other Division of Juvenile Services’ residential facility, with a written clearance from a licensed physician reflecting that the juvenile has been examined and, if necessary, treated and which states that in the physician’s medical opinion the juvenile can be safely confined in the juvenile detention center or other Division of Juvenile Services’ residential facility.
AN ACT to amend and reenact §49-5-9 of the Code of West Virginia, 1931, as amended, relating to authorizing circuit courts to grant both custodial and noncustodial improvement periods to juvenile respondents in delinquency proceedings.

Be it enacted by the Legislature of West Virginia:

That §49-5-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-9. Preliminary hearing; counsel; improvement period.

(a) Following the filing of a juvenile petition, unless a preliminary hearing has previously been held in conjunction with a detention hearing with respect to the same charge contained in the petition, the circuit court or referee shall hold a preliminary hearing. In the event that the juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed in detention unless good cause is shown for a continuance. If no preliminary hearing is held within ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance unless the hearing
has been continued for good cause. If the judge is in another
county in the circuit, the hearing may be conducted in that
other county. The preliminary hearing may be waived by the
juvenile, upon advice of counsel. At the hearing, the court or
referee shall:

(1) If the juvenile is not represented by counsel, inform
the juvenile and his or her parents, guardian or custodian or
any other person standing in loco parentis to him or her of the
juvenile’s right to be represented at all stages of proceedings
under this article and the right to have counsel appointed;

(2) Appoint counsel by order entered of record, if counsel
has not already been retained, appointed or knowingly
waived;

(3) Determine after hearing if there is probable cause to
believe that the juvenile is a status offender or a juvenile
delinquent. If probable cause is not found, the juvenile, if in
d Detention, shall be released and the proceedings dismissed.
If probable cause is found, the case shall proceed to
adjudication. At this hearing or as soon thereafter as is
practicable, the date for the adjudicatory hearing shall be set
to give the juvenile and the juvenile’s parents and attorney at
least ten days' notice unless notice is waived by all parties;

(4) In lieu of placing the juvenile in a detention facility,
the court may place the juvenile in the temporary legal and/or
physical custody of the department. If the juvenile is
detained, the detention may not continue longer than thirty
days without commencement of the adjudicatory hearing
unless good cause for a continuance is shown by either party
or, if a jury trial is demanded, no longer than the next regular
term of the court: Provided, That a juvenile who is alleged
to be a status offender may not be placed in a secure
detention facility; and

(5) Inform the juvenile of the right to demand a jury trial.
(b) The juvenile may move to be allowed an improvement period for a period not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be served by an improvement period, the court may delay the adjudicatory hearing and allow an improvement period upon terms calculated to serve the rehabilitative needs of the juvenile. At the conclusion of the improvement period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for an improvement period may not be construed as an admission or be used as evidence. Improvement periods authorized by this subsection may be, in the court’s discretion, either custodial or noncustodial.

CHAPTER 34

(Com. Sub. for S.B. 76 - By Senators Kessler, Yoder, Plymale, Foster and Unger)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13c, relating to penalties for minors adjudicated delinquent for alcohol, alcoholic liquor, or nonintoxicating beer consumption.

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 §49-5-13c, to read as follows:
ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13c. Graduated sanctions for juvenile alcohol consumption.

(a) Notwithstanding any provision of this article to the contrary, in addition to any other penalty available to the court, any child who is adjudicated to have consumed alcoholic liquor or nonintoxicating beer as defined in section five, article one, chapter sixty of this code, shall:

(1) Upon a first adjudication, he or she shall be ordered to perform community service for not more than eight hours or fined not more than twenty-five dollars, or both.

(2) Upon a second adjudication, he or she shall be ordered to perform community service for not more than sixteen hours or fined not more than fifty dollars, or both.

(3) Upon a third or subsequent adjudication, he or she shall be ordered to perform not more than twenty-four hours of community service or fined not more than one hundred dollars, or both.

(b) In addition to the penalties set forth in subsection (a) of this section and notwithstanding the provisions of subdivision (4), subsection (c), section thirteen-b of this article, any child adjudicated a second time for consumption of alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle suspended for a definite term of not less than five nor more than ninety days. Any child adjudicated a third or subsequent time for consumption of an alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle suspended until he or she attains the age of eighteen years.
AN ACT to amend and reenact §49-5-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-5a and §49-6-8 of said code, all relating to judicial review of juvenile proceedings; requiring court to make finding whether department made reasonable efforts to finalize a permanency plan; requiring judicial review at least quarterly; permanency hearings when a court determines reasonable efforts to preserve families are not required; foster care review; and annual reports to the court.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-5a and §49-6-8 of said code be amended and reenacted, all to read as follows:

Article
5. Juvenile Proceedings
6. Procedure in Cases of Child Neglect or Abuse.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

§49-6-8. Foster care review; annual reports to the court.

§49-5-21. Quarterly judicial review of juvenile proceedings.

1 For cases under this article in which the provisions of section three, article five-d of this chapter apply, the court
wherein the juvenile proceeding is pending shall conduct regular judicial review of the case with the multidisciplinary treatment team and a juvenile probation officer in attendance. Such judicial review may be conducted as often as is considered necessary by the court, but shall be conducted at least once every three calendar months as long as the child remains in the legal or physical custody of the state.

In conducting the judicial review required by this section, the court shall address the extent of progress in the case, treatment and service needs, permanent placement planning for the juvenile, any uncontested issues and any other matters that the court considers pertinent. An order reflecting the matters considered, any uncontested rulings and the scheduling of an evidentiary hearing on any contested issue shall be issued by the court within ten judicial days of the judicial review. At the conclusion of each judicial review hearing, the court shall enter an order stating whether or not the department made reasonable efforts to finalize the permanency plan.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

(a) If the court finds, pursuant to the provisions of subdivision (7), subsection (a), section five of this article that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any other provision, a permanency hearing must be held within thirty days following the entry of the court order so finding and must be conducted at least once every three calendar months thereafter until a permanent placement is achieved.

(b) The purpose of the permanency hearing is to determine the permanency plan for the child that includes: (1) When the child will be returned to the parent; (2) when the child will be placed for adoption, in which event the state will file a petition for termination of parental rights; or (3) when the
child will be referred for legal guardianship. In cases where
the department has demonstrated a compelling reason for
determining it would not be in the best interests of the child
to return home, the court shall determine whether the child
should be referred for termination of parental rights, be
placed for adoption, be placed with a fit and willing relative,
be placed with a legal guardian or placed in another planned
permanent living arrangement. At the conclusion of each
permanency hearing, the court must enter an order stating
whether or not the department made reasonable efforts to
finalize the permanency plan.

(c) Any foster parent, preadoptive parent or relative
providing care for the child shall be given notice of and the
opportunity to be heard at the permanency hearing provided
in this section.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt by the department or its
authorized agent of physical custody of a child either by a
court ordered placement or by a voluntary agreement, the
department has not placed a child in an adoptive home or
placed the child with a natural parent or placed the child in
legal guardianship or permanently placed the child with a fit
and willing relative, the department shall file with the court
a petition for review of the case. The department shall also
file with the court a report detailing the efforts that have been
made to place the child in a permanent home and copies of
the child’s case plan, including the permanency plan as
defined in section five, article six of this chapter. Copies of
the report shall be sent to the child’s attorney and be made
available to the child’s parent(s) or guardian. The court shall
schedule a hearing in chambers, giving notice and the right to
be present to: The child’s attorney; the child, if twelve years
of age or older; the child’s parents; the child’s guardians; the
child’s foster parents; any preadoptive parent or any relative
providing care for the child; and such other persons as the
court may, in its discretion, direct. The child’s presence may
be waived by the child’s attorney at the request of the child
or if the child would suffer emotional harm. The purpose of
the hearing is to review the child’s case, to determine whether
and under what conditions the child’s commitment to the
department shall continue and to determine what efforts are
necessary to provide the child with a permanent home. At
the conclusion of the hearing the court shall, in accordance
with the best interests of the child, enter an appropriate order
of disposition. The court order shall state: (1) Whether or
not the department made reasonable efforts to preserve the
family and to prevent out-of-home placement or that the
specific situation made such effort unreasonable; (2) whether
or not the department made reasonable efforts to finalize the
permanency plan for the child; and (3) identify services
required to meet the child’s needs: Provided, That the
department is not required to make reasonable efforts to
preserve the family if the court determines any of the
conditions set forth in subdivision (7), subsection (a), section
five of this article exist. The court shall possess continuing
jurisdiction over cases reviewed under this section for so long
as a child remains in temporary foster care or, when a child
is returned to his or her natural parents subject to conditions
imposed by the court, for so long as the conditions are
effective.

(b) The state department shall file a supplementary
petition for review with the court within twelve months and
every twelve months thereafter for every child that remains
in the physical or legal custody of the state department until
the child is placed in an adoptive home or returned to his or
her parents or placed in legal guardianship or permanently
placed with a fit and willing relative.

(c) The state department shall annually report to the court
the current status of the placements of children in permanent
care and custody of the state department who have not been
adopted.
(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home: Provided, That no report shall be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(f) Nothing in this article precludes any party from petitioning the court for review of the child’s case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Education; Department of Health and Human Resources; Division of Corrections; Division of Forestry; Division of Highways; Division of Motor Vehicles; Division of Natural Resources; Division of Rehabilitation Services; Office of Miners’ Health, Safety and Training; Public Service Commission; Regional Jail and Correctional Facility Authority; Supreme Court of Appeals and the West Virginia State Police to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the
CLAIMS

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 Department of Administration:
   (TO BE PAID FROM GENERAL REVENUE FUND)
   (1) AT & T Corporation ....................... $ 481,470.93

(b) Claims against the Department of Education:
   (TO BE PAID FROM GENERAL REVENUE FUND)
   (1) Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV ........ $136.83

(c) Claim against the Department of Health and Human Resources:
   (TO BE PAID FROM SPECIAL REVENUE FUND)
   (1) Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV ........ $ 5,011.02

(d) Claims against the Division of Corrections:
   (TO BE PAID FROM GENERAL REVENUE FUND)
   (1) Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV ........ $5,473.36
   (2) Public Employees Insurance Agency ........ $ 207,273.95

(e) Claim against the Division of Forestry:
   (TO BE PAID FROM GENERAL REVENUE FUND)
   (1) Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV ........ $ 299.38

(f) Claims against the Division of Highways:
   (TO BE PAID FROM STATE ROAD FUND)
   (1) Andrea Acord .............................. $ 109.78
   (2) Carol P. Simmons Alderman ................ $ 248.49
   (3) Eva Balsar .................................. $57.90
   (4) Beryl Beal ................................... $100.00
   (5) Jeromey Chad Beller ...................... $ 12,500.00
   (6) Diana Bender ............................... $ 800.00
   (7) Linda Bird, as Admin. of the Estates of Emzie Sovine and Mildred Sovine ........ $ 250.00
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CLAIMS

(g) Claims against the Division of Motor Vehicles:
(TO BE PAID FROM STATE ROAD FUND)

1. Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV $3,643.57
2. Rebecca J. Hess $50.00
3. Homer J. Wilson III $155.00

(h) Claim against the Division of Natural Resources:
(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV $1,449.86

(i) Claims against the Division of Rehabilitation Services:
(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Citizens Telecommunications Co. Of WV, dba Frontier Communications of WV $120.11
2. NDC Health Corporation $10,786.56

(j) Claim against the Office of Miners’ Health, Safety, and Training:
(TO BE PAID FROM SPECIAL REVENUE FUND)

1. John W. Cruse $6,045.32

(k) Claims against the Public Service Commission:
(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Audra L. Blackwell $15,412.00
2. Country Inn & Suites $3,325.58

(l) Claims against Regional Jail and Correctional Facility Authority:
(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Delores J. Cain $13.70
2. Phillip Terry Delaney $65.00
3. Fred Maynard $10.00
4. Michelle Pownall $310.00
5. Arretta Jane Walker $2,920.72

(m) Claim against the Supreme Court of Appeals:
(TO BE PAID FROM GENERAL REVENUE FUND)
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 37

(S.B. 484 - By Senators Love, Edgell, Unger and Sypolt)

[Passed March 4, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

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 and Division of Corrections to be moral obligations of the state and directing payments thereof.
The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Cunningham-Parker-Johnson Funeral Home Inc. $ 1,250.00

(2) Johnson Nichols Funeral Home $ 1,250.00

(b) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation $ 152.50
AN ACT to repeal §20-14-10 of the Code of West Virginia, 1931, as amended, relating to insurance policies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§1. Repeal of section relating to insurance policies.

Section ten, article fourteen, chapter twenty of the Code of West Virginia, 1931, as amended, is hereby repealed.
AN ACT to repeal §49-7-31 of the Code of West Virginia, 1931, as amended, relating to the establishment of a special account in the Department of Health and Human Resources as the Child Assessment or In-State Placement Fund.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to establishing a special account in the Department of Health and Human Resources as the Child Assessment or In-State Placement Fund.

Section thirty-one, article seven, chapter forty-nine of the Code of West Virginia, 1931, as amended, is hereby repealed.

AN ACT to repeal §50-3-5 of the Code of West Virginia, 1931, as amended, relating to repealing the requirement that nonresidents secure costs.
COMMERCIAL DRIVER’S LICENSE [Ch. 41]

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to security bond for costs.

Section five, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 41

(Com. Sub. for H.B. 2575 - By Delegates Hrutkay, Stephens, Burdiss, Shook, Pethtel, Ellem, Pino, Proudfoot, Schadler and Webster)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2007.]

AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-13, §17E-1-20 and §17E-1-25 of the Code of West Virginia, 1931, as amended, all relating to commercial driver’s licences; updating the definition of hazardous materials; reducing the penalty for driving a commercial motor vehicle without a commercial driver’s license in possession; reducing the penalty for driving a commercial motor vehicle without a commercial driver’s license or proper endorsement; updating provisions pertaining to commercial driver’s licenses to conform with federal law; suspending, revoking or canceling the privilege of operating a motor vehicle for offenses in another state; and providing a civil penalty for persons convicted of violating an out-of-service order.

Be it enacted by the Legislature of West Virginia:

That §17E-1-3, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-13, §17E-1-20 and §17E-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the following definitions apply to this article:

(1) "Alcohol" means:

(A) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

(B) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;

(C) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or

(D) Wine of not less than one half of one percent of alcohol by volume.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred milliliters of blood;

(B) The number of grams of alcohol per two hundred ten liters of breath; or
(C) The number of grams of alcohol per sixty-seven milliliters of urine.

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) "At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

(4) "Commercial driver's license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) "Commercial driver's license information system" is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

(B) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
(D) If the vehicle is of any size transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code (Uniform Controlled Substances Act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter sixty-a, as they are revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Division" means the Division of Motor Vehicles.

(12) "Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver’s license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person’s privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on
COMMERCIAL DRIVER’S LICENSE

the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).

(13) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, "drive" includes operation or physical control of a motor vehicle anywhere in this state.

(14) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver's license.

(15) "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.

(17) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(18) “Endorsement” means an authorization to a person to operate certain types of commercial motor vehicles.
(19) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.

(20) "Farmer" includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years' licensed driving experience.

(21) "Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his or her sole or principal function on the farm who is at least eighteen years of age with two years' licensed driving experience.

(22) "Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(23) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(24) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

(25) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. §5103 and is
required to be placarded under subpart F of 49 C.F.R. Part §172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part §73.

(26) "Imminent Hazard" means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(27) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(28) "Non-Commercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle".

(29) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.

(30) "Violation of an out-of-service order" means:

(A) The operation of a commercial motor vehicle during the period the driver was placed out-of-service; or

(B) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.
(31) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home-to-school, from school-to-home, or to and from school sponsored events. School bus does not include a bus used as a common carrier.

(32) "Serious traffic violation" means conviction for any of the following offenses when operating a commercial motor vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

(F) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court, or pay any fine for such violation, that the person held a valid commercial driver’s license on the date the citation was issued, shall not be guilty of this offense;

(G) Driving a commercial motor vehicle without the proper class of commercial driver’s license and/or,
endorsements for the specific vehicle group being operated
or for the passengers or type of cargo being transported; or

(H) A violation of state or local law relating to motor
vehicle traffic control, other than a parking violation, arising
in connection with a fatal traffic accident.

(I) Vehicle defects are excluded as serious traffic
violations, except as to violations committed by a special
permittee on the coal resource transportation road system; or

(J) Any other serious violations determined by the United
States Secretary of Transportation.

(33) "State" means a state of the United States and the
District of Columbia.

(34) “State of Domicile” means the state where a person
has his or her true, fixed and permanent home and principle
residence and to which he or she has the intention of
returning whenever absent in accordance with chapter
seventeen-a, article three, section one-a.

(35) “Suspension, revocation or cancellation” of a
driver’s license, or a commercial driver’s license means the
privilege to operate any type of motor vehicle on the roads
and highways of this state is withdrawn.

(36) "Tank vehicle" means any commercial motor vehicle
that is designed to transport any liquid or gaseous materials
within a tank that is either permanently or temporarily
attached to the vehicle or the chassis. These vehicles include,
but are not limited to, cargo tanks and portable tanks, as
defined in 49 C. F. R. Part 171 (1998). However, this
definition does not include portable tanks having a rated
capacity under one thousand gallons.

(37) “Transportation Security Administration” means the
United States Department of Homeland Security
Transportation Security Administration.
(38) “United States” means the fifty states and the
District of Columbia.

(39) “Vehicle Group” means a class or type of vehicle
with certain operating characteristics.

§17E-1-6. Employer responsibilities.

(a) Each employer must require the applicant to provide
the information specified in section five of this article.

(b) No employer may knowingly allow, permit, require
or authorize a driver to drive a commercial motor vehicle
during any period:

(1) In which the driver has a driver's license suspended,
revoked or canceled by a state; has lost the privilege to drive
a commercial motor vehicle in a state, or has been
disqualified from driving a commercial motor vehicle; or

(2) In which the driver has more than one driver's license
at one time.

(3) During any period in which the driver, or the
commercial motor vehicle he or she is driving or the motor
carrier operation, is subject to an out-of-service order; or

(4) In violation of federal, state or local law or regulation
pertaining to railroad highway grade crossings; or

(5) During any period the driver is in violation of any
provision of 49 C.F.R., Part §382 related to controlled
substances and alcohol use and testing.

(c) The division shall impose a civil penalty, in addition
to any penalty required under the provisions of section
twenty-five of this article, on any employer who knowingly
allows, permits, requires or authorizes a driver to drive a
commercial motor vehicle in violation of subdivision (3) or
(4) of subsection (b) of this section.
(1) If the conviction is for a violation of subdivision (3) of subsection (b) of this section, the penalty shall be two thousand, seven hundred-fifty dollars.

(2) If the conviction is for a violation of subdivision (4) of subsection (b) of this section, the penalty shall be no more than ten thousand dollars.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.

(d) The Commissioner shall suspend for a period of sixty days the driving privileges of any person who is convicted of operating a commercial motor vehicle:

(1) Without holding a valid commercial driver's license and the applicable endorsements valid for the vehicle he or she is driving in accordance with subsection (a) of this section, or

(2) For any conviction for operating a commercial motor vehicle while his or her privilege to operate a motor vehicle were suspended, revoked, canceled or while disqualified
from operating a commercial motor vehicle in accordance with subsection (b) of this section.

(e) Any person not holding a commercial driver's license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver's license for the same time periods as prescribed in federal law or rule or section thirteen of this article for commercial driver's license holders.

§17E-1-8. Exemptions to the commercial driver's license requirements.

(a) Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

1. Driven by a farmer or farm vehicle driver;
2. Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
3. Not used in the operation of a common or contract motor carrier; and
4. Used within one hundred fifty miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Active duty military personnel operating vehicles being used for military purposes are exempted from the provisions of this article in accordance with the provisions of 49 CFR §383.3 (c)(2006).

(c) Fire fighting and rescue equipment. Operators of vehicles authorized to hold an "authorized emergency vehicle permit" for use of red signal lights only are exempt from the provisions of this article while the "authorized emergency
vehicle permit" is in force. Vehicles in this class include, but are not limited to, firefighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments;

(2) Owned and operated by state, county and municipal civil defense organizations;

(3) Owned and operated by a manufacturer engaged in a type of business that requires firefighter equipment to protect the safety of their plants and its employees; or

(4) Owned and operated by volunteer fire departments.

(d) Operators of off-road construction and mining equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, That the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, That no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.


(a) A person shall not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999 (public law
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5 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction for any offense listed in this section resulting from a separate incident shall include convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

13 (2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subsection (b), subdivisions (1) through (8) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after ten years and after completion of the safety and treatment program or other appropriate program prescribed by the Division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision and who is subsequently convicted of a disqualifying offense described in subsection (b), subdivisions (1) through (8) of this section shall not be eligible for reinstatement.

25 (3) Any disqualification imposed by this section shall be in addition to any action to suspend, revoke or cancel the driver’s license or driving privileges if suspension, revocation or cancellation is required under another provision of this code.

30 (4) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver’s license.

33 (b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

36 (1) Driving a motor vehicle under the influence of alcohol or a controlled substance;
(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.
(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(3) Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be
disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in section three, article one of this chapter: Provided, That the commission of any felony involving the manufacture, distribution or dispensing of a controlled
(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver’s privilege to operate a motor vehicle has been suspended, revoked or canceled, or the driver’s privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.
For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance, a driver shall be disqualified from operating a commercial motor vehicle for life and shall not be eligible for reinstatement.
(c) Any person is disqualified from driving a commercial motor vehicle if convicted of;

(1) Speeding excessively involving any speed of fifteen miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving including, but not limited to, the offenses of driving
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242 a motor vehicle in willful or wanton disregard for the safety of persons or property;

244 (A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

249 (B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

257 (C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

263 (D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

272 (3) Making improper or erratic traffic lane changes;

273 (A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor
vehicle, a driver shall be disqualified from operating a
commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of
offenses in this section in a separate incident within a three-
year period while operating a noncommercial motor vehicle,
if the conviction results in the suspension, revocation, or
cancellation of the commercial driver’s license holder’s
privilege to operate any motor vehicle, a commercial driver’s
license holder shall be disqualified from operating a
commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any
combination of the offenses in this subsection in a separate
incident in a three-year period while operating a commercial
motor vehicle, a driver shall be disqualified from operating
a commercial motor vehicle for a period of one hundred
twenty days.

(D) For a third or subsequent conviction of any
combination of offenses in this subsection in a separate
incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of
offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of
offenses in this section in a separate incident within a three-
year period while operating a noncommercial motor vehicle,
if the conviction results in the suspension, revocation, or
cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.
(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession, provided that any person who provides proof of possession of a commercial driver’s license to the enforcement agency
that issued the citation, by the court appearance or fine payment deadline shall not be guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(A) Driving a commercial motor vehicle without the proper class of commercial driver’s license or the proper endorsements for the specific vehicle group being operated, or for the passengers or type of cargo being transported;

(B) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to any of the railroad crossing violations described in subdivisions (1) through (6) of this subsection shall be disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver
shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver
shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver
shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle shall be disqualified for the following periods of time if:

(1) Convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for ninety days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out of service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(2) Convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), or while operating a vehicle designed to transport sixteen or more passengers including the driver;
(A) For the first conviction of violating an out of service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one-hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking or canceling a commercial driver’s license, the division shall update its records to reflect that action within ten days.

(g) In accordance with the provisions of 49 U.S.C. §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and notwithstanding the provisions of section twenty-five, article eleven, chapter sixty-one of this code, no record of conviction, revocation, suspension or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver’s license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the Division shall not issue any temporary driving permit, work-only driving permit or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle.
vehicle has been revoked, suspended, disqualified or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C.F.R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation or cancellation of his or her driver’s license or privilege to operate a motor vehicle by this state or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

(j) In accordance with the provisions of 49 C. F. R. 353.52 (2006), the division shall immediately disqualify a driver’s privilege to operate a commercial motor vehicle upon a notice from the Assistant Administrator of the Federal Motor Carrier Safety Administration that the driver poses an imminent hazard. Any disqualification period imposed under the provisions of this subsection shall be served concurrently with any other period of disqualification if applicable.

§ 17E-1-20. Reciprocity.

(a) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver’s license by any state in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses; if the license is not suspended, revoked or canceled; and if the person is not disqualified from driving a commercial motor vehicle, or subject to an “out-of-service” order.

(b) The Commissioner is authorized to suspend, revoke or cancel the privilege to operate a motor vehicle or disqualify the privilege to operate a commercial motor vehicle of any resident of this State or of a nonresident upon receiving notice of the conviction of such person in another
§ 17E-1-25. Penalties.

(a) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state, declared to be a felony.

(b) Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provisions of this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not more than six months in the county jail, or both fined and imprisoned, except that for the second violation of section seven of this article and, upon conviction thereof, the offender shall be fined not less than five hundred dollars nor more than two thousand dollars or imprisoned for not less than six months nor more than nine months in the county jail, or both fined and imprisoned. For the third or any subsequent conviction for violation of section seven of this article, upon conviction thereof, the offender shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned for not less than nine months nor more than one year in the county jail, or both fined and imprisoned.

(d) The division shall impose a civil penalty, in addition to any penalty required under the provisions of this section on any driver who is convicted of violating subsection (e), section thirteen of this article. The penalty shall be one thousand one hundred dollars.
AN ACT to amend and reenact §61-7-4 and §61-7-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-7-6a, all relating to the carrying of concealed weapons; clarifying the scope of a concealed weapons permit; amending reciprocity requirements; authorizing the Attorney General to investigate and execute reciprocity agreements with other states pertaining to the mutual recognition of permits or licenses to carry concealed handguns; setting forth minimum standards which must be met before such reciprocity agreements may be executed; clarifying the scope of valid out-of-state permits that may be recognized in West Virginia; establishing a registry of states with which West Virginia has entered into reciprocal agreements; and requiring the State Police to provide the public with a list of the states which have entered into reciprocity agreements.

Be it enacted by the Legislature of West Virginia:

That §61-7-4 and §61-7-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-7-6a, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.
§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.
§61-7-6a. Reciprocity; out-of-state concealed handgun permits.
§61-7-4. License to carry deadly weapons; how obtained.

1. (a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for such license, and shall pay to the sheriff, at the time of application, a fee of seventy-five dollars, of which fifteen dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff, a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

1. (1) The applicant's full name, date of birth, social security number and a description of the applicant's physical features;

2. (2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing such residence;

3. (3) That the applicant is twenty-one years of age or older: Provided, That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: Provided, however, That upon a showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer
eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof;

(5) That the applicant has not been convicted of a felony or of an act of violence involving the misuse of a deadly weapon;

(6) That the applicant has not been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense; or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(7) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(8) That the applicant is physically and mentally competent to carry such weapon;

(9) That the applicant has not been adjudicated to be mentally incompetent;

(10) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing such weapon: *Provided,* That this
requirement shall be waived in the case of a renewal applicant who has previously qualified;

(11) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) The sheriff shall conduct an investigation which shall verify that the information required in subdivisions (1), (2), (3), (5), (6), (8) and (9), subsection (a) of this section are true and correct.

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. Such fund shall be administered by the sheriff and shall take the form of an interest bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff’s office, as the sheriff may consider appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official national rifle association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by such institution;
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§ 42-105 (3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the national rifle association;

§ 42-106 (4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or national guard.

§ 42-111 A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

§ 42-118 (e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

§ 42-124 (f) If the information in the application is found to be true and correct, the sheriff shall issue a license. The sheriff shall issue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

§ 42-129 (g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of fifteen dollars which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. Any such license shall be valid for five years throughout the state, unless sooner revoked.

§ 42-136 (h) All persons holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, shall continue to hold a valid concealed weapons license until his or her license
140 expires or is revoked as provided in this article: *Provided,*
141 That all reapplication fees shall be waived for applications
142 received by the first day of January, one thousand nine
143 hundred ninety-seven, for any person holding a current and
144 valid concealed weapons license as of the sixteenth day of
145 December, one thousand nine hundred ninety-five, which
146 contains use restrictions placed upon the license as a
147 condition of issuance by the issuing circuit court. Any
148 licenses reissued pursuant to this subsection will be issued for
149 the time period of the original license.

150 (i) Each license shall contain the full name, social
151 security number and address of the licensee and a space upon
152 which the signature of the licensee shall be signed with pen
153 and ink. The issuing sheriff shall sign and attach his or her
154 seal to all license cards. The sheriff shall provide to each
155 new licensee a duplicate license card, in size similar to other
156 state identification cards and licenses, suitable for carrying in
157 a wallet, and such license card is deemed a license for the
158 purposes of this section.

159 (j) The Superintendent of the West Virginia State Police
160 shall prepare uniform applications for licenses and license
161 cards showing that such license has been granted and shall do
162 any other act required to be done to protect the state and see
163 to the enforcement of this section.

164 (k) In the event an application is denied, the specific
165 reasons for the denial shall be stated by the sheriff denying
166 the application. Any person denied a license may file, in the
167 circuit court of the county in which the application was made,
168 a petition seeking review of the denial. Such petition shall be
169 filed within thirty days of the denial. The court shall then
170 determine whether the applicant is entitled to the issuance of
171 a license under the criteria set forth in this section. The
172 applicant may be represented by counsel, but in no case shall
173 the court be required to appoint counsel for an applicant. The
174 final order of the court shall include the court's findings of
175 fact and conclusions of law. If the final order upholds the
176 denial, the applicant may file an appeal in accordance with
the rules of appellate procedure of the supreme court of
appeals.

(l) In the event a license is lost or destroyed, the person
to whom the license was issued may obtain a duplicate or
substitute license for a fee of five dollars by filing a notarized
statement with the sheriff indicating that the license has been
lost or destroyed.

(m) The sheriff shall, immediately after the license is
granted as aforesaid, furnish the Superintendent of the West
Virginia State Police a certified copy of the approved
application. It shall be the duty of the sheriff to furnish to the
Superintendent of the West Virginia State Police at any time
so requested a certified list of all such licenses issued in the
county. The Superintendent of the West Virginia State Police
shall maintain a registry of all persons who have been issued
concealed weapons licenses.

(n) All licensees must carry with them a state-issued
photo identification card with the concealed weapons license
whenever the licensee is carrying a concealed weapon. Any
licensee who fails to have in his or her possession a state-
issued photo identification card and a current concealed
weapons license while carrying a concealed weapon shall be
guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than fifty or more than two hundred dollars
for each offense.

(o) The sheriff shall deny any application or revoke any
existing license upon determination that any of the licensing
application requirements established in this section have been
violated by the licensee.

(p) No person who is engaged in the receipt, review or in
the issuance or revocation of a concealed weapon license
shall incur any civil liability as the result of the lawful
performance of his or her duties under this article.

(q) Notwithstanding the provisions of subsection (a) of
this section, with respect to application by a former law-
enforcement officer honorably retired from agencies
governed by article fourteen, chapter seven of this code;
article fourteen, chapter eight of this code; article two,
chapter fifteen of this code; and article seven, chapter twenty
of this code, an honorably retired officer is exempt from
payment of fees and costs as otherwise required by this
section, and the application of the honorably retired officer
shall be granted without proof or inquiry by the sheriff as to
those requirements set forth in subdivision (9), subsection (a)
of this section, if the officer meets the remainder of the
requirements of this section and has the approval of the
appropriate chief law-enforcement officer.

(r) Except as restricted or prohibited by the provisions of
this article or as otherwise prohibited by law, the issuance of
a concealed weapon permit issued in accordance with the
provisions of this section shall authorize the holder of the
permit to carry a concealed pistol or revolver on the lands or
waters of this state.

§61-7-6. Exceptions as to prohibitions against carrying
concealed deadly weapons.

The licensure provisions set forth in this article do not
apply to:

(1) Any person carrying a deadly weapon upon his or her
own premises; nor shall anything herein prevent a person
from carrying any firearm, unloaded, from the place of
purchase to his or her home, residence or place of business or
to a place of repair and back to his or her home, residence or
place of business, nor shall anything herein prohibit a person
from possessing a firearm while hunting in a lawful manner
or while traveling from his or her home, residence or place of
business to a hunting site and returning to his or her home,
residence or place of business;

(2) Any person who is a member of a properly organized
target-shooting club authorized by law to obtain firearms by
purchase or requisition from this state or from the United
States for the purpose of target practice from carrying any
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§61-7-6a. Reciprocity; out-of-state concealed handgun permits.

(a) A holder of a valid out-of-state permit or license to carry a concealed handgun, as issued by another state with...
which the State of West Virginia has executed a reciprocity agreement, shall be recognized as valid in this state, if the following conditions are met:

(1) The permit or license holder is a resident of the issuing state;

(2) The permit or license holder is 21 years or older;

(3) The permit or license is in his or her immediate possession;

(4) The permit or license holder is not a resident of the state of West Virginia; and,

(5) The State of West Virginia has executed a valid and effective reciprocity agreement with the issuing state pertaining to the carrying and verification of concealed handgun licenses and permits issued in the respective states.

(b) A holder of a valid permit or license from another state who is authorized to carry a concealed handgun in this state pursuant to provisions of this section is subject to the same laws and restrictions with respect to carrying a concealed handgun as a resident of West Virginia who is so permitted, and must carry the concealed handgun in compliance with the laws of this state.

c) No license or permit from another state is valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

d) The West Virginia Attorney General shall seek to enter into and may execute reciprocity agreements on behalf of the State of West Virginia with states which meet the following standards and requirements:

(1) The standards applied by the other state before issuing a concealed handgun license or permit must be equal to or greater than the standards imposed by this article;
(2) This state’s law-enforcement officers have continuous access to data bases on the criminal information network, twenty-four hours per day, seven days per week, to verify the continued validity of any license or permit to carry a concealed handgun that has been granted by the issuing state;

(3) The other state agrees to grant the right to carry a concealed handgun to residents of West Virginia who have valid concealed handgun permits issued pursuant to this article in their possession while carrying concealed weapons in that state; and

(4) The states agree to apprise one another of changes in permitting standards and requirements, to provide for a prompt reexamination of whether any adopted change in licensing or permitting standards negates the states’ ability to continue with the reciprocity agreement.

(e) The West Virginia State Police shall maintain a registry of states with which the State of West Virginia has entered into reciprocity agreements on the criminal information network and make the registry available to law-enforcement officers for investigative purposes.

(f) Every twelve months after the effective date of this section, the West Virginia Attorney General shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in their state based upon having a valid West Virginia concealed handgun permit; and (ii) whether a West Virginia resident may carry a concealed handgun in that state based upon having a valid West Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of a valid reciprocity agreement between the states.

(g) The West Virginia State Police shall make available to the public a list of states which have entered into reciprocity agreements with the State of West Virginia.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-6a, relating to voluntary election by eligible public safety officers for distributions from retirement plans for payment of qualified health insurance premiums.

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 §5-10D-6a, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.

1 (a) Effective on or after the first day of January, two thousand seven, any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan distributed in order to pay for qualified health insurance premiums. Such election shall be made in writing, in a form and manner authorized by the board, and shall be consistent with the provisions of Section 402(l)(6) of the Internal Revenue Code as it may be amended from time to time.
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(b) The definitions of the following terms contained in Section 402(l)(4) of the Internal Revenue Code, as it may be amended from time to time, shall apply for purposes of this section:

(1) “Eligible retirement plan”;

(2) “Eligible retired public safety officer”;

(3) “Public safety officer”; and

(4) “Qualified health insurance premiums”.

(c) The amount which a participant or member may elect to have distributed pursuant to subsection (a) of this section shall not exceed three thousand dollars per taxable year of the participant or member (or such other limitation amount as is specified in Section 402(l)(2) of the Internal Revenue Code, as it may be amended or as the limitation may be adjusted from time to time) and any amounts so elected to be distributed shall be paid by the board directly to the provider in payment of the qualified health insurance premiums. “Qualified health insurance premiums” includes premiums for certain accident or health insurance plans and certain long-term care insurance contracts.

(d) For purposes of this section, all eligible retirement plans administered by the board shall be treated as a single plan.
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(S.B. 104 - By Senators Foster, Hall, Oliverio, Edgell, McCabe, Deem, Plymale, Minard and McKenzie)

[Passed March 4, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-9, relating to when the Consolidated Public Retirement Board shall pay annuities.

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 §5-10D-9, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-9. When annuities to be paid.

1 For all of the public retirement plans administered by the board, the board shall make monthly annuity payments on the twenty-fifth day of each month, except the month of December, when the board shall make the payments on the eighteenth day of December. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday. All annuities shall be paid in twelve monthly payments.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all relating to consumer protection generally; defining certain terms; providing a procedure for consumers to implement a security freeze to prohibit a consumer-reporting agency from releasing all or any part of the consumer's credit report or any information derived from it to entities with whom the consumer has no existing credit relationship without the express authorization of the consumer in certain circumstances; exemptions; personal identification number or password; procedures for removal or temporary lifting of security freeze; exceptions; fees; providing for a written notice of a consumer's rights; providing civil penalties for violations; and making a violation an unfair or deceptive act or practice.

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 §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all to read as follows:

ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.

For the purposes of this article, the following terms have the following meanings:

1. "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity.

2. "Consumer" means an individual.

3. "Consumer-reporting agency" means any entity which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties.

4. "Credit report" means any written, oral or other communication of any information by a consumer-reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected, in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for:

   (A) Credit or insurance to be used primarily for a personal, family, household or agricultural purpose, except that nothing in this article authorizes or prohibits the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;

   (B) Employment purposes; or
(C) Any other purpose authorized under Section 15 U. S. C. §1681b as in effect on the effective date of this article.

(5) "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer-reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements.

§46A-6L-102. Security freeze; timing; effect; covered entities; cost.

(a) A consumer-reporting agency shall permit a consumer to place a security freeze on his or her credit report by the consumer selecting either of the following:

(1) A request in writing by certified or overnight mail to a consumer-reporting agency; or

(2) Making a request directly to the consumer-reporting agency through a secure electronic method, if available: Provided, That by the thirty-first day of January, two thousand nine, a secure electronic method shall be made available to the consumer by the consumer-reporting agency.

(b) A consumer-reporting agency shall place a security freeze on a credit report no later than five business days after receiving a written request from the consumer. If a security freeze is in place, a report or information may not be distributed to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer-reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report. A consumer-reporting agency may, regardless of the existence of a security freeze, distribute information contained in a consumer file to the extent otherwise permitted by law if the information was lawfully obtained by or for a
consumer-reporting agency from an open public record, without respect to the existence of a security freeze. Nothing herein prevents a consumer-reporting agency from choosing to apply the security freeze to the entire contents of the credit reporting file that is subject to the security freeze.

(c) The consumer-reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the distribution of his or her credit information.

(d) If the consumer wishes to allow his or her credit report to be accessed for a period of time while a freeze is in place, he or she shall contact the consumer-reporting agency by regular mail or a procedure developed under subsection (f) of this section and request that the freeze be temporarily lifted, providing all of the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section; and

(3) The time period for which the credit report shall be available to users of the credit report.

(e) A consumer-reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(f) A consumer-reporting agency shall develop procedures involving the use of telephone, fax, the internet or other electronic media to receive and process a request from a consumer pursuant to subsection (d) of this section to
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56 temporarily lift a freeze on a credit report in an expedited manner.

58 (g) (1) Beginning on the first day of September, two thousand eight, a consumer-reporting agency shall temporarily lift a security freeze from a consumer's credit report within fifteen minutes after the consumer's request is received pursuant to subsection (f) of this section by the consumer-reporting agency.

64 (2) A consumer-reporting agency does not have to remove a security freeze within the time provided in this subsection if:

67 (A) The consumer fails to meet the requirements of subsection (d) of this section; or

69 (B) The consumer-reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

71 (i) An act of God, including fire, earthquakes, hurricanes, storms or similar natural disasters or phenomena;

73 (ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations or similar occurrence;

76 (iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time or similar disruption;

80 (iv) Governmental action, including emergency orders or regulations, judicial or law-enforcement action or similar directives;

83 (v) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer-reporting agency's systems; or

86 (vi) Commercially reasonable maintenance of, or repair to, the consumer-reporting agency's systems that is unexpected or unscheduled.
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(h) A consumer-reporting agency shall remove or temporarily lift a freeze placed on a credit report only upon the request of the consumer, pursuant to subsection (d) or (j) of this section.

(i) If a third party requests access to a credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer has not allowed his or her credit report to be accessed for a period of time, the third party may treat the application as incomplete.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer-reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides the following:

1. Proper identification; and
2. The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section.

(k) A consumer-reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the distribution of a consumer credit report to any of the following:

1. A person or the person's subsidiary, affiliate, agent or assignee with whom the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debt;
2. A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under
this section for purposes of facilitating the extension of credit
or other permissible use;

(3) A person acting pursuant to a court order, warrant or
subpoena;

(4) A state or local agency that administers a program for
establishing and enforcing child support obligations;

(5) The West Virginia Department of Health and Human
Resources or its agents or assigns acting to investigate fraud;

(6) The West Virginia Department of Revenue or its
agents or assigns acting to investigate or collect delinquent
taxes or unpaid court orders or to fulfill any of its other
statutory responsibilities;

(7) A person for the purposes of prescreening as defined
by the federal Fair Credit Reporting Act;

(8) A person or entity administering a credit file
monitoring subscription service to which the consumer has
subscribed; and

(9) A person or entity for the purpose of providing a
consumer with a copy of his or her credit report upon the
consumer's request.

(10) Any person or entity for use in setting or adjusting
a rate, adjusting a claim or underwriting for insurance
purposes to the extent not otherwise prohibited by law.

(m) The provisions of this section do not apply to any of
the following:

(1) A consumer-reporting agency that acts only as a
reseller of credit information by assembling and merging
information contained in the database of another consumer-
reporting agency or multiple consumer credit-reporting
agencies and does not maintain a permanent database of
credit information from which new consumer credit reports
are produced. A consumer-reporting agency acting as a
reseller shall honor any security freeze placed on a consumer credit report by another consumer-reporting agency.

(2) A check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payments.

(3) A deposit account information service company which issues reports regarding account closures due to fraud, a substantial number of overdrafts, ATM abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(4) A consumer-reporting agency’s database or file which consists of information concerning, and used for, criminal record information, fraud prevention or detection, personal loss history information and employment, tenant or background screening.

(n) Except as prohibited by subsection (o) of this section, a consumer-reporting agency may charge a reasonable fee, not to exceed five dollars, to a consumer who elects to place, remove or temporarily lift a security freeze on the consumer’s credit report. No fees except those authorized by this subsection and subsection (p) of this section may be charged in connection with a security freeze.

(o) A consumer-reporting agency may not charge a fee for security freeze services to a consumer who is a victim of identity theft and who provides a copy of a police report, an investigative report or a written complaint made to the Federal Trade Commission, to the office of the Attorney General of West Virginia or to a law-enforcement agency concerning the identity theft.

(p) A consumer may be charged a reasonable fee, not to exceed five dollars, if the consumer fails to retain the original unique personal identification number or password provided
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190 by the consumer-reporting agency and must be reissued the
191 same or a new unique personal identification number or
192 password.

§46A-6L-103. Notice of rights.

1 (a) At any time that a consumer is required to receive a
2 summary of rights required under Section 609 of the federal
3 Fair Credit Reporting Act, 15 U. S. C. §1681g, as in effect on
4 the effective date of this article, the following notice shall be
5 included:

6 "West Virginia consumers have the right to obtain a
7 security freeze.

8 You may obtain a security freeze on your credit report to
9 protect your privacy and ensure that credit is not granted in
10 your name without your knowledge. You have a right to
11 place a security freeze on your credit report pursuant to West
12 Virginia law.

13 The security freeze will prohibit a consumer reporting
14 agency from releasing any information in your credit report
15 without your express authorization or approval.

16 The security freeze is designed to prevent credit, loans
17 and services from being approved in your name without your
18 consent. When you place a security freeze on your credit
19 report, within five business days you will be provided a
20 unique personal identification number or password to use if
21 you choose to remove the freeze on your credit report or to
22 temporarily authorize the distribution of your credit report for
23 a period of time after the freeze is in place. To provide that
24 authorization, you must contact the consumer-reporting
25 agency and provide all of the following:

26 (1) The unique personal identification number or
27 password provided by the consumer-reporting agency;

28 (2) Proper identification to verify your identity; and
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(3) The period of time for which the report shall be available to users of the credit report.

A consumer-reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around or specifically for a certain creditor, a few days before actually applying for new credit.

You have the right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer-reporting agency."

(b) If a consumer requests information about a security freeze, he or she shall be provided with the notice provided in this section about how to place, temporarily lift and remove a security freeze.

§46A-6L-104. Violations; penalties.

(a) If a consumer-reporting agency negligently violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five business days following discovery or actual knowledge of the distribution of the information, including specificity as to the information distributed and the third-party recipient of the information.
(2) File a complaint with the Federal Trade Commission or the office of the Attorney General of West Virginia.

(3) File a civil action against the consumer-reporting agency seeking:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) Actual damages sustained or not more than one thousand dollars, whichever is greater; and

(C) Reasonable expenses, court costs, investigative costs and attorney's fees.

(4) Each violation of the security freeze is a separate incident for purposes of imposing penalties under this section.

(b) If a consumer-reporting agency willfully violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five business days following discovery or actual knowledge of the distribution of the information, including specificity as to the information distributed and the third-party recipient of the information.

(2) File a complaint with the Federal Trade Commission or the office of the Attorney General of West Virginia.

(3) File a civil action against the consumer-reporting agency seeking:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) Actual damages sustained or not more than five thousand dollars, whichever is greater; and

(C) Reasonable expenses, court costs, investigative costs and attorney's fees.
(4) Each violation of the security freeze is a separate incident for purposes of imposing penalties under this section.

§46A-6L-105. Unfair or deceptive acts or practices.

Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this chapter regarding fraudulent acts or practices committed by a person in connection with a consumer transaction and shall be subject to the enforcement provisions of article seven of this chapter.

CHAPTER 46

(S.B. 403 - By Senator Tomblin, Mr. President)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §7-15-16 of the Code of West Virginia, 1931, as amended, relating to increasing the limitation requiring sealed bids for certain purchases and contracts entered into by emergency ambulance service authorities.

Be it enacted by the Legislature of West Virginia:

That §7-15-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of ten thousand dollars, shall be based on competitive sealed bids. Bids shall be obtained by public 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 publication is the service area of the authority. The second publication shall be made at least fourteen days before the final date for submitting bids. In addition to publication, the notice may also be published by any other advertising medium the authority may consider advisable and the authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the office of the authority.

CHAPTER 47

(S.B. 142 - By Senators Kessler, Foster, Green, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed February 16, 2007; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2007.]

AN ACT to amend and reenact §60A-10-15 of the Code of West Virginia, 1931, as amended, relating to providing a penalty for illegally possessing, possessing with intent to distribute or distributing an iodine matrix and/or iodine crystals; defining iodine matrix; and establishing exemption for household uses not intended for manufacture of a controlled substance.

Be it enacted by the Legislature of West Virginia:

That §60A-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-15. Iodine solution greater than two percent; prescription or permit required; offenses; penalties.

(a) A person may offer to sell, sell or distribute an iodine matrix only:

(1) As a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or

(2) To a person who is actively engaged in the legal practice of animal husbandry of livestock.

(b) Prescriptions issued under this section:

(1) Shall provide for a specified number of refills;

(2) May be issued by any means authorized by the Board of Pharmacy; and

(3) May be filled by a person other than the veterinarian or physician issuing the prescription.

(c) A person offering iodine matrix for sale:

(1) Shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(2) Shall keep a record, which may consist of sales receipts of each person purchasing iodine matrix; and

(3) Shall, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.

(d) A person engaging in a regulated transaction pursuant to the provisions of subsection (a) of this section shall not
possess with intent to distribute or distribute an iodine matrix to a person who:

(1) Does not present a prescription or is not engaged in animal husbandry, as required under subsection (a) of this section; or

(2) Is not excepted under subsection (h) of this section.

(e) Any person who violates subsection (d) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars.

(f) A person shall not:

(1) Possess iodine crystals and/or an iodine matrix without proof of obtaining the crystals and/or solution in compliance with subsection (a) of this section; or

(2) Possess with intent to distribute or distribute iodine crystals and/or an iodine matrix in violation of subsection (a) of this section.

(g) Any person who violates subsection (f) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars.

(h) The provisions of subdivision (1), subsection (f) of this section do not apply to:

(1) A public or private regularly established primary or secondary school or a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(2) A veterinarian licensed to practice pursuant to the provisions of article ten, chapter thirty of this code;

(3) A health care facility; or
(4) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier, or an agent of any of these persons, who possesses an iodine matrix in the regular course of lawful business activities.

(5) The transfer or receipt of any betadine or povidone solution with an iodine content not exceeding ten percent in containers of eight ounces or less, or any tincture of iodine not exceeding two percent in containers of one ounce or less that is sold over the counter and is employed solely for its intended common household use.

(i) As used in this section, “iodine matrix” means iodine at a concentration greater than two percent, by weight, in a matrix or solution.

CHAPTER 48

(Com. Sub. for S.B. 175 - By Senators Prezioso, Minard, Kessler and Foster)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all relating to regulation and procedures for the remediation of clandestine drug laboratories; defining terms; establishing a program of certification and licensing of persons engaged in the business of remediation; providing for legislative rules; authorizing the Department of Health and Human Resources to establish fees for certification, licensing and notification requirements; setting forth the responsibility of law-enforcement agencies to notify the Department of Health and Human Resources and residential property owners of the existence of a clandestine drug
laboratory; setting forth the responsibility of residential property owners for remediation of clandestine drug laboratories; providing immunity from liability for innocent property owners who successfully remediate a clandestine drug laboratory; and establishing civil penalties for persons convicted pursuant to subsection (d), section four, article ten of said chapter and whose actions resulted in the necessity of remediation of a clandestine drug laboratory.

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 §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all to read as follows:

ARTICLE 11. CLANDESTINE DRUG LABORATORY REMEDIATION ACT.

§60A-11-1. Legislative findings and purpose.

(a) **Findings.** -- The Legislature finds that some residential and business properties are being used for the consumption, production and manufacture of illegal drugs resulting in contamination with hazardous chemical residues. These illegal laboratories present an immediate and ongoing danger to public health and safety. Innocent members of the public may be harmed when they are exposed to the chemical residues if the property is not decontaminated prior to subsequent rental, sale or use of the property.

(b) **Purpose.** -- The purpose of this article is to protect the public health, safety and welfare by designating the Department of Health and Human Resources as the state
agency to set forth standards for the remediation of clandestine drug laboratories.

§60A-11-2. Definitions.

In this article:

(a) “Clandestine drug laboratory” means the area or areas where controlled substances, or their immediate precursors, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

(b) “Department” means the West Virginia Department of Health and Human Resources.

c) “Controlled substance” means the same as that term is defined in section one hundred one, article one of this chapter and article ten, section three of this chapter a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

d) “Immediate precursor” means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

e) “Law-enforcement agency” means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

(f) “Remediation” means the act of rendering safe and usable for the purposes for which it is intended residential property, as defined in subsection (g) of this section, or any structure appurtenant to the residential property, or other structure on the residential property that has been used for the
manufacture or consumption of methamphetamines or other illicit drug products.

(g) “Residential property” means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

(h) “Residential property owner” means the person holding record title to residential property as that term is defined in subsection (f) of this section.

§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

(a) The Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to address, at a minimum, the following issues:

(1) Establishment of scientific guidelines and numeric decontamination levels for the remediation of clandestine drug laboratories;

(2) Establishment of a certification program for persons or contractors who engage in the business of clandestine drug lab remediation;

(3) Establishment of a licensure procedure whereby individuals and businesses certified to do remediation of clandestine drug laboratories obtain a license from the Department of Health and Human Resources to do such work;

(4) Requiring licensed contractors to notify the Department of Health and Human Resources prior to beginning any remediation project;

(5) Setting forth certification procedures for the department to certify that the completed remediation of the residential property fully meets the scientific guidelines and
(6) Establishing requirements for property owners, sellers and landlords to disclose the existence of any former clandestine laboratory site or activity to any potential occupant of the residential property.

(b) Fees may be set by the legislative rule to be charged to persons or contractors engaged in the business of clandestine drug laboratory remediation for certification, licensing and notification as required in this article.

§60A-11-4. Law-enforcement responsibility.

Any law-enforcement agency, upon locating chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory on residential property, shall notify the residential property owner and the department in a manner prescribed by the legislative rule authorized by this article.

§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.

(a) Upon notification to the residential property owner by a law-enforcement agency that chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory have been located on the residential property owner’s property, the residential property owner shall be responsible for actions necessary to meet the remediation standards established by the legislative rule authorized by this article. The residential property owner is responsible for actions to ensure the residential property shall remain unoccupied from the time the residential property owner is notified of the clandestine drug laboratory until such time as the department certifies that the completed remediation meets the numeric decontamination levels set forth in the legislative rule authorized in this article. The department shall have forty-five days from receipt of all necessary paperwork and documentation to complete remediation certification:

Provided, That a residential property owner may demolish
the residential property as an alternative to meeting the remediation standards established by the department.

(b) Once the remediation has been certified complete by the department, the residential property owner and any representative or agent of a residential property owner who neither knew or should have known of the property’s illegal use shall be immune from civil liability for action brought for injuries or loss based upon the prior use of the residential property as a clandestine drug laboratory by future owners, renters, lessees or any other person who occupies the residential property.

(c) Any residential property owner who neither knew or should have known of the property’s illegal use who chooses to voluntarily and successfully complete the remediation prior to notification by a law-enforcement agency shall have the same immunity from liability as set forth in subsection (b) of this section if the remediation meets the certification standards set forth in legislative rules authorized by this article.

§60A-11-6. Liability for costs of remediation.

Any person convicted pursuant to section four, subsection (d), article ten of this chapter and whose actions also resulted in the necessity of remediation of a clandestine drug laboratory, shall be liable to the person or entity for all costs associated with the remediation of the clandestine drug laboratory. These costs may include attorney's fees and court costs reasonably necessary to bring an action to collect the amount paid for the remediation.
AN ACT to amend and reenact §31D-5-504 of the Code of West Virginia, 1931, as amended, relating to the process of filing with the office of the Secretary of State service of process on corporations in class action suits.

Be it enacted by the Legislature of West Virginia:

That §31D-5-504 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or
(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code: Provided, That with regard to a class action suit in which all defendants are to be served with the same process, notice or demand, service may be made by filing with the Secretary of State the original process, notice or demand and one copy for each named defendant. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, to: (A) The corporation’s registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State’s office as the person to whom notice and process are to be sent and if no person has been named, to the principal office of the corporation as that address was last given to the Secretary of State’s office. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States Postal Service that delivery has been
refused, and the return receipt or registered or certified mail
is appended to the original process or notice and filed in the
clerk’s office of the court from which the process or notice
was issued. No process or notice may be served on the
Secretary of State or accepted by him or her less than ten
days before the return day of the process or notice. The court
may order continuances as may be reasonable to afford each
defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or
necessarily the required means, of serving a corporation.

CHAPTER 50

(Com. Sub. for S.B. 411 - By Senators Kessler, Oliverio, Foster,
Green, Minard, Stollings, Wells, Barnes, Hall and Yoder)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §25-1B-1, §25-1B-2,
§25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all
relating to creation of the West Virginia Correctional Center
Nursery Act; defining terms; establishing eligibility
requirements and terms of participation; providing for
termination from the program; authorizing collection of child
support; requiring assignment of child support to the Division of
Corrections; requiring a portion of child support and other
moneys collected on behalf of a mother or child to be saved and
given to the mother upon her release; creating the Correctional
Center Nursery Fund; authorizing the Division of Corrections to
accept grants, gifts and other moneys; authorizing expenditures
from the fund; and allowing voluntary regulation of the
program.

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 §25-1B-1, §25-1B-2, §25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all to read as follows:

ARTICLE 1B. WEST VIRGINIA CORRECTIONAL CENTER NURSERY ACT.

§25-1B-1. Authorization; definitions.
(a) The Division of Corrections may establish a correctional center nursery in one or more of the correctional centers for women operated by the division. The program would allow eligible inmates and children born to them while in the custody of the division to reside together in the institution. In establishing this program, neither the inmate’s participation in the program nor any provision of this article shall affect, modify or interfere with the inmate’s custodial rights to the child nor does it establish legal custody of the child with the division.

(b) As used in this article:

(1) “Correctional Center Nursery Program” means the program authorized by this article.

(2) “Public assistance” means all forms of assistance, including monetary assistance from any public source paid either to the mother or child or any other person on behalf of the child.

(3) “Support” means the payment of money, including interest:
(A) For a child or spouse ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

(B) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or

(C) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(4) "Support order" means an award of support by order of a court of competent jurisdiction.

§25-1B-2. Eligible inmates.

An inmate is eligible to participate in the Correctional Center Nursery Program if she is pregnant at the time she is delivered into the custody of the Division of Corrections; she gives birth on or after the date the program is implemented; and she and the child meet any other criteria established by the division. Placement into the nursery program shall be by internal classification of the division. A sentencing court is without jurisdiction to order a placement of an inmate into the nursery program.

§25-1B-3. Terms of participation.

To participate in the Correctional Center Nursery Program, each eligible inmate selected by the division shall agree in writing to:
(1) Comply with any educational, counseling or other requirements established for the program by the Division of Corrections;

(2) If eligible, have the child participate in the Medicaid program or a health insurance program;

(3) Accept the normal risks of child bearing;

(4) Abide by any court decisions regarding the allocation of parental rights and responsibilities with respect to the child;

(5) Assign to the division any rights to support from any other person; and

(6) Specify with whom the child is to be placed in the event the inmate’s participation in the program is terminated for a reason other than release from imprisonment.

§25-1B-4. Termination of inmate’s participation in program.

An inmate’s participation in the Correctional Center Nursery Program may be terminated by the division if one of the following occurs:

(a) The inmate fails to comply with the agreement entered into under section three of this article;

(b) The inmate’s child becomes seriously ill, cannot meet medical criteria established by the division for the program or otherwise cannot safely participate in the program;

(c) A court of competent jurisdiction issues an order that designates a person other than the inmate as the child’s custodial parent and legal custodian;

(d) A court of competent jurisdiction grants custody of the child to a person other than the inmate;

(e) An order is issued granting shared parenting of the child;
(f) An order regarding the child is issued granting temporary, permanent, or legal custody of the child to a person other than the inmate, or to a public children services agency or private child placing agency; or

(g) The inmate is released from imprisonment.

§25-1B-5. Collection of child support.

(a) The rights to support assigned by any inmate shall constitute an obligation of the person who is responsible for providing the support to the division for the support provided the inmate and child pursuant to the Correctional Center Nursery Program. The Bureau of Child Support Enforcement shall collect support payments made pursuant to the assignment and forward them to the division.

(b) The division may receive the following:

(1) Money that is assigned or donated on behalf of, and public assistance provided to, a specific inmate or child participating in the Correctional Center Nursery Program; and

(2) Money or other property assigned or donated to establish and maintain the Correctional Center Nursery Program.

(c) Ten percent of the moneys described in this section shall be placed in the mandatory savings account of the mother for whom the money was received. The remaining moneys shall be used for items not covered by other program funds.

§25-1B-6. Program support; Correctional Center Nursery Fund.

The division shall obtain sufficient resources to initiate and maintain the Correctional Center Nursery Program if the program is established. The division may accept gifts, grants, property, funds, money, interest on investment of the fund, materials, labor, supplies or services from the United States
of America or from any governmental unit or any person, foundation, firm or corporation to support the program. All moneys collected shall be deposited in a special revenue account, designated the Correctional Center Nursery Fund, which is hereby created. 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 two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand eight, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. If there are sufficient moneys in the fund, they shall be invested by the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code.


Notwithstanding any other provision of this code to the contrary, neither the Correctional Center Nursery Program nor the division, with respect to the program, is subject to any regulation, licensing or oversight by the Department of Health and Human Resources unless the division and the Department of Health and Human Resources agree to voluntary regulation, licensing or oversight.

CHAPTER 51

(Com. Sub. for H.B. 2253 - By Delegates Caputo, Perdue, Tucker and Stalnaker)

[Passed March 10, 2007; in effect January 1, 2008.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §31-20-27 of the Code of West Virginia, 1931, as amended, relating to requiring classified
service designation for certain Regional Jail and Correctional Facility Authority employees; providing that certain employees retain their current exempt status; and authorizing employment of new employees who have successfully completed certain required examinations.

Be it enacted by the Legislature of West Virginia:

That §31-20-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

*§31-20-27. Employees of Regional Jail Authority; priority of hiring; civil service coverage.

(a) Notwithstanding any provision of this code to the contrary, the authority, when hiring employees to complete the approved staffing plan of a regional jail shall do so at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code. All persons employed under this subsection shall be placed in the civil service system as covered employees. On and after the first day of January, two thousand eight, the executive director, of the Regional Jail and Correctional Facility Authority; all employees within the office of the executive director and all regional jail administrators are exempt from coverage under the classified service.

(b) Persons employed under the provisions of this subsection shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code. All persons employed under this subsection shall also be covered by the policies and procedures of the West Virginia Public Employees

*CLERK’S NOTE: This section was also amended by S.B. 442 (Chapter 207), which passed prior to this act
21 Grievance Board created under section one, article three, chapter six-c of this code.

23 (c) Notwithstanding the provisions of section ten, article six, chapter twenty-nine of this code, and any rule promulgated thereunder, on and after the first day of July, two thousand seven, any person applying for employment with the Regional Jail and Correctional Facility Authority shall be hired based on passage of the correctional officer examination without regard to his or her position on the correctional officer register and shall be placed in the civil service system as covered employees: Provided, That no such person shall be hired before an otherwise qualified person on a preference register.

CHAPTER 52

(Com. Sub. for H.B. 2422 - By Delegates Perry, Pino and Stemple)

[Passed March 9, 2007; in effect ninety days from passage.] [Approved by the Governor on March 22, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-4; and to amend said code by adding thereto a new section, designated §31-20-30, all relating to reducing the reimbursement provided by the Regional Jails and the Division of Corrections provided that the Department of Health and Human Services and the Regional Jail Authority and the Department of Corrections will effectuate an electronic payment system.

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 §25-1-4; and that said code be amended by adding thereto a new section, designated §31-20-30, all to read as follows:

Chapter
25. Division of Corrections.
ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-4. Limitation on reimbursement rate to medical service providers for services outside division facilities.

(a) Effective the first day of July, two thousand seven, the division, or its contracted medical provider, may not pay an amount to an outside provider of a medical service for a person residing in a correctional facility greater than seventy-three percent of the billed charges: Provided, That critical access hospitals shall be reimbursed at eighty-five percent of the billed charges. This limitation applies to all medical care services, goods, prescription drugs and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of said correctional facility.

(b) Effective the first day of July, two thousand eight, the division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for a person residing in a correctional facility greater than the reimbursement rate applicable to service providers established by legislative rule of the Bureau for Medical Service within the Department of Health and Human Resources: Provided, That critical access hospitals shall be reimbursed at seventy-five percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: Provided, however, That the Department of Military Affairs and Public Safety and the Department of Health and Human Resources effectuate an interagency agreement for the electronic processing and payment of medical services.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.
§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.

(a) Effective the first day of July, two thousand seven, the authority, or its contracted medical provider, may not pay an amount to an outside provider of a medical service for a person residing in a regional jail greater than seventy-three percent of the billed charges: Provided, That critical access hospitals shall be reimbursed at eighty-five percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs and medications provided to a person who is in the custody of a regional jail and is provided these services outside of a regional jail.

(b) Effective the first day of July, two thousand eight, the authority, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for a person residing in a regional jail greater than the reimbursement rate applicable to service providers established by legislative rule of the Bureau for Medical Service within the Department of Health and Human Resources: Provided, That critical access hospitals shall be reimbursed at seventy-five percent of the billed charges. This limitation applies to all medical care services, goods, prescription drugs and medications provided to a person who is in the custody of a regional jail and is provided these services outside of a regional jail: Provided, however, That the Department of Military Affairs and Public Safety and the Department of Health and Human Resources effectuate an interagency agreement for the electronic processing and payment of medical services.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-31, relating to authorizing the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority to establish a work program for qualified inmates in regional jail facilities; providing accounting procedures and requirements; specifying required deductions from earnings; permitting transfer of funds to the Commissioner of Corrections; and authorizing legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-20-31, to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-31. Work program.

(a) The executive director is authorized to establish at each regional jail facility a work program for qualified inmates and to establish at each regional jail facility under his or her jurisdiction an inmate trustee account. The authority shall establish guidelines and qualifications to allow inmates sentenced to a regional jail facility to be gainfully employed with local businesses and governmental entities as part of a
Provided, That with regard to an inmate sentenced to the Division of Corrections that is domiciled at a regional jail facility under the supervision of the authority, the Commissioner of the Division of Corrections or designee shall first determine the eligibility of such inmate for participation in the work program authorized by this section and consent to such inmate's participation therein. A qualified inmate does not include an inmate convicted of a sexual offense or a violent felony.

(b) The administrator or designee of each regional jail facility shall receive and take charge of the money of all inmates in his or her regional jail and all money sent to the inmates or earned by the inmates as compensation for work performed under this section. The administrator or designee shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all the money so received, which account is subject to examination by the executive director or designee. The administrator or designee shall deposit the moneys in one or more responsible banks in accounts to be designated inmate trustee account.

(c) For each inmate sentenced to the Division of Corrections participating in a work program authorized by this section, the administrator or designee of the regional jail facility shall keep in an account at least ten percent of all money earned during the inmate's incarceration and pay the money to the inmate at the time of the inmate's release. The administrator may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(d) An inmate who works in work programs established under this section shall make reimbursement to the authority toward the cost of his or her incarceration to be credited to the agency billed for that incarceration: Provided, That prior to directing a qualified inmate to make reimbursement under this section, the executive director or designee shall consider the following:

(1) The inmate's ability to pay;
(2) The nature and extent of the inmate's responsibilities to his or her dependents, if any;

(3) The length of probable incarceration under the court's sentence; and

(4) The effect, if any, that reimbursement might have on the inmate's rehabilitation.

(e) (1) The administrator shall deduct from the earnings of each qualified inmate legitimate court-ordered financial obligations including, but not limited to, child support payments, liens and any other court-ordered financial obligation. The executive director shall develop a policy that outlines the formula for the distribution of the qualified inmate's income and the formula shall include a percentage deduction, not to exceed forty percent in the aggregate, for any court ordered victim restitution, court fees and child support obligations owed under a support order, including an administrative fee not to exceed one dollar, consistent with the provisions of subsection (c), section four hundred six, article fourteen, chapter forty-eight of this code, to support the authority's administration of this financial service.

(2) In the event that the qualified inmate's income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations and garnishment: Provided, That nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate's moneys, assets or property.

(f) The administrator or designee of a regional jail facility, upon request of an inmate to release funds, on behalf of the family of the inmate, may authorize the release of funds up to one half of the money earned by the inmate participating in a work program as authorized by this section: Provided, That the court-ordered financial obligations provided in subsection (e) of this section and other fees owed by the inmate including, but not limited to, the costs of incarceration and any restitution for facility rule infractions,
have been paid. The remainder of the money earned, after
deducting amounts expended as authorized, shall be
accumulated to the credit of the inmate and be paid to the
inmate at times as may be prescribed by rules. The funds so
accumulated on behalf of inmates shall be held by the
administrator or designee of each institution under a bond
approved by the Attorney General.

(g) The administrator or designee shall deliver to the
inmate at the time he or she leaves the regional jail facility,
or as soon as practicable after departure, moneys and
earnings then credited to the inmate: Provided, That if an
inmate is transferred to the physical custody of the
Commissioner of the Division of Corrections, as defined in
section two of this article, at the time he or she leaves the
regional jail facility, the administrator or designee shall
deliver moneys and earnings then credited to the inmate to
the Commissioner of the Division of Corrections for
administration in accordance with the provisions of section
three-a, article one, chapter twenty-five of this code. In case
of the death of the inmate before authorized release from the
regional jail facility, the administrator or designee shall
deliver the property to the inmate's lawful representative. In
case a conservator is appointed for the inmate while he or she
is domiciled at the regional jail facility, the administrator
shall deliver to the conservator, upon proper demand, all
moneys and personal property belonging to the inmate that
are in the custody of the administrator.

(h) The executive director shall propose rules for
legislative approval in accordance with article three, chapter
twenty-nine-a of this code to administer and establish the
work programs authorized by this section.

(i) Notwithstanding any provision of this code to the
contrary, the county commission, its members and agents, the
Executive Director of the West Virginia Regional Jail and
Correctional Facility Authority or designee its members or
agents, the sheriff, his or her deputies, correctional officers
and agents shall be immune from all liability of any kind
except for accident, injury or death resulting directly from
gross negligence or malfeasance.
AN ACT to repeal §7-8-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-20-32, all relating to amount, collection of and refunding of jail processing fees.

Be it enacted by the Legislature of West Virginia:

That §7-8-13 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §31-20-32, all to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-32. Jail processing fee.

(a) A person committed to be housed in jail by order of magistrate, circuit judge or by temporary commitment order shall, at the time of booking into the jail, pay a processing fee of thirty dollars. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of fifty percent, from any new deposits made into the person’s jail trust account until the jail processing fee is paid in full. The fee shall be credited to the Regional Jail and Correctional Facility Authority’s operating budget. The fee should be paid prior to the offender being released.
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(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

CHAPTER 55

(Com. Sub. for S.B. 192 - By Senators Love, Hunter, White, McKenzie and Plymale)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-8-8, relating to authorizing the Commissioner of the Division of Corrections to issue orders of arrest for certain inmates who are no longer in the physical custody of the commissioner; allowing division personnel to obtain criminal complaints and warrants for escapees and absconders; and entering data into all criminal reporting databases and other computerized systems for the reporting and apprehension of criminals and fugitives.

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 §62-8-8, to read as follows:
ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-8. Orders and warrants for arrest of inmates; authorization to obtain arrest warrants.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the Division of Corrections, or his or her designee, may issue an order of arrest for inmates who have been released from the custody of the division due to a clerical error, mistake or due to the failure of a sentencing court to timely transmit an order of commitment prior to the release of an inmate from the commissioner’s custody or to the commissioner’s custody. All law-enforcement officers shall honor and enforce orders of arrest in the same manner afforded warrants of arrest issued by magistrate or circuit courts notwithstanding any provision of this code to the contrary.

(b) The Commissioner of the Division of Corrections, or his or her designee, may file criminal complaints and obtain from a court of competent jurisdiction an arrest warrant for any inmate under commitment to the commissioner for service of a sentence of incarceration who has escaped from a facility or otherwise absconded from a furlough or temporary release.

(c) The Commissioner of the Division of Corrections, or his or her designee, may enter such orders of arrest or warrants referred to in this section into all criminal reporting databases and other computerized systems utilized by law enforcement for the reporting and apprehension of criminals and fugitives.
AN ACT to amend and reenact §7-1-3mm of the Code of West Virginia, 1931, as amended, relating to transfer of development rights; eliminating the five year ordinance waiting period; and providing that the transfer of development rights may be renewable.

Be it enacted by the Legislature of West Virginia:

That §7-1-3mm of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3mm. Transfer of development rights in growth counties.

(a) In addition to all other powers and duties now conferred by law upon county commissions, if a county has been designated as a growth county as that term is defined in section three, article twenty of this chapter, those county commissions, upon approval by a majority of the legal votes cast at an election as provided in section three-nn of this article, are hereby authorized to, as part of a county-wide zoning ordinance, establish a program for the transfer of development rights in order to:

(1) Encourage the preservation of natural resources;
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(2) Protect the historic, scenic, recreational and agricultural qualities of open lands; and

(3) Facilitate orderly growth and development in the county.

(b) The program for the transfer of development rights may provide for:

(1) The voluntary transfer of the development rights permitted on any parcel of land to another parcel of land for use in accordance with the zoning and subdivision ordinance;

(2) Restricting or prohibiting further development of the parcel from which development rights are severed; and

(3) Increasing the density or intensity of development of the parcel to which such rights are transferred.

(c) The program for the transfer of development rights shall:

(1) Designate a program for which development rights may be transferred from any parcel of land to any other parcel of land for use in accordance with the zoning and subdivision ordinance;

(2) Provide that any rights transferred under this section be for a period of ten years and may be renewed for additional ten year periods; and

(3) Any rights which expire before being used for development, revert to the original parcel of land from which the rights were first severed.
(d) The county commission may not set a price for any development rights that are proposed to be transferred or received.

(e) "Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance.

(f) Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon the transfer shall vest in the grantee and be freely alienable.

(g) The zoning ordinance may provide for:

(1) The method of transfer of development rights;

(2) Recordation of the date of each transfer;

(3) The names of the transferor and transferee;

(4) A description of the property;

(5) The granting of easements;

(6) Reasonable regulations to effect and control transfers and assure compliance with the provisions of the ordinance; and

(7) Any other information necessary to administer the program.
AN ACT to amend and reenact §7-1-3r of the Code of West Virginia, 1931, as amended, relating to selection of executive secretary to county commission on crime, delinquency and correction; and removing circuit clerk from that position.

Be it enacted by the Legislature of West Virginia:

That §7-1-3r of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3r. Purposes of section; county commissions on crime, delinquency and correction created and established; composition of commission; powers and duties of commission; executive secretary; duties of executive secretary.

(a) The enactment of the Omnibus Crime Control and Safe City Streets Act of 1968 and subsequent amendments thereto with millions of federal dollars available to local units of government in the fiscal year one thousand nine hundred seventy-two--one thousand nine hundred seventy-three, and the probability that this program will be continued and expanded in future years makes the establishment of a county agency to ensure that the county may make the best use of the benefits of this act.
(b) There is hereby established in each county a county commission on crime, delinquency and correction. The commission shall consist of the members of the county commission and such other members as may be designated by the county commission. Members other than the county commission members shall serve at the will and pleasure of the county commission.

(c) This commission shall collect and compile all data and other information with respect to police agencies, courts of record and justice of peace courts, prosecution of crimes, probation, jails, juvenile detention facilities and such other matters as might be concerned with the total criminal justice system.

(d) The commission shall work closely with the Governor's Committee on Crime, Delinquency and Correction established by Executive Order 7-A66 dated the first day of September, one thousand nine hundred sixty-six.

(e) The commission shall analyze the data and information herein required, shall determine federal funds available under the provisions of the state plan developed by the aforesaid Governor's Committee on Crime, Delinquency and Correction and shall make recommendations to the governing body with respect to priorities in the expenditure of funds.

(f) The commission may make recommendations with respect to steps to be taken in the county designed to improve the criminal justice system.

(g) The commission shall select one of its members to be the executive secretary to the commission and as such shall keep a record of all proceedings, shall collect and compile data and information as may be required by the commission and perform other duties as reasonably may be required by the commission to effectuate the purposes of this section.
AN ACT to amend and reenact §7-12-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §7-24-1, all relating to the Appalachian Region Interstate Compact; authorizing revenue-sharing agreements between development authorities or similar authorities outside the state; providing that certain obligations of development authorities are not debts pursuant to section eight, article X of the Constitution of West Virginia; creating the Appalachian Region Interstate Compact; providing a short title; establishing the compact and authorizing membership under certain conditions; setting forth powers and duties of compact members; providing for six compact commissioners; authorizing appointment by the President of the Senate and the Speaker of the House of Delegates; specifying terms of service; providing for funding for operating expenses; providing that members will receive compensation and reimbursement for reasonable and necessary expenses as determined by each state; and providing that the act will become effective upon adoption of at least one other state.

Be it enacted by the Legislature of West Virginia:

That §7-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §7-24-1, all to read as follows:
ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

Article
12. County and Municipal Development Authorities.

§7-12-7. Powers generally.

(a) The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex, including, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage and maintain such buildings and structures and provide adequate
insurance of all types and in connection with the primary use thereof and incidental thereto to provide such services, such as barber shops, newsstands, drugstores and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (6) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (7) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (8) to acquire real property by gift, purchase or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the board of directors of the development authority; (9) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, on such terms as the authority shall determine and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this
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75 article is a "governing body" within the definition of that  
76 term as used in said article sixteen, chapter eight of this  
77 code; and (12) to expend its funds in the execution of the  
78 powers and authority herein given, which expenditures, by  
79 the means authorized herein, are hereby determined and  
80 declared as a matter of legislative finding to be for a public  
81 purpose and use, in the public interest, and for the general  
82 welfare of the people of West Virginia, to alleviate and  
83 prevent economic deterioration and to relieve the existing  
84 critical condition of unemployment existing within the state.  

85 (b) The amendment of this section enacted in the year  
86 one thousand nine hundred ninety-eight is intended to  
87 clarify the intent of the Legislature as to the manner in  
88 which an authority may sell, lease or otherwise dispose of  
89 real and personal property owned by an authority and shall  
90 be retroactive to the date of the prior enactment of this  
91 section.  

92 (c) Notwithstanding any provision of this code to the  
93 contrary, any development authority participating in the  
94 Appalachian Region Interstate Compact pursuant to chapter  
95 seven-a of this code may agree to a revenue and economic  
96 growth-sharing arrangement with respect to tax revenues  
97 and other income and revenues generated by any facility  
98 owned by an authority. Any development authority or  
99 member locality may be located in any jurisdiction  
100 participating in the Appalachian Region Interstate Compact  
101 or a similar agreement for interstate cooperation for  
102 economic and workforce development authorized by law.  
103 The obligations of the parties to any such agreement shall  
104 not be debt within the meaning of section eight, article X of  
105 the Constitution of West Virginia. Any such agreement  
106 shall be approved by a majority vote of the governing bodies  
107 of the member localities reaching such an agreement but  
108 does not require any other approval.  

109 (d) "Member localities" means the counties,  
110 municipalities or combination thereof which are members of  
111 an authority.
ARTICLE 24. APPALACHIAN REGION INTERSTATE COMPACT.

§7-24-1. Appalachian Region Interstate Compact; form of compact.

The Appalachian Region Interstate Compact (the compact) is hereby created and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Short title.

This act shall be known and may be cited as the Appalachian Region Interstate Compact.

Article II. Compact established.

Pursuant to section ten, article I of the Constitution of the United States, the signatories hereby provide a mechanism for the creation of one or more authorities for the purpose of developing one or more facilities to enhance the regional economy that shall constitute instrumentalities of the signatories. For purposes of this chapter, "Appalachian Region" means the areas included in "region" as defined in §403 of the Appalachian Regional Development Act of 1965, as amended (40 U. S. C.§14102 (a)(1)).

Article III. Agreement.

The State of West Virginia may enter into agreement with one or more signatory states and, upon adoption of this compact, agree as follows:

1. To study, develop and promote a plan for the design, construction, financing and operation of interstate facilities of strategic interest to the signatory states;
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2. To coordinate efforts to establish a common legal framework in all the signatory states to authorize and facilitate design, construction, financing and operation of such facilities either as publicly operated facilities or through other structures authorized by law;

3. To advocate for federal and other public and private funding to support the establishment of interstate facilities of interest to all signatory states;

4. To make available to such interstate facilities funding and resources that are or may be appropriated and allocated for that purpose; and

5. To do all things necessary or convenient to facilitate and coordinate the economic and workforce development plans and programs of the State of West Virginia and the other signatory states to the extent such plans and programs are not inconsistent with federal law and the laws of the State of West Virginia or other signatory states.

Article IV. Compact commission established; membership; chairman; meetings; and report.

Each signatory state to the compact shall establish a compact commission. In West Virginia, the Appalachian Region Interstate Compact Commission (the commission) shall be established as a regional instrumentality and agency of the State of West Virginia and the signatory states. The compact commissions of the signatory states shall be empowered to carry out the purposes of their respective compacts.

The Appalachian Region Interstate Compact Commission shall consist of six members from each of the other signatory states to be appointed pursuant to the laws of the signatory states and six members of the West Virginia delegation to the commission to be appointed as follows: Three members to be appointed by the President of the Senate and three members to be appointed by the Speaker of the House of Delegates. Members of the West Virginia
delegation to the compact commission shall serve terms coincident with their terms of office if an elected state or local representative, and may be reappointed. Members who are not elected officials shall serve a term of four years and may be reappointed. The chairman of the commission shall be elected by the members of the commission from among its membership. The chairman shall serve for a term of two years and the chairmanship shall rotate among the signatory states.

The commission shall meet not less than twice annually; however, the commission shall not meet more than once consecutively in the same state.

**Article V. Powers and duties of the commission.**

The commission is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, the commission may:

1. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;

2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel and agents as may be necessary in the judgment of the commission and fix their compensation;

3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate and maintain facilities to the extent necessary or convenient to accomplish the purposes of the compact;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein;

5. Invest and reinvest funds of the commission;

6. Enter into contracts of any kind and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the compact;

7. Expend such funds as may be available to it for the purpose of developing facilities, including, but not limited to: (i) Purchasing real estate; (ii) grading sites; (iii) improving, replacing and extending water, sewer, natural gas, electrical and other utility lines; (iv) constructing, rehabilitating and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the commission to meet its objectives;

8. Fix and revise, from time to time, and charge and collect rates, rents, fees or other charges for the use of facilities or for services rendered in connection with the facilities in accordance with applicable state and federal laws and as approved by the commission;

9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds or interest; mortgage, pledge or otherwise encumber the property or funds of the commission; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit or insurers;

10. Issue bonds the principal and interest on which are payable exclusively from the revenues and receipts of a specific facility in accordance with applicable laws;
11. Accept funds and property from the state and other signatory jurisdictions, persons, counties, cities and towns and use the same for any of the purposes for which the commission is created;

12. Apply for and accept grants or loans of money or other property from any federal agency for any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

13. Make loans or grants to, and enter into cooperative arrangements with, any person, partnership, association, corporation, business or governmental entity in furtherance of the purposes of this chapter for the purposes of promoting economic and workforce development, provided that such loans or grants shall be made only from revenues of the commission that have not been pledged or assigned for the payment of any of the commission's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans, and any security therefor. The word "revenues" as used in this subdivision includes grants, loans, funds and property, as set out in subdivisions (11) and (12) of this article;

14. Enter into agreements with political subdivisions of the state for joint or cooperative action;

15. Exercise any additional powers granted to it by subsequent legislation; and

16. Do all things necessary or convenient to carry out the purposes of this chapter.

Article VI. Funding and compensation.

The commission may utilize for its operation and expenses: (i) Funds that may be generated by borrowing, gifts and grants; (ii) funds appropriated to it for such purposes by the West Virginia Legislature and the
legislatures of the other signatory states; (iii) federal funds; and (iv) revenues collected for the use of any facility approved by the commission.

Members of the West Virginia delegation to the commission shall not receive compensation but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties to the commission. All such expenses shall be paid from existing appropriations, gifts, grants, federal funds or other revenues collected for the use of any facility approved by the commission. Members of the commission representing other signatory states shall receive compensation and reimbursement of expenses incurred in the performance of their duties to the commission in accordance with the applicable laws of the respective signatory states.

The provisions of this act shall become effective upon the enactment of the Appalachian Region Interstate Compact as authorized by this article and upon the enactment of this compact by at least one other state in accordance with its terms and federal law.

CHAPTER 59

(Com. Sub. for S.B. 105 - Senators Foster, Hall, McCabe, Oliverio, Deem, Edgell, Plymale and McKenzie)

[Passed March 4, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2007.]

AN ACT to amend and reenact §7-14E-2 of the Code of West Virginia, 1931, as amended, relating to imposing a surcharge on county commissions for delinquent payment of fees due the Deputy Sheriff Retirement Fund.
Be it enacted by the Legislature of West Virginia:

That §7-14E-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO DEPUTY SHERIFF RETIREMENT SYSTEM.

§7-14E-2. Statewide uniform fees for reports generated by sheriff’s offices; dedication of fees.

(a) The county commission of each county in this state shall set a fee for obtaining certain reports. This fee shall be set at a minimum of ten dollars for each report, with a maximum of twenty dollars for each report. Ten dollars of the charge for each report shall be deposited into the Deputy Sheriff Retirement Fund created in section six, article fourteen-d of this chapter. The reports for which a charge may be made are traffic accident reports, criminal investigation reports, incident reports and property reports.

(b) All sheriff’s offices in this state shall collect a fee of five dollars for performing the following services: Adult private employment fingerprinting; fingerprinting for federal firearm permits; motor vehicle number identification; adult identification cards; and photo-identification cards. Upon collection, these fees shall be deposited into the Deputy Sheriff Retirement Fund created in section six, article fourteen-d of this chapter.

(c) All sheriff’s offices in this state shall collect a fee of five dollars for each nongovernmental background investigation report. Upon collection, these fees shall be deposited into the Deputy Sheriff Retirement Fund created in section six, article fourteen-d of this chapter.

(d) No charge may be made under this section for any report or reports made to governmental agencies.
(e) Any county commission which fails to make any payment due the Deputy Sheriff Retirement Fund by the fifteenth day following the end of each calendar month in which a fee or other contribution is received by the county’s sheriff may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent county commission commences after the fifteenth day following the end of the calendar month in which the fee or other contribution is due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is fifty dollars.

CHAPTER 60

(S.B. 141 - By Senators Kessler, Foster, Green, Hunter, Jenkins, Oliverio, Stollings, Wells, White, Barnes, Caruth, Deem, Hall and McKenzie)

[Passed February 2, 2007; in effect ninety days from passage.]
[Approved by the Governor on February 20, 2007.]

AN ACT to amend and reenact §51-2A-2 of the Code of West Virginia, 1931, as amended, relating to family court jurisdiction in sibling visitation proceedings.

Be it enacted by the Legislature of West Virginia:

That §51-2A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.
(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of articles eleven, twelve and fourteen, chapter forty-eight of this code;

(3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;

(5) All actions for the interstate enforcement of family support brought under article sixteen, chapter forty-eight of this code and for the interstate enforcement of child custody brought under the provisions of article twenty of said chapter;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or
decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under article seven, chapter forty-eight of this code;

(16) All proceedings to obtain spousal support brought under article eight, chapter forty-eight of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to sections three, four and six, article ten, chapter forty-four of this code, exercising concurrent jurisdiction with the circuit court; and
(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter forty-eight of this code. A family court may not exercise the powers given courts of record in section one, article five, chapter fifty-one of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature.
A family court judge is not a "judge of any court of record" or a "judge of a court of record" as the terms are defined and used in article nine of this chapter.

CHAPTER 61

(Com. Sub. for H.B. 3106 - By Delegates Webster, White, Fragale, Long, Moore, Hrutkay, Brown, Tabb, Miley, Fleischauer and Guthrie)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §51-2A-3 and §51-2A-5 of the Code of West Virginia, 1931, as amended, all relating to family courts; realigning and increasing family court circuits; and increasing the number of family court judges.

Be it enacted by the Legislature of West Virginia:

That §51-2A-3 and §51-2A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.
§51-2A-5. Term of office of family court judge; initial appointment; elections.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) Until the first day of January, two thousand nine, a total of thirty-five family court judges shall serve throughout the state.
(b) Until the first day of January, two thousand nine, the state shall be divided into twenty-six family court circuits with the family court judges allocated as follows:

1. The counties of Brooke, Hancock and Ohio constitute the first family court circuit and have two family court judges;
2. The counties of Marshall, Wetzel and Tyler constitute the second family court circuit and have one family court judge;
3. The counties of Pleasants, Ritchie, Wood and Wirt constitute the third family court circuit and have two family court judges;
4. The counties of Doddridge, Roane, Calhoun and Gilmer constitute the fourth family court circuit and have one family court judge;
5. The counties of Mason and Jackson constitute the fifth family court circuit and have one family court judge;
6. The county of Cabell constitutes the sixth family court circuit and has two family court judges;
7. The county of Wayne constitutes the seventh family court circuit and has one family court judge;
8. The county of Mingo constitutes the eighth family court circuit and has one family court judge;
9. The county of Logan constitutes the ninth family court circuit and has one family court judge;
10. The counties of Lincoln and Boone constitute the tenth family court circuit and have one family court judge;
11. The county of Kanawha constitutes the eleventh family court circuit and has four family court judges;
(12) The counties of McDowell and Mercer constitute the twelfth family court circuit and have two family court judges;

(13) The counties of Raleigh and Wyoming constitute the thirteenth family court circuit and have two family court judges;

(14) The counties of Fayette and Summers constitute the fourteenth family court circuit and have one family court judge;

(15) The counties of Greenbrier and Monroe constitute the fifteenth family court circuit and have one family court judge;

(16) The counties of Clay, Nicholas and Webster constitute the sixteenth family court circuit and have one family court judge;

(17) The counties of Braxton, Lewis and Upshur constitute the seventeenth family court circuit and have one family court judge;

(18) The county of Harrison constitutes the eighteenth family court circuit and has one family court judge;

(19) The county of Marion constitutes the nineteenth family court circuit and has one family court judge;

(20) The county of Monongalia constitutes the twentieth family court circuit and has one family court judge;

(21) The counties of Barbour, Preston and Taylor constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Grant, Tucker and Randolph constitute the twenty-second family court circuit and have one family court judge;
(23) The counties of Mineral, Hampshire and Morgan constitute the twenty-third family court circuit and have one family court judge;

(24) The counties of Berkeley and Jefferson constitute the twenty-fourth family court circuit and have two family court judges;

(25) The counties of Hardy, Pendleton and Pocahontas constitute the twenty-fifth family court circuit and have one family court judge; and

(26) The county of Putnam constitutes the twenty-sixth family court circuit and has one family court judge.

(c) Beginning on the first day of January, two thousand nine, the family court circuits shall be realigned and adjusted to add an additional ten family court judges, so that a total of forty-five family court judges shall serve throughout the state, allocated among a total of twenty-seven family court circuits as follows:

(1) The counties of Brooke, Hancock and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson and Wirt shall constitute the fifth family court circuit and have two family court judges;
(6) The county of Cabell shall constitute the sixth family court circuit and have two family court judges;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;

(13) The counties of Raleigh, Summers and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;
(17) The counties of Braxton, Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge;

(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;

(23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have one family court judge;

(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;

(25) The counties of Hardy, Pendleton and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and
(27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.

(d) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

(a) Beginning with the primary and general elections to be conducted in the year two thousand two, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be.

(b) The term of office for all family court judges elected in two thousand two shall be for six years, commencing on the first day of January, two thousand three, and ending on the thirty-first day of December, two thousand eight. Subsequent terms of office for family court judges elected thereafter shall be for eight years.
(c) The primary and general elections conducted in the year two thousand eight shall be conducted to fill the family court judge positions in the reconfigured districts set forth by subsection (c), section three of this article, for terms to commence on the first day of January, two thousand nine.

CHAPTER 62

(S.B. 208 - By Senators Kessler, Oliverio, Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §51-9-9 of the Code of West Virginia, 1931, as amended, relating to requiring certified copies of eligibility for judicial retirement be provided to the Supreme Court of Appeals and the Consolidated Public Retirement Board; and making stylistic changes throughout.

Be it enacted by the Legislature of West Virginia:

That §51-9-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.


1 Before any person is entitled to retirement benefits under the provisions of this article, he or she shall submit proof of his or her eligibility for retirement benefits to the Governor. If the judge is still sitting, he or she shall at the
same time tender to the Governor his or her resignation as judge to the Governor upon condition that, if the resignation is accepted, he or she will be paid retirement benefits as provided in this article. Upon request for retirement by a sitting judge, the governor shall investigate to the extent he or she deems advisable to determine the judge’s eligibility. If the Governor determines that such person is entitled to retirement benefits under the provisions of this article, the Governor shall accept the resignation and certify the facts and the amount of retirement benefits to be paid to the judge upon retirement by a written order filed in the office of the Secretary of State. The Secretary of State shall, upon receipt of the order, file a certified copy of the order with the State Auditor, the Governor’s office, the Supreme Court of Appeals’ administrative office and the Consolidated Public Retirement Board. After accepting the judge’s resignation, a vacancy is created in the office of the retiring judge which shall be filled by appointment or election as provided by law.

CHAPTER 63

(H.B. 2770 - By Delegates Ellem, Webster, Hamilton, Proudfoot, Schadler, Guthrie, Shook, Burdiss, Amores, Kessler and Mahan)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2007.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to court security personnel and Public Service Commission motor carrier inspector and enforcement officer; enhancing penalties for
certain acts against court security personnel and Public Service Commission motor carrier inspector and enforcement officer; defining “court security personnel” and “Public Service Commission motor carrier inspector and enforcement officer”; and incorporating certain acts previously enacted by the Legislature during the 2007 regular session.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal, Division of Forestry employees, county or state correctional employees, Public Service Commission motor carrier inspector and enforcement officer and court security personnel; penalties.

(a) Malicious assault. -- Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system, court security personnel or Public Service Commission motor carrier inspector and enforcement officer acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof,
shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) *Unlawful assault.* -- Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system, court security personnel or Public Service Commission motor carrier inspector and enforcement officer 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 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 police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee, state correctional employee, employee of a mass transportation system, court security personnel or Public Service Commission motor carrier inspector and enforcement officer acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall
be confined in jail for not less than one month nor more than
twelve months, fined the sum of five hundred dollars, or
both. If any person commits a second such offense, he or
she is guilty of a felony and, upon conviction thereof, shall
be confined in a correctional facility for not less than one
year nor more than three years or fined the sum of one
thousand dollars or both fined and confined. Any person
who commits a third violation of this subsection is guilty of
a felony and, upon conviction thereof, shall be confined in
a correctional facility not less than two years nor more than
five years or fined not more than two thousand dollars or
both fined and confined.

(d) Assault. -- Any person who unlawfully attempts to
commit a violent injury to the person of a police officer,
probation officer, conservation officer, humane officer,
emergency medical service personnel, firefighter, State Fire
Marshal or employee, Division of Forestry employee,
county correctional employee, state correctional employee,
employee of a mass transportation system, court security
personnel or Public Service Commission motor carrier
inspector and enforcement officer acting in his or her
official capacity, or unlawfully commits an act which places
that person acting in his or her official capacity in
reasonable apprehension of immediately receiving a violent
injury, is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for not less than twenty-four
hours nor more than six months, fined not more than two
hundred dollars, or both fined and confined.

(e) For purposes of this section:

(1) "Police officer" means any person employed by the
State Police, any person employed by the state to perform
78 law-enforcement duties, any person employed by a political
79 subdivision of this state who is responsible for the
80 prevention or detection of crime and the enforcement of the
81 penal, traffic or highway laws of this state or employed as a
82 special police officer as defined in section forty-one, article
83 three of this chapter.

84 (2) "Employee of an urban mass transportation system"
85 means any person employed by an urban mass
86 transportation system as such is defined in section three,
87 article twenty-seven, chapter eight of this code or by a
88 system that receives federal transit administration funding
89 under 49 U.S.C. §5307 or §5311.

90 (3) "Division of Forestry employee" means an officer,
91 agent, employee or servant, whether full-time or not, of the
92 Division of Forestry.

93 (4) “Court security personnel” means any person
94 employed by a circuit court, family court, magistrate court,
95 county commission, sheriff, the state or other political
96 subdivision to operate and maintain security devices,
97 including, but not limited to, a metal detector, x-ray
98 machine, video monitoring equipment and/or other security
99 devices, prevent or detect crime, enforce the laws of this
100 state, or otherwise provide court security.

101 (5) “Public Service Commission motor carrier inspector
102 and enforcement officer” means an officer, agent or
103 employee of the Public Service Commission charged with
104 the enforcement of commercial motor vehicle safety and
105 weight restriction laws of the State of West Virginia.
AN ACT to amend and reenact §61-3-45 of the Code of West Virginia, 1931, as amended, relating to the theft of oil, natural gas, water, telecommunications and electric service; and increasing the maximum fine upon conviction.

Be it enacted by the Legislature of West Virginia:

That §61-3-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-45. Tampering with pipes, tubes, wires or electrical conductors; penalty.

Every person who, with intent to injure or defraud, connects, or causes to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe, or other pipe or conduit or flume for conducting water, or with any main, service pipe, or other pipe or conduit for conducting oil, natural gas, or with any main, service wire or other electric conductor used for the
8 purpose of conducting electric energy for light, heat or
9 motive services, for the purpose of taking therefrom water,
10 oil, natural gas, telecommunications service, or electric
11 energy, without the knowledge of the owner thereof and
12 with intent to evade payment therefor, is guilty of a
13 misdemeanor and, upon conviction thereof, shall be
14 confined in jail not exceeding twelve months, or fined not
15 exceeding two thousand dollars, or both, in the discretion of
16 the court.

CHAPTER 65

(Com. Sub. for H.B. 2498 - By Delegates Azinger and Craig)

[Amended and again passed March 18, 2007, as a result of the objections
of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §61-8-9 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §61-
8B-1 of said code, all relating to sexual offenses generally;
increasing penalties for second and subsequent convictions for
indecent exposure; clarifying that breast feeding an infant in
public is not indecent exposure; and expanding the definition
of sexual contact to include the touching of the buttocks or
breasts.

Be it enacted by the Legislature of West Virginia:

That §61-8-9 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §61-8B-1 of said code be
amended and reenacted, all to read as follows:
ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.


(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: Provided, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than two hundred fifty dollars, or both fined and confined.

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and imprisoned in a state correctional facility for not less than one year nor more than five years.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.
In this article, unless a different meaning plainly is required:

(1) "Forcible compulsion" means:

(a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or

(c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.
"Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

"Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

"Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

"Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

"Serious bodily injury" 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.

"Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

"Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.
AN ACT to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, providing that it is a crime for home confinement officers to engage in sexual intercourse or sexual intrusion with persons incarcerated; defining the phrase ‘incarcerated in this state’ to include home confinement subject to the Home Incarceration Act; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.

(a) Any person employed by the Division of Corrections, any person working at a correctional facility managed by the Commissioner of Corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the Division of Juvenile Services pursuant to contract or as an employee of a state agency, and any person working at a correctional facility managed by a state agency pursuant to contract or as an employee of a state agency, shall be guilty of a felony punishable by a term of imprisonment of not less than five years nor more than twenty years, or a fine of not less than $500 nor more than $5,000, or both, for engaging in sexual intercourse or sexual intrusion with persons incarcerated.
agency, any person employed by a jail or by the Regional Jail and Correctional Facility Authority, any person working at a facility managed by the Regional Jail and Correctional Facility Authority or a jail or any person employed by, or acting pursuant to, the authority of any sheriff, county commission or court to ensure compliance with the provisions of article eleven-b, chapter sixty-two of this code who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than five thousand dollars.

(b) Any person employed by the Division of Corrections as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than five thousand dollars, or both.

(c) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article eleven-b, chapter sixty-two of this code.
AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to prohibiting county and district officers, teachers and school officials from having a pecuniary interest in certain contracts; and exemptions.

Be it enacted by the Legislature of West Virginia:

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§ 61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation penalties.

(a) It is unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for
or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: Provided, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the
paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than twenty-five hundred dollars and, in the court’s discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the
(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of the code, for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsections (e), (f), (g) or (h) of this section.
AN ACT to amend and reenact §61-8B-16 of the Code of West Virginia, 1931, as amended, relating to forensic medical examinations; prohibiting any requirement that an alleged victim of a sexual offense must pay for the costs of a forensic medical examination, participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic medical examination; eliminating certain reimbursement; and clarifying that licensed medical facilities may seek payment from the alleged victim or his or her insurer for services rendered other than the forensic medical examination.

Be it enacted by the Legislature of West Virginia:

That §61-8B-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-16. Payment for costs of forensic medical examination.

1 (a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund
the cost of the forensic medical examination for the alleged victim on the following conditions and in the following manner:

(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund: Provided, That nothing in this section shall be construed to prohibit a licensed medical facility from seeking payment for services referred to in this subdivision from the alleged victim or his or her insurer, if any;

(3) The forensic medical examination must have been conducted within a reasonable time of the alleged violation;

(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;

(5) The licensed medical facility shall certify that the forensic medical examination was performed and may submit a statement of charges to the West Virginia Prosecuting Attorneys Institute for payment from the fund.

(b) No licensed medical facility may collect the costs of a forensic medical examination from the alleged victim of a violation of this article or from the alleged victim’s insurance coverage, if any.

(c) Nothing in this section shall be construed to require an alleged victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination pursuant to the provisions of this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-6-8, relating to prohibiting law-enforcement officers or prosecutors from asking or requiring an adult, youth or child victim of an alleged sexual offense to submit to a polygraph examination or other truth testing device as a condition for proceeding with the investigation of the offense; and establishing that refusal to undergo such testing shall not prevent investigation of the offense.

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 §62-6-8, to read as follows:

ARTICLE 6. MISCELLANEOUS PROVISIONS CONCERNING CRIMINAL PROCEDURE.

§62-6-8. Alleged victim of sexual offense may not be required to submit to a polygraph examination or other truth telling device as a condition of investigating an alleged offense nor may prosecutors or law-enforcement officers decline to proceed if the victim refuses such examination.
No law-enforcement officer, prosecutor or any other government official may ask or require the adult, youth or child victim of an alleged sexual offense, as set forth in the provisions of section six, article eight, chapter sixty-one of this code; section six, article twelve of said chapter; section five, article eight-d, of said chapter; and article eight-b of said chapter, or any other sexual offense as defined under state or local law, to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law-enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination.

CHAPTER 70

(Com. Sub. for H.B. 2791 - By Delegates Webster, Proudfoot, Stemple, Varner, Longstreth and Kominar)

[Passed February 23, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2007.]

AN ACT to repeal §62-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-10-1 and §62-10-3 of said code, all relating to penalties for violating peace bonds.

Be it enacted by the Legislature of West Virginia:

That §62-6-2 of the Code of West Virginia, 1931, as amended, be repealed; and that §62-10-1 and §62-10-3 of said code be amended and reenacted, all to read as follows:
ARTICLE 10. PREVENTION OF CRIME.

§62-10-1. Security to keep the peace.
Every magistrate shall have the power to require, from persons not of good fame, security for their good behavior and to keep the peace, for a term not exceeding one year. A person who violates a court order to keep the peace may be fined not more than two hundred fifty dollars.

§62-10-3. Hearing, judgment, appeal process for security to keep the peace.
When a defendant appears pursuant to section one, article ten, chapter sixty-two of the Code of West Virginia, if the magistrate, upon hearing the parties, decides that there is not good cause for the complaint, the magistrate shall discharge the defendant, and may grant judgment in the defendant’s favor and against the complainant for the defendant’s costs. If the magistrate decides there is good cause for the complaint, he or she may grant judgment for the complainant and may require a bond of the person against whom the judgment is granted. The magistrate may then enter a judgment against the defendant for the full costs of the prosecution, or any part thereof. If the defendant violates the conditions of the bond, he or she may be fined not more than two hundred fifty dollars. If the defendant fails to pay the fine imposed, the magistrate granting the judgment under this section for costs may, pursuant to article four, chapter thirty-eight of the Code of West Virginia issue a writ of execution on the defendant’s personal property. A person from whom a bond is required may, upon the imposition of the bond, appeal the judgment to the circuit court of the county in which the judgment was granted.
AN ACT to amend and reenact §62-11C-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Community Corrections Fund; establishing fee collected from persons on home incarceration; setting fee amount; and removing provision allowing modification of fee amount by legislative rule.

Be it enacted by the Legislature of West Virginia:

That §62-11C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§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
eight 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 first day of July, two thousand
seven, in addition to the fee required in section five, article
eleven-b of this chapter, a fee of two dollars fifty cents per
day is 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 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 Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) Beginning on the first day of July, two thousand six, in addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a ten-dollar fee shall be added. 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, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community Corrections Fund are to be disbursed by the Governor's Committee on Crime, Delinquency and Correction, upon recommendation by the community corrections subcommittee, for the funding of community corrections programs and to pay expenses of the Governor's committee in administering the provisions of this article, which expenses may not in any fiscal year exceed ten percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia Community Corrections Fund allocated for community corrections programs by the Governor's committee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.
CRIMINAL PROCEDURE

74 (g) Nothing in this article may be construed to mandate
75 funding for the West Virginia Community Corrections Fund
76 or to require any appropriation by the Legislature.

CHAPTER 72

(S.B. 206 - By Senators Kessler, Oliverio, Chafin, Foster,
Green, Hunter, Jenkins, Minard, Stollings, Wells, White,
Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 2, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2007.]

AN ACT to amend and reenact §62-11C-9 of the Code of West
Virginia, 1931, as amended, relating to assessing court costs for
participants in pretrial diversion programs.

Be it enacted by the Legislature of West Virginia:

That §62-11C-9 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY
CORRECTIONS ACT.

§62-11C-9. Use of community corrections programs for those
not under court supervision.

1 (a) Subject to the availability of community corrections
2 programs in the county, a written pretrial diversion
3 agreement, entered into pursuant to the provisions of section
4 twenty-two, article eleven, chapter sixty-one of this code,
5 may require participation or supervision in a community
6 corrections program as part of the prosecution and resolution
7 of charges.
(b) Any pretrial diversion program for a defendant charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code, subsection (b) or (c), section nine of said article where the alleged victim is a family or household member or the provisions of section two, article five, chapter seventeen-c of this code is to require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement or tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendant's motion, the court shall continue the matter for the period of time necessary for the person charged to complete the pretrial diversion program. If the person charged successfully completes the pretrial diversion program, the matter is to be resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter, if no plea of guilty or nolo contendere has been tendered, is to be returned to the court's docket for resolution. If the person charged has tendered a plea of guilty or nolo contendere and fails to successfully complete the pretrial diversion program, the court shall accept the tendered plea of guilty or nolo contendere and proceed to sentencing.

(c) No provision of this article may be construed to limit the prosecutor's discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion agreement by not completing the required supervision or participation in a community corrections program.

(d) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of section twenty-two, article eleven of this chapter, shall be liable for any applicable court costs. Payment of the court costs shall be made a condition of the pretrial diversion agreement.
AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-14-19, all relating to deficient dams; establishing the Dam Safety Rehabilitation Revolving Fund for deficient dams; and providing for promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22-14-19, all to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

§22-14-3. Definition of terms used in article.

1 As used in this article, unless used in a context that clearly requires a different meaning, the term:
3 (a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam that may affect its safety to be determined by the secretary.

6 (b) "Application for a certificate of approval" means the written application provided to the secretary requesting that a person be issued a certificate of approval.

9 (c) "Appurtenant works" means any structure or facility that is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to, spillways, a reservoir and its rim, low-level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

15 (d) "Certificate of approval" means the written approval issued by the secretary to a person who has applied to the secretary for a certificate of approval that authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

21 (e)(1) "Dam" means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and:

26 (A) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or
(B) Is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water;

(2) “Dam” does not mean:

(A) Any dam owned by the federal government;

(B) Any dam for which the operation and maintenance of the dam is the responsibility of the federal government;

(C) Farm ponds constructed and used primarily for agricultural purposes, including, but not limited to, livestock watering, irrigation, retention of animal wastes and fish culture, and that have no potential to cause loss of human life in the event of embankment failure; or

(D) Roadfill or other transportation structures that do not or will not impound water under normal conditions and that have a designed culvert or similar conveyance or capacity that would be used under a state designed highway at the same location: Provided, That the secretary may apply the provisions of section ten of this article for roadfill or other transportation structures that become a hazard to human life or property through the frequent or continuous impoundment of water.

(f) “Deficient dam” means a noncoal-related dam that exhibits one or more design, maintenance or operational problems that may adversely affect the performance of the dam over a period of time or during a major storm or other inclement weather that may cause loss of life or property; or a noncoal-related dam that otherwise fails to meet the requirements of this article.
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59  (g) "Department" means the Department of Environmental Protection.

61  (h) "Enlargement" means any change in or addition to an existing dam which: (1) Raises the height of the dam; (2) raises or may raise the water storage elevation of the water impounded by the dam; (3) increases or may increase the amount of water impounded by the dam; or (4) increases or may increase the watershed area from which water is impounded by the dam.

68  (i) "Person" means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; or any other legal entity. The term "person", when used in this article, includes and refers to any authorized agent, lessee or trustee of any of the foregoing, or receiver or trustee appointed by any court for any of the foregoing.

82  (j) "Reservoir" means any basin which contains or will contain impounded water.

84  (k) "Secretary" means the Secretary of the Department of Environmental Protection.

86  (l) "Natural Resources Conservation Service" means the Natural Resources Conservation Service of the United States Department of Agriculture or any successor or predecessor agency, including the Soil Conservation Service.
(m) "Water" means any liquid, including any solids or other matter that may be contained in the liquid, which is or may be impounded by a dam.

(n) "Water storage elevation" means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

(a) There is created in the State Treasury a special revenue fund known as the Dam Safety Rehabilitation Revolving Fund. The fund shall be comprised of money allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state Dam Safety Rehabilitation Revolving Fund. The fund shall also include all receipts from loans made by the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund and all other moneys designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund, but shall remain in the account and be available for expenditure in succeeding fiscal years.

(b) The fund, to the extent that money is available, shall be used solely to make loans to persons who own an interest in a deficient dam to finance the engineering, design, alteration, improvement, repair, breaching or removal of the deficient dam necessary to correct or remove the deficiencies and other activities as authorized by a federal grant or a legislative appropriation. Further, the fund may be used to defray costs incurred by the department in administering the provisions of this subsection.
(c) The secretary shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the disbursement of moneys from the fund, establish a state deficient dams rehabilitation assistance program to direct the distribution of loans from the fund, establish criteria for eligibility to receive loans from the fund and establish the terms and conditions of the loans, including interest rates and repayment terms.

(d) The secretary may employ qualified officers, agents, advisors and consultants and other persons necessary to carry out the administration and management of the fund.

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5-10B-3a and §5-10B-10a; and to amend and reenact §36-8-13 of said code, all relating to government employees deferred compensation plans; authorizing automatic enrollment in a plan; authorizing a matching contribution program; establishing matching program term; establishing qualifications for participation; limiting the match to twenty-five percent of employee contributions at a maximum of one hundred dollars per year, not to exceed four hundred dollars over the life of the matching program; establishing the Deferred Compensation Matching Fund; specifying that operation of a matching program is contingent upon funding by the Legislature and may be changed or discontinued at any time for a time certain or
DEFERRED COMPENSATION

indefinitely; specifying that disbursements from the matching fund may not exceed one million dollars in any one fiscal year; allowing earnings to accrue to the matching fund; requiring the unclaimed property administrator to transfer two million dollars from the unclaimed property trust fund to the matching fund on or before the first day of June, two thousand seven, and one million dollars on or before the first day of June, two thousand eight.

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 §5-10B-3a and; §5-10B-10a; and that §36-8-13 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.

36. Estates and Property.

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 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-3a. Automatic enrollment.
§5-10B-10a. Matching contribution program.

§5-10B-3a. Automatic enrollment.

1 (a) Every state employee commencing work on and after the first day of July, two thousand seven, shall have a
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minimum of ten dollars per pay period of his or her salary deferred to the state deferred compensation plan unless the state employee provides written notice declining to participate in accordance with the Treasurer’s guidelines. A state employee may change the contribution amount or cease participating at any time. An employee declining participation in the state deferred compensation plan may elect to participate at a later time.

(b) A political subdivision may establish an automatic enrollment program in a deferred compensation plan pursuant to this article. A political subdivision employee may elect to not participate in the deferred compensation plan at any time and to change the contribution amount.

§5-10B-10a. Matching contribution program.

(a) For a period commencing the first day of July, two thousand seven, and continuing through the thirtieth day of September, two thousand twelve, the Treasurer is authorized to establish and operate a savings incentive program pursuant to section 401(a) of the Internal Revenue Code of 1986, as amended, in which a state employee participating in the deferred compensation plan authorized in this article may receive certain matching contributions pursuant to this section. The Treasurer shall establish matching program guidelines in accordance with this article.

(b) To qualify for participation in the matching program, a state employee shall have contributed to his or her deferred compensation account not less than ten dollars every pay period during a fiscal year.
(c)(1) Subject to the limitations provided by subdivision (2) of this subsection and subsections (e) and (f) of this section, the Treasurer shall allocate and credit a matching sum of up to twenty-five percent of the contributions a qualified state employee made to his or her deferred compensation account during a fiscal year subsequent to qualifying to participate in the matching program for a period of up to five fiscal years, which contributions shall be at least ten dollars in every pay period during the fiscal year, and which matching contributions for any employee shall not exceed one hundred dollars in any one fiscal year and four hundred dollars total over the life of the matching program.

(2) The Treasurer shall set the amount of funds a qualified state employee may receive as a match in accordance with this section in an amount not to exceed the amount of funds authorized by the Legislature for this purpose.

(d) The matching contribution shall be remitted annually by the Treasurer from the West Virginia Deferred Compensation Matching Fund, which is hereby created, to the employee’s account in the West Virginia Deferred Compensation Trust Fund no later than the thirtieth day of September each year for the prior fiscal year.

(e) The Treasurer shall not obligate, authorize or pay any match for which funds are not available in the West Virginia Deferred Compensation Matching Fund.

(f) Operation of the matching program is contingent upon funding made available by the West Virginia Legislature and may be changed or discontinued at any time for a time certain or indefinitely, as determined by the Legislature or the Treasurer. The maximum amount of funds that may be
expend from the Deferred Compensation Matching Fund in any one fiscal year is one million dollars.

(g) On or before the first day of June, two thousand seven, the unclaimed property administrator shall transfer the amount of two million dollars from the Unclaimed Property Trust Fund, created in section thirteen, article eight, chapter thirty-six of this code, to the Deferred Compensation Matching Fund for operation of the matching program. On or before the first day of June, two thousand eight, the unclaimed property administrator shall transfer the amount of one million dollars from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.

(h) Moneys in the Deferred Compensation Matching Fund may be invested, in whole or in part, with the West Virginia Board of Treasury Investments or any other entity the Treasurer selects, and all earnings shall accrue to and be retained by the fund.

(i) The State of West Virginia, the Treasurer and his or her employees, agents and representatives shall not be liable for any losses incurred by the Deferred Compensation Matching Fund.

(j) Any moneys remaining in the Deferred Compensation Matching Fund at the termination of the matching program shall be transferred to the General Revenue Fund of the state no later than the thirty-first day of December, two thousand twelve.

(k) Any public employer may elect to operate its own matching program.
CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. THE UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.
(c) The Unclaimed Property Trust Fund is continued within the State Treasury. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) On or before the fifteenth day of December of each year and after receipt of a report from the Chairman of the Board of Trustees of the West Virginia College Prepaid Tuition and Savings Program stating the amount certified by an actuary in accordance with the provisions of section six, article thirty, chapter eighteen of this code, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of money certified by the actuary from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, the amount transferred not to exceed one million dollars annually.

(e) On or before the first day of June, two thousand seven, the unclaimed property administrator shall transfer the amount of two million dollars from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the deferred compensation matching program for state employees. On or before the first day of June, two thousand eight, the unclaimed property administrator shall transfer the amount of one million dollars from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.

(f) After transferring any money required by subsections (d) and (e) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.
AN ACT to amend and reenact §11A-2-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-3-2 of said code, all relating to clarifying the deadline for redeeming delinquent lands.

Be it enacted by the Legislature of West Virginia:

That §11A-2-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-3-2 of said code be amended and reenacted, all to read as follows:

Article
2. Delinquency and Methods of Enforcing Payment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-18. Redemption before sale; record; lien.

1 The owner of any real estate returned delinquent, or any other person entitled to pay the taxes thereon, may redeem at any time before the close of business on the last business day prior to the sale provided in the following article by payment
of the taxes, interest and charges due. However, redemption of an undivided interest included in a group assessment or of part of a tract or lot the whole of which was assessed in the name of a person other than the owner shall not be permitted until the applicable provisions of section nine or of section ten, article one of this chapter, have been complied with. The sheriff shall give to the person redeeming a duplicate receipt, one of which shall be filed with the clerk of the county court, who shall note the fact of such redemption on his or her record of delinquent lands. Whenever only part of a tract or lot, or only an undivided interest therein, has been redeemed, the clerk shall make the necessary changes in his or her record of delinquent lands before noting the fact of redemption on the record. Any person redeeming an interest of another shall be subrogated to the lien of the State on such interest as provided in section nine, article one of this chapter.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.

(a) On or before the tenth day of September of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his or her county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that tax liens for the following described tracts or lots of land or undivided interests therein in the County of ________________ which are delinquent for the nonpayment of taxes for the year (or years) 20__, will be offered for sale by the undersigned sheriff (or
collectors) at public auction at the front door of the courthouse of the county, between the hours of nine in the morning and four in the afternoon, on the _____ day of ______________, 20__.

Tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, will be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest and charges which shall be due thereon to the date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
</table>

Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before sale, of the total amount of taxes, interest and charges due thereon up to the date of redemption. Payment received within fourteen business days prior to the date of sale must be paid by cashier check, money order, certified check or United States currency. Payment must be received in the tax office by the close of business on the last business day prior to the sale.

Given under my hand this __________ day of ______________, 20__.

________________________________________
Sheriff (or collector).
The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

(b) In addition to such publication, no less than thirty days prior to the sale, the sheriff shall send a notice of the delinquency and the date of sale by certified mail: (1) To the last known address of each person listed in the land books whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes are due as disclosed by a statement filed with the sheriff pursuant to the provisions of section three of this article; (3) to each other person with an interest in the property or with a fiduciary relationship to a person with an interest in the property who has in writing delivered to the sheriff on a form prescribed by the Tax Commissioner a request for such notice of delinquency; and (4) in the case of property which includes a mineral interest but does not include an interest in the surface other than an interest for the purpose of developing the minerals, to each person who has in writing delivered to the sheriff, on a form prescribed by the Tax Commissioner, a request for such notice which identifies the person as an owner of an interest in the surface of real property that is included in the boundaries of such property: Provided, That in a case where one owner owns more than one parcel of real property upon which taxes are delinquent, the sheriff may, at his or her option, mail separate notices to the owner and each lienholder for each parcel or may prepare and mail to the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient
description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is conveyed pursuant to section twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing the second delinquent list, a charge of twenty-five dollars shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(2) To cover the cost of preparing and mailing notice to the landowner, lienholder or any other person entitled thereto pursuant to this section, a charge of ten dollars per addressee shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) Any person whose taxes were delinquent on the first day of September may have his or her name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the person at the date of such redemption. In such case, the sheriff shall include but three dollars of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the General County Fund.
AN ACT to amend and reenact §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System; amending the definition of “annuity start date”; requiring a member’s application for retirement; and providing the basis for determining a member’s retirement benefit.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions. 
§7-14D-9. Retirement; commencement of benefits. 
§7-14D-2. Definitions.

1 As used in this article, unless a federal law or
2 regulation or the context clearly requires a different
3 meaning:

4 (a) "Accrued benefit" means on behalf of any member
5 two and one-quarter percent of the member's final average
6 salary multiplied by the member's years of credited
7 service. A member's accrued benefit may not exceed the
8 limits of Section 415 of the Internal Revenue Code and is
9 subject to the provisions of section nine-a of this article.

10 (b) "Accumulated contributions" means the sum of all
11 amounts deducted from the compensation of a member, or
12 paid on his or her behalf pursuant to article ten-c, chapter
13 five of this code, either pursuant to section seven of this
14 article or section twenty-nine, article ten, chapter five of
15 this code as a result of covered employment together with
16 regular interest on the deducted amounts.

17 (c) "Active military duty" means full-time active duty
18 with any branch of the armed forces of the United States,
19 including service with the National Guard or reserve
20 military forces when the member has been called to active
21 full-time duty and has received no compensation during
22 the period of that duty from any board or employer other
23 than the armed forces.

24 (d) "Actuarial equivalent" means a benefit of equal
25 value computed upon the basis of the mortality table and
26 interest rates as set and adopted by the retirement board in
27 accordance with the provisions of this article.

28 (e) "Annual compensation" means the wages paid to
29 the member during covered employment within the
30 meaning of Section 3401(a) of the Internal Revenue Code,
31 but determined without regard to any rules that limit the
(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board: Provided, That the member has ceased covered employment and reached early or normal retirement age.

(h) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

(i) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or
(2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code: Provided, That the deputy sheriff contributes to the fund created in section six of this article the amount specified as the deputy sheriff's contribution in section seven of this article.

(I) "Credited service" means the sum of a member's years of service, active military duty, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen of this chapter.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or
(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof or both, during which time a member receives disability benefits under section fourteen or fifteen of this article.

(q) "Early retirement age" means age forty or over and completion of twenty years of service.

(r) "Effective date" means the first day of July, one thousand nine hundred ninety-eight.

(s) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member...
received disability benefits under section fourteen or fifteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to section six of this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year
or years to which the award or agreement pertains rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following: (1) Attainment of age fifty years and the completion of twenty or more years of service; (2) while still in covered employment, attainment of at least age fifty years and when the sum of current age plus years of service equals or exceeds seventy years; (3) while still in covered employment, attainment of at least age sixty years and completion of five years of service; or (4) attainment of age sixty-two years and completion of five or more years of service.
(z) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two-thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) "Public Employees Retirement System" means the West Virginia Public Employee's Retirement System created by article ten, chapter five of this code.

(bb) "Plan" means the West Virginia Deputy Sheriff Death, Disability and Retirement Plan established by this article.

(cc) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ee) " Retirement income payments" means the annual retirement income payments payable under the plan.

(ff) "Spouse" means the person to whom the member is legally married on the annuity starting date.
(gg) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(hh) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(ii) "Year of service". -- A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:
<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Years of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section thirteen of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

(jj) "Required beginning date" means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.
§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board’s receipt of the member’s voluntary written application for retirement. Before receiving retirement income payments, the member shall have ceased covered employment and reached early or normal retirement age. The retirement income payments shall be in an amount as provided under section eleven of this article: Provided, That retirement income payments under this plan shall be subject to the provisions of section nine-b of this article. Upon receipt of the application, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process the member's request and commence payments as soon as administratively feasible.


This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under section twelve of this chapter. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. -- A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued
14 retirement benefit based on years of service and final average salary at termination of employment.

16 (b) Early retirement. -- A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

31 (c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.
AN ACT to amend and reenact §7-14D-14 of the Code of West Virginia, 1931, as amended, relating to eliminating any reduction in the benefit of a deputy sheriff who is totally disabled on the job.

Be it enacted by the Legislature of West Virginia:

That §7-14D-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT


1 Any member who after the effective date of this article and during covered employment: (A) Has been or becomes either totally or partially disabled by injury, illness or disease; and (B) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (C) the disability was incurred while performing law-enforcement functions during either scheduled work
hours or at any other time; and (D) in the opinion of the
board, the member is by reason of the disability unable to
perform adequately the duties required of a deputy sheriff, is
entitled to receive and shall be paid from the fund in monthly
installments during the lifetime of the member, or if sooner,
until the member attains normal retirement age or until the
disability sooner terminates, the compensation under either
subdivision (a) or (b) of this section.

(a) If the member is totally disabled, the member shall
receive ninety percent of his or her average full monthly
compensation for the twelve-month contributory period
preceding the member’s disability award, or the shorter
period if the member has not worked twelve months.

(b) If the member is partially disabled, the member shall
receive forty-five percent of his or her average full monthly
compensation for the twelve-month contributory period
preceding the member’s disability award, or the shorter
period if the member has not worked twelve months.

If the member remains partially disabled until attaining
sixty years of age, the member shall then receive the
retirement benefit provided in sections eleven and twelve of
this article.
AN ACT to amend and reenact §19-20-12 of the Code of West Virginia, 1931, as amended, relating to protection of registered dogs; prohibiting a person not the owner of a registered dog from removing tags, collars or apparel from a registered dog, or turning off a radio transmitting collar without the permission of the owner; providing for limited exceptions thereto; and establishing related penalties.

Be it enacted by the Legislature of West Virginia:

That §19-20-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. DOGS AND CATS.

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

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

(b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than five hundred dollars, or both. Any person violating the provisions of this subsection, for second or subsequent offense, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than ninety days nor more than six months, or shall be ordered to provide public service for not more than one year, and fined not less than one thousand dollars. In no case can any action or prosecution relating to a dog under the provisions of this section be maintained if the dog concerned has not been duly registered pursuant to the provisions of this article or owned and kept pursuant to the provisions of this section or owned and kept pursuant to the provisions of this section at the time the cause of action shall have arisen.
(c) No person other than the owner of a registered dog may remove a tag, collar or other identifying apparel from the registered dog, nor remove or turn off a radio transmitting collar on the registered dog, without the permission of the owner, unless removal of the tag, collar or apparel is necessary to prevent or treat an injury to the dog or is done by a law-enforcement officer for a legitimate law-enforcement purpose. Any person who intentionally removes a tag, collar or other apparel from a registered dog in violation of the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide community service for not less than eight hours nor more than forty hours or fined not less than fifty dollars nor more than one hundred fifty dollars, or both.

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

(e) It shall be the duty of all members of the West Virginia State Police, sheriffs and police officers to aid in the enforcement of the provisions of this article and, for services rendered in the enforcement thereof, those persons shall be entitled to fees in the amounts set forth in section eight of this article. The fees shall be paid by the county commission from the dog and kennel fund.
AN ACT amend and reenact §48-2-402 of the Code of West Virginia, 1931, as amended, relating to the maintenance of a registry for registration and renewal of persons authorized to perform marriages; eliminating the bonding requirement; providing for the removal of a registrant to inactive status; and establishing a fee for reactivation of a registrant on inactive status.

Be it enacted by the Legislature of West Virginia:

That §48-2-402 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. MARRIAGES.

§48-2-402. Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.

(a) Beginning the first day of September, two thousand one, the Secretary of State shall, upon payment of the registration fee established by the Secretary of State pursuant to subsection (d) of this section, make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the state, upon proof that the person:
(1) Is eighteen years of age or older;

(2) Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and

(3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

(b) The Secretary of State shall establish a central registry of persons authorized to celebrate marriages in this state. Every person authorized under the provisions of subsection (a) of this section to celebrate marriages shall be listed in this registry. Every county clerk shall, prior to the first day of October, two thousand one, transmit to the Secretary of State the name of every person authorized to celebrate marriages by order issued in his or her county since one thousand nine hundred sixty and the Secretary of State shall include these names in the registry. The completed registry and periodic updates shall be transmitted to every county clerk.

(c) (1) Upon written request from the registrant, the Secretary of State shall designate the registrant as inactive on the registry.

(2) Upon written notice from the governing body of the registrant’s authorizing body that the registrant has died or that the registrant’s authority to perform marriages has been revoked, the Secretary of State shall attempt to notify the registrant of the change in the registrant’s status by United States mail addressed to the registrant’s last known address. If the registrant fails to provide the Secretary of State with proof of good standing with his or her authorizing body within thirty days, the registrant shall be designated on the registry as inactive.
(d) A fee not to exceed twenty-five dollars may be charged by the Secretary of State for each registration or reactivation of an individual designated as inactive on the registry received on or after the first day of September, two thousand one, and all money received shall be deposited in a special revenue revolving fund designated the Marriage Celebrants Registration Fee Administration Fund in the State Treasury to be administered by the Secretary of State. Expenses incurred by the secretary in the implementation and operation of the registry program shall be paid from the fund.

(e) No marriage performed by a person authorized by law to celebrate marriages may be invalidated solely because the person was not listed in the registry provided for in this section.

(f) The Secretary of State shall promulgate rules to implement the provisions of this section.

CHAPTER 80

(Com. Sub. for H.B. 2870 - By Delegates Fleischauer, Hrutkay, Manchin, Doyle, Hatfield, Marshall, Ellis, Shook, Guthrie and Mahan)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §48-26-603 of the Code of West Virginia, 1931, as amended, relating to authorizing the court to order payment into the Domestic Violence Legal Services Fund under certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §48-26-603 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§48-26-603. Domestic Violence Legal Services Fund.

(a) There is hereby established in the State Treasury a special revenue account, designated as the “Domestic Violence Legal Services Fund,” which shall be an appropriated fund for receipt of grants, gifts, fees, or federal or state funds designated for legal services for domestic violence victims. Expenditures from the fund shall be limited to attorneys employed by domestic violence shelters, or employed by nonprofit agencies which establish a collaborative relationship with a domestic violence shelter, that provide civil legal services to victims of domestic violence.

(b) Any court of this state may order a nonprevailing party to pay an amount equivalent to the reasonable attorney’s fee to which the prevailing litigant would be entitled into the Domestic Violence Legal Services Fund, established in subsection (a) of this section, if the following circumstances occur:

(1) A prevailing litigant is entitled by statute or common law to a reasonable attorney’s fee, and

(2) The prevailing litigant’s legal counsel informs the court that no fee will be requested.
AN ACT to amend and reenact §48-27-401 of the Code of West Virginia, 1931, as amended, relating to domestic violence protective orders; providing for the development of rules by the Supreme Court of Appeals regarding the provision of notice to the parties, law-enforcement and the domestic violence registry when a domestic violence protective order is extended by the reopening of or filing of certain civil actions between the parties; and, providing that a party’s right to a domestic violence order is not affected by the entry of a procedural order in a separate domestic relations action between the parties.

Be it enacted by the Legislature of West Virginia:

That §48-27-401 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.


1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article until an
3 order other than a procedural order is entered in the divorce
4 action pursuant to Part 5-501, et seq.
(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order other than a procedural order has been entered in the action for divorce, annulment and separate maintenance, pursuant to Part 5-501, et seq.

(c) Except as provided in section 5-509 of this chapter and section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order other than a procedural order has been entered pursuant to Part 5-501, et seq. of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section 27-505, when an action seeking a divorce, an annulment or separate maintenance, the allocation of custodial responsibility or a habeas corpus action to establish custody, the establishment of paternity, the establishment or enforcement of child support, or other relief under the provisions of this chapter is filed or is reopened by petition, motion or otherwise, then any order issued pursuant to this article which is in effect on the day the action is filed or reopened shall remain in full force and effect by operation of this statute until: (1) A temporary order other than a procedural order or a final order is entered pursuant to the provisions of Part 5-501, et seq. or Part 6-601 et seq., of this chapter; or (2) an order is entered modifying such order issued pursuant to this article; or (3) the entry of a final order granting or dismissing the action. The Supreme Court of Appeals shall provide by rule for notice of the extension of the Domestic Violence Order to be provided to the parties, law enforcement and the domestic violence registry by the clerk of the court, or clerks of the courts, in which the action or actions are filed.
AN ACT to amend and reenact §48-27-902 and §48-27-903 of the Code of West Virginia, 1931, as amended, all relating to clarifying that continuing to threaten or harass a petitioner, by whatever means, is a violation of a domestic violence protective order.

Be it enacted by the Legislature of West Virginia:

That §48-27-902 and §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


(a) When a respondent abuses the petitioner or minor children, or both, or is physically present at any location, or continues to contact, threaten or harass the petitioner, the minor children, or both, by phone, voice mail, e-mail or other means,
even if the respondent is not physically present with the petitioner or minor children at the time of the threats or harassment:

(1) In knowing and willful violation of the terms of an emergency or final protective order under the provisions of this article or section five hundred nine or six hundred eight, article five of this chapter granting the relief pursuant to the provisions of this article;

(2) In knowing and willful violation of the terms of a protection order from another jurisdiction that is required to be enforced pursuant to section three, article twenty-eight of this chapter; or

(3) In knowing and willful violation of the terms of a condition of bail, probation or parole imposed in another state which has the express intent or effect of protecting the personal safety of a particular person or persons in violation of subdivision (3), subsection (a), section seven, article twenty-eight of this chapter then any person authorized to file a petition pursuant to the provisions of section three hundred five of this article or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section nine hundred one of this article.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.

(a) A respondent who abuses the petitioner or minor children or who is physically present at any location, or continues to contact, threaten or harass the petitioner, the minor children, or both, by phone, voice mail, e-mail or other means, even if the respondent is not physically present with the petitioner or minor children at the time of the threats or harassment in knowing and willful violation of the terms of: (1) An emergency or final protective order issued under the provisions of this article or section five hundred nine or six hundred eight, article five of this chapter granting relief pursuant to the provisions of this article; or (2) a condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) A respondent who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.
Ch. 83] DRUG AND ALCOHOL TESTS

CHAPTER 83

(S.B. 416 - By Senators Kessler, Oliverio, Chafin, Foster, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-412, relating to creating misdemeanor offenses for adulterating or defeating or attempting to adulterate or defeat bodily fluid test results and drug and alcohol tests; creating adulteration offenses; defining terms; and penalties for first, second and subsequent offenses.

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 §60A-4-412, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§ 60A-4-412. Defeating drug and alcohol screening tests; penalties.

1 (a) Any person who:

2 (1) Knowingly sells, gives away, distributes or markets any substance or product in this state or transports such a
DRUG AND ALCOHOL TESTS

(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample;

(3) Knowingly advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;

(4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;

(5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol screening test; or

(6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

(b) A person who violates a provision of subsection (a) of this section:

(1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars;

(2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not more than five thousand dollars; and

(3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be fined not more than
ten thousand dollars or confined in the regional jail for not more than one year, or both.

(c) As used in this section, “adulterate” means a substance that is not expected to be in human fluids but that is a concentration so high that it is not consistent with human bodily fluids, including, but not limited to:

(1) Bleach;
(2) Chromium;
(3) Creatinine;
(4) Detergent;
(5) Glutaraldehyde;
(6) Glutaraldehyde/squalene;
(7) Hydrochloric acid;
(8) Hydroiodic acid;
(9) Iodine;
(10) Nitrite;
(11) Peroxidase;
(12) Potassium dichromate;
(13) Potassium nitrate;
(14) Pyridinium chlorochromate; and
(15) Sodium nitrite.
D.U.I.  [Ch. 84]

CHAPTER 84

(Com. Sub. for H.B. 2544 - By Delegates Fragale, Miley and laquinta)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to increasing the penalty for conviction of the offense of driving under the influence causing death.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or
(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or
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30. (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

32. (2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

40. (c) Any person who:

41. (1) Drives a vehicle in this state while he or she:

42. (A) Is under the influence of alcohol; or

43. (B) Is under the influence of any controlled substance; or

44. (C) Is under the influence of any other drug; or

45. (D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

47. (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

49. (2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less
than twenty-four hours, and shall be fined not less than two
hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any
controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of
eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for not less than one day nor
more than six months, which jail term is to include actual
confinement of not less than twenty-four hours, and shall be
fined not less than one hundred dollars nor more than five
hundred dollars.

(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a
vehicle in this state, is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not less than
one day nor more than six months, which jail term is to
include actual confinement of not less than twenty-four
hours, and shall be fined not less than one hundred dollars
nor more than five hundred dollars.
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81 (f) Any person who:

82 (1) Knowingly permits his or her vehicle to be driven in this State by any other person who:

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

87 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

88 (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

89 (g) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

90 (h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this
subsection, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the vehicle alcohol test and lock program as provided in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or
(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the
following types of convictions are to be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use
alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less for a first offense under this section. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: Provided, however, That for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: Provided further, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.
AN ACT to repeal §18A-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-23-4a of said code; to amend and reenact §18A-3-3 of said code; and to amend said code by adding thereto a new section, designated §18A-3-11, all relating to education generally; findings; definitions; allowing for the designation of up to twenty-five professional educators as 21st Century Learner Fellows; allowing Fellows to continue as a member of either the teachers retirement system or the defined contribution system, as applicable, while being employed by a state institution of higher education or a research corporation; allowing Fellows to continue to participate in public employee insurance programs during the employment; limiting the responsibility of a state institution of higher education or a research corporation for a fellow’s annual and sick leave earned from prior employment; the renewal of teaching certificates and permanent certification; providing certification through National Board for Professional Teaching Standards as an additional option for attaining permanent certification; providing for state board member participation in the public employees insurance program; and making technical improvements.
Be it enacted by the Legislature of West Virginia:

That §18A-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that §5-16-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-23-4a of said code be amended and reenacted; that §18A-3-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-3-11, 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.

18. Education.

18A. School Personnel.

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.

*§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

4 (1) "Agency" means the public employees insurance agency created by this article.

CLERK'S NOTE: This section was also amended by S.B. 129 (Chapter 208), which passed prior to this act.
"Director" means the director of the public employees insurance agency created by this article.

"Employee" means any person, including an elected officer, who works regularly full time in the service of the State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code; any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works as a long term substitute as defined in section one, article one, chapter eighteen-a of this code, in the service of a county board of education: Provided, That a long term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term and until the
end of that instructional term, is eligible for the benefits provided in this article until the first day of September following that instructional term: Provided, however, That a long term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long term substitute. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a county board of education to allow elected board members to participate in the public employees insurance program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the public employees insurance program pursuant to this article, any person appointed to the State Board of Education is considered an “employee” during the term of office of the appointed member: Provided further, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an "employee" if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and
(iii) Works at least one third of the time required for a full-time employee.

(4) "Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(5) "Finance board" means the Public Employees Insurance Agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service
corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the higher education policy commission, the council for community and technical college education, a state institution of higher education or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system but who are covered by a state approved or state contracted retirement program shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers’ Retirement System and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

CHAPTER 18. EDUCATION.

Article
7A. State Teachers’ Retirement System.
7B. Teachers’ Defined Contribution Retirement System.
ARTICLE 7A. STATE TEACHERS’ RETIREMENT SYSTEM.


(a) As used in this article, unless the context clearly require a different meaning:

(1) “Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) “Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

(4) “Average final salary” means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

(5) “Beneficiary” means the recipient of annuity payments made under the retirement system.

(6) “Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

(7) “Deposit” means a voluntary payment to his or her account by a member.
(8) “Employer” means the agency of and within the state which has employed or employs a member.

(9) “Employment term” means employment for at least ten months, a month being defined as twenty employment days.

(10) “Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also shall include retroactive payments made to a member to correct a clerical error, or pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all the retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary shall not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(11) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(12) “Member” means a member of the retirement system.

(13) “Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(14) “Members of the extension staff of the public schools” means every agricultural agent, boys’ and girls’ club
agent and every member of the agricultural extension staff
whose work is not primarily stenographic, clerical or
secretarial.

(15) “New entrant” means a teacher who is not a present
teacher.

(16) “Non-teaching member” means any person, except a
teacher member, who is regularly employed for full-time
service by: (a) Any county board of education; (b) the State
Board of Education; (c) the Higher Education Policy
Commission, the West Virginia Council for Community and
Technical College Education or a governing board, as
defined in section two, article one, chapter eighteen-b of this
code; or (d) the Teachers Retirement Board: Provided, That
any person whose employment with the Higher Education
Policy Commission, the West Virginia Council for
Community and Technical College Education or a governing
board commences on or after the first day of July, one
thousand nine hundred ninety-one, is not considered a
nonteaching member.

(17) “Pick-up service” means service that a member was
entitled to, but which the employer has not withheld or paid
for.

(18) “Plan year” means the twelve-month period
commencing on the first day of July and ending the following
thirtieth day of June of any designated year.

(19) “Present member” means a present teacher who is a
member of the retirement system.

(20) “Present teacher” means any person who was a
teacher within the thirty-five years beginning the first day of
July, one thousand nine hundred thirty-four, and whose
membership in the retirement system is currently active.
(21) “Prior service” means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(22) “Public schools” means all publicly supported schools, including colleges and universities in this state.

(23) “Refund beneficiary” means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(24) “Refund interest” means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(25) “Regular interest” means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(26) “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) “Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.
(28) “Retirement system” means the State Teachers’ Retirement System provided for in this article.

(29) “Teacher member” means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher’s certificate; (f) the Executive Secretary of the Retirement Board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (i) employees of the State Board of Education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; (l) employees of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (m) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Retirement System provided for in this article.

(30) “Total service” means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.
The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be considered to be seventy years.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

(1) “Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article;

(2) “Existing retirement system” means the State Teachers’ Retirement System established in article seven-a of this chapter;

(3) “Existing employer” means any employer who employed or employs a member of the existing retirement system;

(4) “Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s
(F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Defined Contribution System established by this article;

(6) “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) “Year of employment service” means employment for at least ten months, a month being defined as twenty employment days: Provided, That no more than one year of service may be accumulated in any twelve-month period;

(8) “Employer” means the agency of and within the State of West Virginia which has employed or employs a member;
“Compensation” means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;

“Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state;

“Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Defined Contribution Retirement System;

“Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

“Annuity account” or “annuity” means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

“Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

“Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the Board: Provided, however, That for employees hired on or after the first day of July, two thousand five, permanent, total disability means an inability
to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

(16) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;

(17) “Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and

(18) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the “additional retirement plan” relating to state higher education employees, means the “higher education retirement plan” provided in this
section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any such retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The Higher Education Policy Commission, on behalf of the governing boards and itself, shall contract for a retirement plan for its employees, to be known as the “Higher Education Retirement Plan”. The governing boards and Higher Education Policy Commission shall make periodic deductions from the salary payments due the employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The Higher Education Policy Commission and the governing boards, with policy commission approval, may contract for a supplemental retirement plan for any or all of their employees to supplement the benefits the employees otherwise receive. The governing boards and Higher Education Policy Commission may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) The Higher Education Policy Commission shall conduct a study of the feasibility of offering multiple vendors of retirement products and services to be offered for the benefit of higher education employees. The commission shall report the findings of the study, along with a plan for offering multiple vendors for the employees, to the Joint Committee on Pensions and Retirement no later than the first day of December, two thousand one. Upon approval by the Joint Committee on Pensions and Retirement, the commission shall provide a choice of vendors to their
employees. Any selection of vendors made by the
commission shall be determined according to a request for
proposal issued pursuant to the provisions of section four,
article five, chapter eighteen-b of this code.

(e) Each governing board and the Higher Education
Policy Commission, by way of additional compensation to
their employees, shall pay an amount equal to the
contributions of the employees into the higher education
retirement plan from funds appropriated to the board or
commission for personal services.

(f) Each participating employee has a full and immediate
vested interest in the retirement and death benefits accrued
from all the moneys paid into the Higher Education
Retirement Plan or a supplemental retirement plan for his or
her benefit. Upon proper requisition of a board or the Higher
Education Policy Commission, the auditor shall periodically
issue a warrant, payable as specified in the requisition, for the
total contributions so withheld from the salaries of all
participating employees and for the governing board's or
Higher Education Policy Commission's matching funds.

(g) Any person whose employment commences on or
after the first day of July, one thousand nine hundred ninety-
one, and who is eligible to participate in the Higher
Education Retirement Plan, shall participate in that plan and
is not eligible to participate in any other state retirement
system: Provided, That the foregoing provision does not
apply to a person designated as a 21st Century Learner
Fellow pursuant to section eleven, article three, chapter
eighteen-a of this code. The additional retirement plan
contracted for by the governing boards prior to the first day
of July, one thousand nine hundred ninety-one, remains in
effect unless changed by the Higher Education Policy
Commission. Nothing in this section may be construed to
consider employees of the governing boards as employees of
the Higher Education Policy Commission, nor is the Higher
Education Policy Commission responsible or liable for
retirement benefits contracted by, or on behalf of, the
governing boards.

(h) It is the intent of the Legislature in amending and
reenacting this section during its two thousand one regular
session solely to:

(1) Maintain the current retirement plans offered to state
higher education employees in their current form;

(2) Clarify that employees of the Higher Education Policy
Commission are participants in the higher education
retirement plan;

(3) Codify the current contribution levels of the
governing boards, the Higher Education Policy Commission
and their employees toward the present higher education
retirement plan;

(4) Make mandatory the contribution levels of the
governing boards and Higher Education Policy Commission;

(5) Establish a standardized retirement policy for all state
higher education employees as determined by the policy
commission;

(6) Clarify the application and purposes of the additional
and supplemental retirement plans previously provided for in
this section; and

(7) Remove obsolete and archaic language.
§18A-3-3. Renewal of certificates; permanent certification.

(a) Until the person qualifies for a permanent certificate, any professional or first class certificate based upon a bachelor's degree shall be renewable provided the holder within five years from the date the certificate became valid:

1. Files application on a prescribed form with the State Department of Education;

2. Presents an official transcript of six semester hours of approved credit as may be prescribed by the state board;

3. Successfully completes a beginning teacher internship program, if applicable; and

4. Submits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which the holder last taught or resides.

(b) The holder of a professional certificate, valid for five years, shall have the certificate made permanent upon meeting any of the following requirements:

1. Completion of the second renewal, in accordance with the provisions set forth in subsection (a) of this section; or
20 (2) After five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American Library Association; or

28 (3) Receives certification through the National Board for Professional Teaching Standards.

(c) To satisfy any of the requirements of subsection (b) of this section, the person must file application on a prescribed form with the State Department of Education and must submit a recommendation from the county superintendent of schools of the county in which the person last taught or resides.

(d) All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

(e) If the applicant seeking renewal has cause to believe that the county superintendent refuses to give a recommendation without just cause, the applicant shall have the right, in such case, to appeal to the State Superintendent of Schools whose responsibility it shall be to investigate the matter and issue a certificate if, in the opinion of the state superintendent, the county superintendent's recommendation was withheld arbitrarily.

(f) A person who has reached the age of sixty and holds a renewable certificate, as provided in this section, need not present renewal credit but shall meet all other renewal requirements.

(a) The Legislature finds that:

(1) There are instances, especially for the purpose of professional development, where it would be beneficial for persons who are members of the Teachers’ Retirement System or the Teachers’ Defined Contribution System to be employed by state institutions of higher education or research corporations;

(2) Members of the Teachers’ Retirement System are discouraged from terminating their membership to that system because their annuity is based on their final average salary and their total service credit;

(3) A member of the Teachers’ Defined Contribution System may be discouraged from terminating his or her membership to that system because the member may be completely vested in that system or have made substantial progress toward being vested;

(4) These members also are discouraged from leaving employment that allows them to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code; and

(5) An example of this beneficial arrangement would be the employment of a member of the Teachers’ Retirement System or a member of the Teachers’ Defined Contribution System by an entity that otherwise would not be considered an employer under article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code for the purpose of working on a joint professional development project between higher education and public education.
(b) For the purposes of this section only, unless the context clearly indicates otherwise:

(1) “Employer” means either the state institution of higher education or the research corporation employing a 21st Century Learner Fellow;

(2) “Research corporation” means a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code; and

(3) “State institution of higher education” means the same as defined in section two, article one, chapter eighteen-b of this code.

(c) The State Superintendent is authorized to designate up to twenty-five professional educators who are currently employed and who are members of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers’ Defined Contribution System set forth in article seven-b, chapter eighteen of this code as 21st Century Learner Fellows, subject to the following:

(1) Before designating a person as a 21st Century Learner Fellow, the State Superintendent shall consult with the state institution of higher education or the research corporation that would employ the member if designated;

(2) In determining whether or not to designate a person as a 21st Century Learner Fellow, the State Superintendent shall give preference to a person who:

(A) Is certified by the National Board for Professional Teaching Standards; and
(B) Demonstrates leadership within his or her content field in the county, regional education service agency area or the state;

(3) The duration of the person’s designation as a 21st Century Learner Fellow shall be for the period in which the specific project to be undertaken by the person will last as determined by the State Superintendent at the time he or she designates the person; and

(4) Only the employer may terminate the employment of a person designated as a 21st Century Learner Fellow prior to the end of the duration of the person’s designation as set forth in subsection (3) of this subsection.

(d) Notwithstanding any other provision of the code to the contrary, the professional educators designated as 21st Century Learner Fellows may elect to remain a member of the retirement system in which they were a member of immediately preceding their designation while they are employed by either a state institution of higher education or a research corporation, subject to the following:

(1) This authorization to remain a member of the retirement system in which they were a member of immediately preceding their designation only applies to authorization to remain a member of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or to the Teachers’ Defined Contribution System set forth in article seven-b, chapter eighteen of this code, but not both;

(2) Both the employer and the member each shall contribute their share as required by article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code, as applicable;
(3) If a 21st Century Learner Fellow elects to remain a member of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers’ Defined Contribution System set forth in article seven-b, chapter eighteen of this code, he or she may not participate in any retirement plan offered by the employer; and

(4) Notwithstanding any other provision of law to the contrary, the employer does not assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(e) Notwithstanding any other provision of code to the contrary, each 21st Century Learner Fellow also qualifies as an employee for the purposes of being authorized to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code and the state institution of higher education or the research corporation, as applicable, shall be considered an employer under that program, subject to the following:

(1) The state institution of higher education or the research corporation, as applicable, is not considered an employer with respect to any employee other than a 21st Century Learner Fellow;

(2) For any employee that elects to participate in the program pursuant to this subdivision, the employer shall pay their share of the premium and the employee shall pay his or
her share of the premium pursuant to article sixteen, chapter five of this code; and

(3) Notwithstanding any other provision of law to the contrary, the employer does not assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(f) Notwithstanding any other provision of law to the contrary:

(1) The employer is not responsible for any accrued annual leave, sick leave or both that a 21st Century Learner Fellow has accumulated during any prior employment; and

(2) If a 21st Century Learner Fellow has accumulated sick leave from prior employment, and if not for this subsection that sick leave obligation or any part of that obligation otherwise would have been transferred to the employer, after expending all sick leave accrued with the employer, the 21st Century Learner may expend the sick leave accumulated with the prior employer, and the prior employer is responsible for paying the cost of the sick leave expended by the 21st Century Learner Fellow at a rate equivalent to the salary and benefits paid to the 21st Century Learner Fellow at the time his or her employment with the prior employer ended.
CHAPTER 86

(Com. Sub. for H.B. 2189 - By Delegates Caputo, Paxton, Perry, Fragale and M. Poling)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-13 of said code; to amend and reenact §18-20-2 of said code; to amend and reenact §18A-1-1 of said code; to amend and reenact §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said code; to amend said code by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and to amend and reenact §18A-5-8 of said code, all relating to public schools and county boards of education; school service personnel; personal leave and leave banks for school personnel; authority of county boards of education; updating definitions; expanding purposes for which schools may expend funds; establishing certain vehicle and driver safety requirements for transporting students to a school-sponsored activity; expanding the purposes for which county boards may lease school buses; giving preference to a currently employed professional educator for summer employment; establishing service personnel classification title for licensed practical nurse; adding posting and notice requirements for filling service personnel positions; prohibiting displacement of aides to create vacancy for licensed practical nurse; establishing parameters for the workday and
beginning work station for certain service personnel; modifying process for determining certain service personnel hiring priority in cases of school merger or consolidation; authorizing transfer of personal leave in certain circumstances; modifying employment benefits accrued by substitute service personnel; requiring county boards of education to make certain training available to all regularly employed teachers’ aides; prohibiting an autism mentor or aide who works with autistic students from transferring to another position after the fifth day prior to the beginning of the instructional term under certain conditions; deleting obsolete language; and making technical corrections.

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

That §18-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-13 of said Code be amended and reenacted; that §18-20-2 of said Code be amended and reenacted; that §18A-1-1 of said Code be amended and reenacted; that §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said Code be amended and reenacted; that said Code be amended by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and that §18A-5-8 of said Code be amended and reenacted, all to read as follows:

**Chapter 18. Education.**

18. Education.

18A. School Personnel.

**CHAPTER 18. EDUCATION.**

Article

1. Definitions; Limitations of Chapter; Goals for Education.

5. County Board of Education.

20. Education of Exceptional Children.
ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "School" means the students and teachers assembled in one or more buildings, organized as a unit;

(b) "District" means county school district;

(c) "State board" means the West Virginia Board of Education;

(d) "County board" or "board" means a county board of education;

(e) "State superintendent" means the State Superintendent of Free Schools;

(f) "County superintendent" or "superintendent" means a county superintendent of schools;

(g) "Teacher" means a teacher, supervisor, principal, superintendent or public school librarian; registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses and employed by a county board, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;
(h) "Service person" or "service personnel", whether singular or plural, means any non-teaching school employee who is not included in the meaning of "teacher" as defined in this section, and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of this code means service person or service personnel as defined in this section;

(i) "Social worker" means a nonteaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional social work services, activities or methods as defined by the State Board for the benefit of students;

(j) "Regular full-time employee" means any person employed by a county board who has a regular position or job throughout his or her employment term, without regard to hours or method of pay;

(k) "Career clusters" means broad groupings of related occupations;

(l) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;

(m) "School-age juvenile" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools in accordance with:
(1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter;

(n) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter;

(o) "Low-density county" means a county whose ratio of student population to square miles is less than or equal to the state average ratio as computed by the State Department of Education;

(p) "High-density county" means a county whose ratio of student population to square miles is greater than the state average ratio as computed by the State Department of Education; and

(q) "Casual deficit" means a deficit of not more than three percent of the approved levy estimate or a deficit that is nonrecurring from year to year.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


Subject to the provisions of this chapter and the rules of the State Board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:
(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:
(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the State Board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to the provisions of subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;
(f) Provide transportation according to rules established by the county board, as follows:

1. To provide at public expense adequate means of transportation:
   
   A. For all children of school age who live more than two miles distance from school by the nearest available road;
   
   B. For school children participating in county board-approved curricular and extracurricular activities;
   
   C. Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to the provisions of subsection (h) of this section; and
   
   D. Within available revenues, for students within two miles distance of the school; and

2. To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the Bureau or the local or county affiliate of the Bureau;

3. Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board;
(4) Pursuant to rules established by the State Board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The State Board shall promulgate a rule to establish requirements for:

(i) Automobile insurance coverage;

(ii) Vehicle safety specifications;

(iii) School bus or public transit ratings; and

(iv) Driver training, certification and criminal history record check; and
(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the State Board rule; and

(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;
(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the State Board; and, prior to assignment, to provide a four-clock-hour
program of training for a service person assigned duties as a
teacher aide in an exceptional children program. The four-
clock-hour program shall consist of training in areas
specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a
post high school program; and

(2) Persons employed to teach in the high school or post
high school program;

(l) At the county board’s discretion, employ, contract
with or otherwise engage legal counsel in lieu of using the
services of the prosecuting attorney to advise, attend to,
bring, prosecute or defend, as the case may be, any matters,
actions, suits and proceedings in which the county board is
interested;

(m) Provide appropriate uniforms for school service
personnel;

(n) Provide at public expense for payment of traveling
expenses incurred by any person invited to appear to be
interviewed concerning possible employment by the county
board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided
carriage to travel from their residences to their workplace and
return. The use:
177 (1) Is subject to the supervision of the county board; and
178 (2) Shall be directly connected with, required by and
179 essential to the performance of the employee's duties and
180 responsibilities;
181 (p) Provide at public expense adequate public liability
182 insurance, including professional liability insurance, for
183 county board employees;
184 (q) Enter into cooperative agreements with other county
185 boards to provide improvements to the instructional needs of
186 each district. The cooperative agreements may be used to
187 employ specialists in a field of academic study or for support
188 functions or services for the field. The agreements are
189 subject to approval by the State Board;
190 (r) Provide information about vocational and higher
191 education opportunities to exceptional students. The county
192 board shall provide in writing to the students and their
193 parents or guardians information relating to programs of
194 vocational education and to programs available at state
195 institutions of higher education. The information may
196 include sources of available funding, including grants,
197 mentorships and loans for students who wish to attend classes
198 at institutions of higher education;
199 (s) Enter into agreements with other county boards for the
200 transfer and receipt of any funds determined to be fair when
201 students are permitted or required to attend school in a
202 district other than the district of their residence. These
203 agreements are subject to the approval of the State Board;
(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;
230 (4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

233 (5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position; and

241 (u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

1 (a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for treatment and prosthesis as may
(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the State.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the State Board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this Code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers’ aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and
(2) Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

(A) Notify in writing all teachers’ aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Reimburse any regularly employed or substitute teacher’s aide who elects to attend this training for one-half of the cost of the tuition.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant to this chapter have the meanings ascribed to them unless the context clearly indicates a different meaning:

*Clerk’s Note: This section was also amended by S.B. 129 (Chapter 208) which passed prior to this act.
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7    (a) "School personnel" means all personnel employed by
8 a county board whether employed on a regular full-time
9 basis, an hourly basis or otherwise. "School personnel" is
10 comprised of two categories: Professional personnel and
11 service personnel;

12    (b) "Professional person" or "Professional personnel"
13 means those persons or employees who meet the certification
14 requirements of the state, licensing requirements of the state,
15 or both, and includes a professional educator and other
16 professional employee;

17    (c) "Professional educator" has the same meaning as
18 "teacher" as defined in section one, article one, chapter
19 eighteen of this code. Professional educators are classified as
20 follows:

21    (1) "Classroom teacher" means a professional educator
22 who has a direct instructional or counseling relationship with
23 students and who spends the majority of his or her time in
24 this capacity;

25    (2) "Principal" means a professional educator who
26 functions as an agent of the county board and has
27 responsibility for the supervision, management and control of
28 a school or schools within the guidelines established by the
29 county board. The principal’s major area of responsibility is
30 the general supervision of all the schools and all school
31 activities involving students, teachers and other school
32 personnel;
(3) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a non-teaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this code, and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service
employees” in this chapter or chapter eighteen of this code means service person or service personnel as defined in this section;

(f) "Principals Academy" or "Academy" means the Academy created pursuant to section two-b, article three-a of this chapter;

(g) "Center for Professional Development" means the Center created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional person" whether singular or plural, means a certified professional educator who:

(1) Has been recruited on a reserve list of a county board;

(2) Has been recruited at a job fair or as a result of contact made at a job fair;

(3) Has not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and

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(4) Has obtained a baccalaureate degree from an accredited institution of higher education within the past year;

(j) "Dangerous student" means a student who is substantially likely to cause serious bodily injury to himself, herself or another individual within that student’s educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the student, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense; and

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.

(l) "Long-term substitute" means a substitute employee who fills a vacant position:

(1) That the county superintendent expects to extend for at least ninety consecutive days, and is either:

(A) Listed in the job posting as a long term substitute position of over ninety days; or
(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7c. Summer employment of professional educators.

(a) A county board shall hire professional educators for positions in summer school programs in accordance with section thirty-nine, article five, chapter eighteen of this code or section seven-a of this article, as applicable, except that a professional educator who is currently employed by the county board shall be given employment preference over applicants who are not current employees.
ten months. A month is defined as twenty employment days:
Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall be paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

Clerk’s Note: This section was also amended by H.B. 2777 (Chapter 95), which passed prior to this act.
person shall be paid for at least one-half day of work for each
day he or she reports for work. If the service person works
more than three and one-half hours on any Saturday or
Sunday, he or she shall be paid for at least a full day of work
for each day.

(f) A custodian, aide, maintenance, office and school
lunch service person required to work a daily work schedule
that is interrupted shall be paid additional compensation.

(1) A maintenance person is defined as a person who
holds a classification title other than in a custodial, aide,
school lunch, office or transportation category as provided in
section one, article one of this chapter.

(2) A service person’s schedule is considered to be
interrupted if he or she does not work a continuous period in
one day. Aides are not regarded as working an interrupted
schedule when engaged exclusively in the duties of
transporting students;

(3) The additional compensation provided for in this
subsection:

(A) Is equal to at least one eighth of a service person’s
total salary as provided by the state minimum pay scale and
any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a
service person meets the requirements of an advanced
classification, his or her salary shall be made to comply with
the requirements of this article and any county salary
schedule in excess of the minimum requirements of this
article, based upon the service person’s advanced
classification and allowable years of employment.

(h) A service person’s contract as provided in section
five, article two of this chapter, shall state the appropriate
monthly salary the employee is to be paid, based on the class
title as provided in this article and on any county salary
schedule in excess of the minimum requirements of this
article.

(i) The column heads of the state minimum pay scale and
class titles, set forth in section eight-a of this article, are
defined as follows:

(1) "Pay grade" means the monthly salary applicable to
class titles of service personnel;

(2) "Years of employment" means the number of years
which an employee classified as a service person has been
employed by a county board in any position prior to or
subsequent to the effective date of this section and includes
service in the armed forces of the United States, if the
employee was employed at the time of his or her induction.
For the purpose of section eight-a of this article, years of
employment is limited to the number of years shown and
allowed under the state minimum pay scale as set forth in
section eight-a of this article;

(3) "Class title" means the name of the position or job
held by a service person;
(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the State Board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;
(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed fifteen hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;
(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means a person employed to provide braille and/or sign language assistance to students. A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;

(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation,
161 preparing financial reports and keeping records pertinent to
162 food services of a school;

163 (20) "Carpenter I" means a person classified as a
164 carpenter's helper;

165 (21) "Carpenter II" means a person classified as a
166 journeyman carpenter;

167 (22) "Chief mechanic" means a person employed to be
168 responsible for directing activities which ensure that student
169 transportation or other county board-owned vehicles are
170 properly and safely maintained;

171 (23) "Clerk I" means a person employed to perform
172 clerical tasks;

173 (24) "Clerk II" means a person employed to perform
174 general clerical tasks, prepare reports and tabulations and
175 operate office machines;

176 (25) "Computer operator" means a qualified person
177 employed to operate computers;

178 (26) "Cook I" means a person employed as a cook's
179 helper;

180 (27) "Cook II" means a person employed to interpret
181 menus and to prepare and serve meals in a food service
182 program of a school. This definition includes a service
183 person who has been employed as a "Cook I" for a period of
184 four years;
(28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the
210 professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."

213 (C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes; and

216 (D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person;

220 (35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

223 (36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the state fire marshal;

226 (37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the state fire marshal;

229 (38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

232 (39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;
"Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

"Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

"Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

"General maintenance" means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

"Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

"Graphic artist" means a person employed to prepare graphic illustrations;

“Groundsman” means a person employed to perform duties that relate to the appearance, repair and general care of
262 school grounds in a county school system. Additional
263 assignments may include the operation of a small heating
264 plant and routine cleaning duties in buildings;

265 (47) "Handyman" means a person employed to perform
266 routine manual tasks in any operation of the county school
267 system;

268 (48) "Heating and air conditioning mechanic I" means a
269 person employed at the apprentice level to install, repair and
270 maintain heating and air conditioning plants and related
271 electrical equipment;

272 (49) "Heating and air conditioning mechanic II" means a
273 person employed at the journeyman level to install, repair and
274 maintain heating and air conditioning plants and related
275 electrical equipment;

276 (50) "Heavy equipment operator" means a person
277 employed to operate heavy equipment;

278 (51) "Inventory supervisor" means a person employed to
279 supervise or maintain operations in the receipt, storage,
280 inventory and issuance of materials and supplies;

281 (52) "Key punch operator" means a qualified person
282 employed to operate key punch machines or verifying
283 machines;

284 (53) “Licensed practical nurse” means a nurse, licensed
285 by the West Virginia Board of Examiners for Licensed
286 Practical Nurses, employed to work in a public school under
287 the supervision of a school nurse;
(54) "Locksmith" means a person employed to repair and maintain locks and safes;

(55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(61) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;
(62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(63) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(64) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(65) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;
(B) A person who has held or holds an aide title and
becomes employed as a paraprofessional shall hold a
multiclassification status that includes both aide and
paraprofessional titles in accordance with section eight-b of
this article; and

(C) When a service person who holds an aide title
becomes certified as a paraprofessional and is required to
perform duties that may not be performed by an aide without
paraprofessional certification, he or she shall receive the
paraprofessional title pay grade;

(67) "Payroll supervisor" means a person employed in the
county board office who has primary responsibility for the
payroll function and who either has completed twelve college
hours of accounting from an accredited institution of higher
education or has at least eight years of experience performing
progressively difficult accounting tasks. Responsibilities of
this class title may include supervision of other personnel;

(68) "Plumber I" means a person employed as an
apprentice plumber and helper;

(69) "Plumber II" means a person employed as a
journeyman plumber;

(70) "Printing operator" means a person employed to
operate duplication equipment, and to cut, collate, staple,
bind and shelve materials as required;

(71) "Printing supervisor" means a person employed to
supervise the operation of a print shop;
(72) "Programmer" means a person employed to design and prepare programs for computer operation;

(73) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(74) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(75) "School bus supervisor" means a qualified person employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees;

(76) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(77) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;
(78) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";

(79) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(80) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

(81) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(82) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;
(84) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(85) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(86) “WVEIS data entry and administrative clerk” means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classifications. The state
457 superintendent may withhold state funds appropriated
458 pursuant to this article for salaries for service personnel who
459 are improperly classified by the county boards. Further, the
460 state superintendent shall order a county board to correct
461 immediately any improper classification matter and, with the
462 assistance of the attorney general, shall take any legal action
463 necessary against any county board to enforce the order.

464 (m) Without his or her written consent, a service person
465 may not be:

466 (1) Reclassified by class title; or

467 (2) Relegated to any condition of employment which
468 would result in a reduction of his or her salary, rate of pay,
469 compensation or benefits earned during the current fiscal
470 year; or for which he or she would qualify by continuing in
471 the same job position and classification held during that fiscal
472 year and subsequent years.

473 (n) Any county board failing to comply with the
474 provisions of this article may be compelled to do so by
475 mandamus and is liable to any party prevailing against the
476 board for court costs and the prevailing party's reasonable
477 attorney fee, as determined and established by the court.

478 (o) Notwithstanding any provision of this code to the
479 contrary, a service person who holds a continuing contract in
480 a specific job classification and who is physically unable to
481 perform the job's duties as confirmed by a physician chosen
482 by the employee, shall be given priority status over any
483 employee not holding a continuing contract in filling other
484 service personnel job vacancies if the service person is
485 qualified as provided in section eight-e of this article.
(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means that the applicant holds a classification title in his or her category of employment as provided in this section and shall be given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title as defined in section eight of this article, that relates to the promotion or vacancy. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted.
or employed in the position for which he or she applies. Applicants shall be considered in the following order:

(1) Regularly employed service personnel;

(2) Service personnel whose employment has been discontinued in accordance with this section;

(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for these temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion is defined as any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having
Roman numeral designations, which shall be considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor and braille or sign language specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(e) For purposes of determining seniority under this section an service person’s seniority begins on the date that he or she enters into the assigned duties.

(f) Extra-duty assignments.

(1) For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by
other fellow employees on a rotating basis according to the
length of their service time until all such employees have had
an opportunity to perform similar assignments. The cycle
then shall be repeated.

(B) An alternative procedure for making extra-duty
assignments within a particular classification category of
employment may be used if the alternative procedure is
approved both by the county board and by an affirmative vote
of two thirds of the employees within that classification
category of employment.

(g) County boards shall post and date notices of all job
vacancies of established existing or newly created positions
in conspicuous places for all school service personnel to
observe for at least five working days.

(1) Posting locations shall include any website
maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job
description, the period of employment, the amount of pay and
any benefits and other information that is helpful to
prospective applicants to understand the particulars of the
job. Job postings for vacancies made pursuant to this section
shall be written so as to ensure that the largest possible pool
of qualified applicants may apply. Job postings may not
require criteria which are not necessary for the successful
performance of the job and may not be written with the intent
to favor a specific applicant.

(3) After the five-day minimum posting period, all
vacancies shall be filled within twenty working days from the
posting date notice of any job vacancies of established
existing or newly created positions.
(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of any service person shall be determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when a service person has been employed in one or more classifications, the seniority accrued in each previous classification is retained by the employee.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) Prior to the first day of August after a reduction in force or transfer is approved:
(1) If the county board in its sole and exclusive judgment determines that the reason for any particular reduction in force or transfer no longer exists, the board shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) Within five days of being notified, the affected employee shall notify the county board of his or her intent to return to the former position of employment or the right of restoration to the former position terminates.

(3) The county board shall not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

(l) If two or more service persons accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.
(n) A service person placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, or to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list shall not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the service person. Each service person shall notify the county board of any change of address.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter shall be accorded preferred recall status on the first day of July of the succeeding school year if the he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.
(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8f. Seniority rights, school consolidation.

(a) Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers or school service personnel, who vote to do so, in accordance with procedures established in this section, and who are employed by a county board, the board shall give priority to classroom teachers or school service personnel in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger.

(b) Each year a consolidation or merger is proposed, prior to the implementation of that plan, the superintendent shall cause to be prepared and distributed to all faculty senates and to all schools or other work sites a ballot on which teachers and service personnel may indicate whether or not they desire those affected by school closings to be given priority status in filling new positions. A secret ballot election shall be conducted:

(1) In each faculty senate for classroom teachers. The faculty senate chair shall convey the results of the election to the superintendent; and
(2) At each school or work site for school service personnel. The service personnel supervisor at each school or work site shall convey the results of the election to the superintendent.

(c) The superintendent shall tabulate and post all results prior to the notice requirements for reduction in force and transfer as outlined in sections two and seven, article two of this chapter. The total number of votes shall be tabulated separately for classroom teachers and for service personnel. The provisions of this section also shall be implemented separately as follows:

(1) For classroom teachers only if a majority of the total number of teachers who cast a ballot vote to do so; and

(2) For school service personnel only if a majority of the total number of service personnel who cast a ballot vote to do so.

(d) If a majority approves, the teachers or school service personnel in the school or schools to be closed have priority in filling new positions in the new or merged schools for which the teachers are certified or for which the school service personnel are qualified and meet the standards set forth in the job posting on the basis of seniority within the county. A teacher or school service person may receive priority for filling a position at a school affected by a merger or consolidation only for the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level.

(1) The most senior teacher from the closed school or schools shall be placed first, the second most senior shall be placed next and so on until all the newly created positions are
filled, or until all the teachers in the closed school or schools who wish to transfer into the newly created positions are placed.

(2) The most senior service person from the closed school or schools has priority in filling any position within his or her classification category. The second most senior service person from the closed school or schools then has priority in filling remaining vacancies and so on until all available positions are filled.

(3) If there are fewer new positions in the newly created school or merged school than there are classroom teachers or school service personnel from the school or schools to be closed, the teachers or school service personnel who were not placed in the new positions retain the same rights as all other teachers or service personnel with regard to seniority, transfer and reduction in force.

(4) This section does not grant any employee additional rights or protections with regard to reduction in force.

(e) For the purposes of this section only:

(1) A consolidation means that one or more schools are closed, or one or more grade levels are removed from one or more schools, and the students who previously attended the closed schools or grade levels are assigned to a new school.

(2) A merger means that one or more schools are closed or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.
(f) The provisions of this section do not apply to positions that are filled by a county board prior to the effective date of this section, as reenacted during the regular session of the Legislature, two thousand seven.

§18A-4-8g. Determination of seniority for service personnel.

(a) Seniority accumulation for a regular school service person:

(1) Begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter;

(2) Continues until the service person’s employment as a regular employee is severed with the county board; and

(3) Does not cease to accumulate when the county board has authorized an absence whether without pay or due to illness or other reason over which the employee has no control.

(b) Seniority accumulation for a substitute service person:

(1) Begins on the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the county board a contract of employment as provided in section five, article two of this chapter; and

(2) Continues until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter; or employment as a substitute service person with the county board is severed.
(c) Seniority of a regular or substitute service person does not continue to accumulate under the following conditions:

(1) When a service person is willfully absent from employment duties because of a concerted work stoppage or strike; or

(2) When a service person is suspended without pay.

(d) For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article.

(e) When implementing a reduction in force, the service person with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by a service person within the classification category may not be considered when implementing a reduction in force.

(f) On or before the first day of September and the fifteenth day of January of each school year, county boards shall post at each county school or working station the current seniority list or lists of each service personnel classification. Each list shall contain the name of each regularly employed school service person employed in each classification and the date that each employee began performing his or her assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board office.
(g) The seniority of a service person who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment is calculated as follows:

(1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the service person’s initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

(h) Beginning on the first day of July, two thousand seven, a substitute school service person shall acquire regular employment status, but not regular employee job bidding rights or regular seniority, if the employee receives a position pursuant to the leave of absence or suspension provisions of subdivisions (2) and (5), subsection (a), section fifteen of this article.

(1) A substitute service person shall accumulate substitute employee seniority while holding a position acquired pursuant to subsections (2) and (5).
(2) Upon termination of the regular service person’s leave of absence or suspension, the substitute service person shall return to the status previously held.

(3) County boards are not prohibited from providing any benefits of regular employment for substitute service personnel, but the benefits may not include regular service personnel employee status or seniority.

(i) If two or more service personnel accumulate identical seniority, the priority shall be determined by a random selection system established by the service personnel and approved by the county board.

(1) A board shall conduct the random selection within thirty days of the time the service personnel establish an identical seniority date. All service personnel with an identical seniority date within the same class title or classification category shall participate in the random selection.

(2) As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority applies to the filling of vacancies and to the reduction in force of school service personnel.

(3) If any other service person subsequently acquires seniority identical to the employees involved in the original random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee within the group.
(A) The priority between the employees who participated in the original random selection remains the same.

(B) The second random selection is performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. Any service person who was not involved in the original random selection shall draw a number from the container which will determine his or her seniority within the group as a whole.

(C) This process will be repeated if any additional service person subsequently acquires identical seniority.

(D) The same process shall be used if any additional service person is subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection due to oversight or mistake.

(j) Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

(k) Seniority acquired as a substitute service person and as a regular service person shall be calculated separately and may not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately. If a school service employee applies for a position outside of the classification category he or she currently holds, and if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purpose of bidding on the position.
(1) A school service person who holds a multiclassification title accrues seniority in each classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title. A multiclassified service person is subject to reduction in force in any category of employment contained within his or her multiclassification title, based upon the seniority accumulated within that category of employment. If a multiclassified service person is subject to a reduction in force in one classification category, the service person retains employment in any of the other classification categories that he or she holds within his or her multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

(m) When applying to fill a vacancy outside the classification categories held by a multiclassified service person, seniority acquired simultaneously in different classification categories is calculated as if accrued in one classification category only.

(n) The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental to the seniority commence as of the effective date of this section.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

(a) Personal Leave.

(1) At the beginning of the employment term, any full-time employee of a county board is entitled annually to at least one and one-half days personal leave for each
employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee is entitled.

(3) Each employee is permitted to use three days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment,
the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) Leave Banks.
(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient
general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the State Board and the provisions of this chapter and chapter eighteen of this code.
§18A-4-10f. Leave donation program.

(a) Definitions.

For the purposes of this section and section ten of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) "Catastrophic medical emergency" means a medical or physical condition that:

(A) Incapacitates an employee or an immediate family member for whom the employee will provide care;

(B) Is likely to require the prolonged absence of the employee from duty; and

(C) Will result in a substantial loss of income to the employee:

(i) Has exhausted all accrued personal leave; and

(ii) Is not eligible to receive personal leave or has exhausted personal leave available from a leave bank established pursuant to this article;

(2) "Employee" means a professional educator or school service person who is employed by a county board and entitled to accrue personal leave as a benefit of employment;

(3) "Donor employee" means a professional educator or school service person employed by a county board who voluntarily contributes personal leave to another designated employee; and
(4) “Receiving employee” means a professional educator or school service person employed by a county board who receives donated personal leave from another employee.

(b) **Leave donation program.**

(1) In addition to any personal leave bank established pursuant to this article, a county board shall establish a leave donation program pursuant to which a donor employee may transfer accrued personal leave to the personal leave account of another designated employee.

(2) A county board:

   (A) May not limit the number of personal leave days a donor employee may transfer to a receiving employee who is his or her spouse;

   (B) May not limit the total number of personal leave days a receiving employee receives; and

   (C) May limit the number of days a donor employee transfers to a receiving employee who is not his or her spouse.

(c) **Rule.**

(1) The county board shall adopt a rule to implement the program.

(2) The rule shall set forth at least the following conditions:

   (A) The donor employee voluntarily agrees to the leave transfer;
(B) The donor employee selects the employee designated to receive the personal leave transferred; and

(C) The receiving employee requires additional personal leave because of a catastrophic medical emergency;

(D) The donated leave may not be used to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code;

(E) Each personal leave day contributed:

(i) Shall be deducted from the number of personal leave days to which the donor employee is entitled by section ten of this article;

(ii) Shall not be deducted from the number of personal leave days without cause to which the donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Shall be credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the donor employee; and
(F) An employee may not be coerced or compelled to contribute to a leave donation program.

§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

1. To fill the temporary absence of another service employee;

2. To fill the position of a regular service person as follows:
   
   (A) If the regular service person requests a leave of absence from the county board in writing and is granted the leave in writing by the county board; or
   
   (B) If the regular service person is on workers’ compensation and absent.

   (C) If an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond thirty working days, the county board shall post the position of the absent employee under the procedures set forth in section eight-b of this article. If a substitute service person is employed to fill the position of the absent employee and is employed in the position for twenty or more working days, the substitute service person:

   (i) Acquires regular employment status with the exception of regular employee job bidding rights;

   (ii) Does not accrue regular seniority; and
(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the county board;

(D) If a regular or substitute employee fills a vacancy that is related in any manner to a leave of absence or the absence of an employee on workers’ compensation as provided in this section, upon termination of the absence the employee shall be returned to his or her original position or status;

(E) A service person may not be:

(i) Required to request or to take a leave of absence; or

(ii) Deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

(3) To perform the service of a service person who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to section eight, article two of this chapter, or death of the regular service person who had been assigned to the position. Within twenty working days from the commencement of the vacancy, the county board shall fill the vacancy under the procedures set forth in section eight-b of this article and section five, article two of this chapter. The person hired to fill the vacancy shall have and be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee's suspension.
(A) If the suspension is for more than thirty working days, the county board shall post the position of the suspended employee under the procedures set forth in section eight-b of this article.

(B) If a substitute service person is employed to fill the suspended employee’s position, the substitute service person:

(i) Acquires regular employment status with the exception of regular employee job-bidding rights;

(ii) Does not accrue regular seniority; and

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the termination by the county board becomes final or the suspended employee is returned to employment.

(C) If the suspended employee is not returned to his or her job, the county board shall fill the vacancy under the procedures set forth in section eight-b of this article and section five, article two of this chapter; and

(6) To fill temporarily a vacancy in a newly created position prior to employing a service person on a regular basis pursuant to section eight-b of this article.

(b) Service personnel substitutes shall be assigned in the following manner:

(1) The substitute with the greatest length of service time in the vacant category of employment has priority in accepting the assignment throughout the period of the regular service person’s absence or until the vacancy is filled on a regular basis pursuant to section eight-b of this article. Length of service time is calculated from the date a substitute
service person begins assigned duties as a substitute in a particular category of employment.

(2) All service personnel substitutes are employed on a rotating basis according to their lengths of service time until each substitute has had an opportunity to perform similar assignments.

(3) Any regular service person employed in the same building or working station and the same classification category of employment as the absent employee shall be given the first opportunity to fill the position of the absent employee on a rotating and seniority basis. In such case the regular service person's position is filled by a substitute service person. A regular service person assigned to fill the position of an absent employee has the opportunity to hold that position throughout the absence. For the purpose of this section only, all regularly employed school bus operators are considered to be employed within the same building or working station.

(c) The county board shall return a regular school service person to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service person:

(1) Retains all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence; and

(2) Has all rights, privileges and benefits generally accorded school service personnel at the time of return to work.

(d) The salary of a substitute service person is determined:
(1) Based upon his or her years of employment as defined in section eight of this article;

(2) As provided in the state minimum pay scale set forth in section eight-a of this article; and

(3) In accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

(e) A substitute service person shall execute a written contract with the county board pursuant to section five, article two of this chapter, prior to beginning assigned duties.

(f) The following method shall be used to establish a fair, equitable and uniform system for assigning service personnel substitutes to their duties for the first time:

(1) The initial order of assigning newly-employed substitutes is determined by a random selection system established by the affected substitute employees and approved by the county board; and

(2) The initial order is effective only until the substitute service personnel have begun their duties for the first time.

(g) A substitute service person who has worked thirty days for a school system has all rights pertaining to suspension, dismissal and contract renewal as are granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.
ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section may not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension may not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the service person under section eight-a, article four of this chapter and any county salary schedule in excess of the minimum requirements of this article.

(d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of
time which exceeds that required under the aide's contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval.

(1) The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits.

(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school.

(3) Aides have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

(f) Subject to the limitations set forth in subsection (g) of this section, an aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval. During the first year of employment as an aide, an aide may not transfer to another
position of employment during the first one-half school term of employment unless mutually agreed upon by the aide and county superintendent, subject to board approval.

(g) Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder.

(1) Legislative findings and intent.

(A) The Legislature finds that it is not in the best interest of students with autism to have multiple teachers, mentors, aides or any combination thereof during the instructional term; and

(B) It is the intent of the Legislature that filling positions for autism mentors and aides who work with autistic students through transfers of personnel from one position to another after the fifth day prior to the beginning of the instructional term be kept to a minimum.

(2) Transfer limitations and conditions.

(A) After the fifth day prior to the beginning of the instructional term, no service person employed and assigned as an autism mentor or aide who works with autistic students may transfer to another position in the county during that instructional term unless the service person holding that position does not have valid certification.
(B) The provisions of this subsection are subject to the following conditions:

(i) The aide or autism mentor may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term;

(ii) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students; and

(iii) The county superintendent shall notify the State Board when a service person employed in a position as autism mentor or aide working with autistic students is transferred to another position after the fifth day prior to the beginning of the instructional term;

(h) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
CHAPTER 87

(S.B. 657 - By Senators Plymale, Edgell, Unger, Stollings and McCabe)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29A-3B-9 and §29A-3B-10 of said code, all relating to public education generally; standards, assessment and accountability for student performance and progress; requiring 21st Century Skills Initiative incorporation into standards; renaming unified improvement plans as strategic improvement plans; revising uniform statewide student assessment program; providing annual performance measures for the No Child Left Behind Act of 2001; providing state annual performance measures; providing additional category of school accreditation and renaming existing category; revising criteria for accreditation status; providing for appeal of on-site findings and report to oversight commission; removing obsolete provisions; and allowing electronic filing of state board rules with the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29A-3B-9 and §29A-3B-10 of said code be amended and reenacted, all to read as follows:
§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(a) Legislative findings, purpose and intent. — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

1. The process for improving education includes four primary elements, these being:

2. (A) Standards which set forth the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

3. (B) Assessments of student performance and progress toward meeting the standards;

4. (C) A system for holding schools and school systems accountable for student performance and progress toward obtaining the knowledge and skills intrinsic to a high quality
education in the twenty-first century which is delivered in an efficient manner; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor.

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use.

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided
for all West Virginia public school students on an equal education opportunity basis.

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine the performance and progress of students, schools and school systems and, when necessary, to consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) Electronic county and school strategic improvement plans. -- The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be a five-year plan that includes the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The revised annual plan also shall identify any deficiency which is reported on the check lists identified in paragraph (G), subdivision (5), subsection (l) of this section including any deficit more than a casual deficit by the county board. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date
certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

(c) High quality education standards and efficiency standards. -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

(1) Curriculum;

(2) Workplace readiness skills;

(3) Finance;

(4) Transportation;

(5) Special education;

(6) Facilities;

(7) Administrative practices;
(8) Training of county board members and administrators;

(9) Personnel qualifications;

(10) Professional development and evaluation;

(11) Student performance and progress;

(12) School and school system performance and progress;

(13) A code of conduct for students and employees;

(14) Indicators of efficiency; and

(15) Any other areas determined by the state board.

The standards, as applicable, shall incorporate the state’s 21st Century Skills Initiative and shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.

(d) Comprehensive statewide student assessment program. -- The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors. The state board may require that student proficiencies be measured through the West Virginia writing assessment at
any of the grade levels four, seven and ten determined by the state board to be appropriate: Provided, That, effective the first day of July, two thousand eight, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and eleven determined by the state board to be appropriate. The state board may provide through the statewide assessment program other testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school upon approval by the school curriculum team to promote student achievement. The use of assessment results are subject to the following:

1. The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);

2. Only the assessment results in the subject areas of reading/language arts and mathematics may be used for determining whether a school or school system has made adequate yearly progress (AYP);

3. The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP);

4. The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and
(5) All assessment provisions of the comprehensive statewide student assessment program in effect for the school year two thousand six—two thousand seven shall remain in effect until replaced by the state board rule.

(e) Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965, as amended (No Child Left Behind Act of 2001). -- The standards shall include annual measures of student, school and school system performance and progress for the grade levels and the content areas defined by the act. The following annual measures of student, school and school system performance and progress shall be the only measures for determining whether adequately yearly progress under the No Child Left Behind Act has been achieved:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the required accountability assessments at the grade levels and content areas as required by the act subject to the limitations set forth in subsection (d) of this section.

(2) The student participation rate in the uniform statewide assessment must be at least ninety-five percent or the average of the participation rate for the current and the preceding two years is ninety-five percent for the school, county and state;

(3) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance for the school, county and state. The following absences shall be excluded:

(A) Student absences excused in accordance with the state board rule promulgated pursuant to section four, article eight of this chapter;
(B) Students not in attendance due to disciplinary measures; and

(C) Absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority; and

(4) The high school graduation rate which shall be no less than eighty percent for the school, county and state; or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia Education Information System on the fifteenth day of August.

(f) State annual performance measures for school and school system accreditation. -- The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from achieving less than full approval status: Provided, That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection shall only apply to schools and school systems that do not achieve adequate yearly progress.

The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform
statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;

(2) Writing assessment results in grades tested;

(3) School attendance rates;

(4) Percentage of courses taught by highly qualified teachers;

(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(6) Graduation rates;

(7) Job placement rates for vocational programs;

(8) Percent of students passing end-of-course career/technical tests;

(9) Percent of students not requiring college remediation classes; and

(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.

(g) Indicators of exemplary performance and progress. The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as
indicators for determining whether accredited and approved
schools and school systems should be granted exemplary
status. These indicators shall include, but are not limited to,
the following:

(1) The percentage of graduates who declare their intent
to enroll in college and other post-secondary education and
training following high school graduation;

(2) The percentage of graduates who receive additional
certification of their skills, competence and readiness for
college, other post-secondary education or employment
above the level required for graduation; and

(3) The percentage of students who successfully complete
advanced placement, dual credit and honors classes.

(h) Indicators of efficiency. -- In accordance with the
provisions of article three-b, chapter twenty-nine-a of this
code, the state board shall adopt by rule and periodically
review and update indicators of efficiency for use by the
appropriate divisions within the department to ensure
efficient management and use of resources in the public
schools in the following areas:

(1) Curriculum delivery including, but not limited to, the
use of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel;
(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

(i) Assessment and accountability of school and school system performance and processes. -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, individually and collectively as the Process for Improving Education Council, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

(1) The assessment of student, school and school system performance and progress based on the annual measures set forth in subsection (d) of this section;

(2) The evaluation of records, reports and other information collected by the department upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system electronic strategic improvement plans; and
(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(j) Uses of school and school system assessment information. -- The state board and the Process for Improving Education Council established pursuant to section five-c of this article shall use information from the system of education performance audits to assist them in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(k) Early detection and intervention programs. -- Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available
resources of the Department of Education, the regional
educational service agencies, the Center for Professional
Development and the Principals Academy, as appropriate, to
assist underachieving schools and school systems to improve
performance before conditions become so grave as to warrant
more substantive state intervention. Assistance shall include,
but is not limited to, providing additional technical assistance
and programmatic, professional staff development, providing
monetary, staffing and other resources where appropriate,
and, if necessary, making appropriate recommendations to
the Process for Improving Education Council.

(1) Office of Education Performance Audits.

(1) To assist the state board and the Process for
Improving Education Council in the operation of a system of
education performance audits, the state board shall establish
an Office of Education Performance Audits consistent with
the provisions of this section. The Office of Education
Performance Audits shall be operated under the direction of
the state board independently of the functions and
supervision of the State Department of Education and state
superintendent. The Office of Education Performance Audits
shall report directly to and be responsible to the state board
and the Process for Improving Education Council created in
section five-c of this article in carrying out its duties under
the provisions of this section.

(2) The office shall be headed by a director who shall be
appointed by the state board and who shall serve at the will
and pleasure of the state board. The annual salary of the
director shall be set by the state board and may not exceed
eighty percent of the salary cap of the State Superintendent
of Schools.
(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures are secure as required in section one-a of this article;

(B) Administer all accountability measures as assigned by the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the approval of school systems; and

(ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;
(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the state board and recommend to the state board and the Process for Improving Education Council plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board and the Process for Improving Education Council;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board and make recommendations to the state board, the Process for Improving Education Council, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance and make recommendations to the state board and the Process for Improving Education Council for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence; and
Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The school provides multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

(m) On-site reviews. --

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which
on-site reviews will be conducted may be held in executive
session and is not subject to the provisions of article nine-a,
chapter six of this code relating to open governmental
proceedings. An on-site review shall be conducted by the
Office of Education Performance Audits of a school or
school system for the purpose of investigating the reasons for
performance and progress that are persistently below
standard and making recommendations to the school and
school system, as appropriate, and to the state board on such
measures as it considers necessary to improve performance
and progress to meet the standard. The investigation may
include, but is not limited to, the following:

(A) Verifying data reported by the school or county
board;

(B) Examining compliance with the laws and policies
affecting student, school and school system performance and
progress;

(C) Evaluating the effectiveness and implementation
status of school and school system electronic strategic
improvement plans;

(D) Investigating official complaints submitted to the
state board that allege serious impairments in the quality of
education in schools or school systems;

(E) Investigating official complaints submitted to the
state board that allege that a school or county board is in
violation of policies or laws under which schools and county
boards operate; and

(F) Determining and reporting whether required reviews
and inspections have been conducted by the appropriate
agencies, including, but not limited to, the State Fire Marshal,
the Health Department, the School Building Authority and
the responsible divisions within the Department of Education,
and whether noted deficiencies have been or are in the
process of being corrected. The Office of Education
Performance Audits may not conduct a duplicate review or
inspection of any compliance reviews or inspections
conducted by the department or its agents or other duly
authorized agencies of the state, nor may it mandate more
stringent compliance measures.

(2) The Director of the Office of Education Performance
Audits shall notify the county superintendent of schools five
school days prior to commencing an on-site review of the
county school system and shall notify both the county
superintendent and the principal five school days prior to
commencing an on-site review of an individual school:
Provided, That the state board may direct the Office of
Education Performance Audits to conduct an unannounced
on-site review of a school or school system if the state board
believes circumstances warrant an unannounced on-site
review.

(3) The Office of Education Performance Audits shall
conduct on-site reviews which are limited in scope to specific
areas in which performance and progress are persistently
below standard as determined by the state board unless
specifically directed by the state board to conduct a review
which covers additional areas.

(4) An on-site review of a school or school system shall
include a person or persons from the Department of
Education or a public education agency in the state who has
expert knowledge and experience in the area or areas to be
reviewed and who has been trained and designated by the
state board to perform such functions. If the size of the
school or school system and issues being reviewed
necessitate the use of an on-site review team or teams, the
person or persons designated by the state board shall advise
and assist the director to appoint the team or teams. The
person or persons designated by the state board shall be the
team leaders.

The persons designated by the state board shall be
responsible for completing the report on the findings and
recommendations of the on-site review in their area of
expertise. It is the intent of the Legislature that the persons
designated by the state board participate in all on-site reviews
that involve their area of expertise, to the extent practicable,
so that the on-site review process will evaluate compliance
with the standards in a uniform, consistent and expert
manner.

(5) The Office of Education Performance Audits shall
reimburse a county board for the costs of substitutes required
to replace county board employees while they are serving on
a review team.

(6) At the conclusion of an on-site review of a school
system, the director and team leaders shall hold an exit
conference with the superintendent and shall provide an
opportunity for principals to be present for at least the portion
of the conference pertaining to their respective schools. In
the case of an on-site review of a school, the exit conference
shall be held with the principal and curriculum team of the
school and the superintendent shall be provided the
opportunity to be present. The purpose of the exit conference
is to review the initial findings of the on-site review, clarify
and correct any inaccuracies and allow the opportunity for
dialogue between the reviewers and the school or school
system to promote a better understanding of the findings.
(7) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A copy of the report shall be provided to the Process for Improving Education Council at its request. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county, or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.

(8) The Legislature finds that the accountability and oversight of the following activities and programmatic areas in the public schools is controlled through other mechanisms and that additional accountability and oversight are not only unnecessary but counterproductive in distracting necessary resources from teaching and learning. Therefore, notwithstanding any other provision of this section to the contrary, the following activities and programmatic areas are not subject to review by the Office of Education Performance Audits:

(A) Work-based learning;

(B) Use of advisory councils;
(C) Program accreditation and student credentials;
(D) Student transition plans;
(E) Graduate assessment form;
(F) Casual deficit;
(G) Accounting practices;
(H) Transportation services;
(I) Special education services;
(J) Safe, healthy and accessible facilities;
(K) Health services;
(L) Attendance director;
(M) Business/community partnerships;
(N) Pupil-teacher ratio/split grade classes;
(O) Local school improvement council, faculty senate, student assistance team and curriculum team;
(P) Planning and lunch periods;
(Q) Skill improvement program;
(R) Certificate of proficiency;
(S) Training of county board members;
(T) Excellence in job performance;
(U) Staff development; and
(V) Preventive discipline, character education and student and parental involvement.
School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, distinction accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or low performing accreditation status.

(1) Full accreditation status shall be given to a school when the school’s performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (e) or (f), as applicable, of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the school’s performance and progress are below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s electronic strategic improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance and progress are below the level required for full accreditation, but the
school’s electronic strategic improvement plan meets the following criteria:

(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;

(B) The plan has been approved by the state board; and

(C) The school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school’s performance and progress substantially exceed the standards adopted by the state board pursuant to subsections (f) and (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code designated to establish standards of performance and progress to identify exemplary schools.

(5) Distinction accreditation status shall be given to a school when the school’s performance and progress exceed the standards adopted by the state board. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing standards of performance and progress to identify schools of distinction.

(6) Low-performing accreditation status shall be given to a school whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, the following:
(i) The failure of a school on temporary accreditation status to obtain approval of its revised electronic school strategic improvement plan within a reasonable time period as defined by the state board;

(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised electronic school strategic improvement plan; or

(iii) The failure of a school to meet a standard by the date specified in the revised plan.

(B) Whenever the state board determines that the quality of education in a school is low performing, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the low performance. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the low performance as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:

(i) Improving personnel management;

(ii) Establishing more efficient financial management practices;

(iii) Improving instructional programs and rules; or

(iv) Making any other improvements that are necessary to correct the low performance.
(C) If the low performance is not corrected by a date certain as set by the state board:

(i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;

(ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school cannot be made without additional targeted resources, in which case it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;

(iii) If the low performance is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the low performance and may intervene in the operation of the school to cause improvements to be made that will provide
assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the low performance, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: Provided, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the low performance are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(I) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

(II) The principal who was removed shall be eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

(III) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term;
(6) The county board shall take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.

(o) *Transfers from low-performing schools.* -- Whenever a school is determined to be low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the low performance, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(p) *School system approval.* -- The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.
(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

(i) The plan has been revised in accordance with subsection (b) of this section;

(ii) The plan has been approved by the state board; and

(iii) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.
Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas...
designated by the state board by rule, which may include
delegating decision-making authority regarding these matters
to the state superintendent;

(ii) Declaring that the office of the county superintendent
is vacant;

(iii) Delegating to the state superintendent both the
authority to conduct hearings on personnel matters and
school closure or consolidation matters and, subsequently, to
render the resulting decisions and the authority to appoint a
designee for the limited purpose of conducting hearings while
reserving to the state superintendent the authority to render
the resulting decisions;

(iv) Functioning in lieu of the county board of education
in a transfer, sale, purchase or other transaction regarding real
property; and

(v) Taking any direct action necessary to correct the
emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to
replace administrators and principals in low performing
schools and to transfer them into alternate professional
positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to
fill positions of administrators and principals with individuals
determined by the state superintendent to be the most
qualified for the positions. Any authority related to
intervention in the operation of a county board granted under
this paragraph is not subject to the provisions of article four,
chapter eighteen-a of this code;
Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (p) of this section, if the state board finds the following:

1. That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

2. That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the
resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor.

The state board shall recommend to the appropriate body including, but not limited to, the Process for Improving Education Council, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

1. Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

2. Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system;

3. Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;
(4) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the School Building Authority based on identified needs;

(6) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.
CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3B. STATE BOARD OF EDUCATION RULEMAKING.

§29A-3B-9. Submission of legislative rules to the Legislative Oversight Commission on Education Accountability.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

§29A-3B-9. Submission of legislative rules to the Legislative Oversight Commission on Education Accountability.

(a) When the board proposes a legislative rule, the board shall submit the following to the Legislative Oversight Commission on Education Accountability: (1) The full text of the legislative rule as proposed by the board and filed with the office of the Secretary of State, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(b) At its discretion, the board may meet the filing requirement of subsection (a) of this section using either of the following methods:
(1) By submitting twenty copies of the proposed rule to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission; or

(2) By submitting the proposed rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;
(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

d) After reviewing the legislative rule, the commission may recommend to the board any changes needed to comply with the legislative intent of the statute upon which the rule is based or otherwise to modify the activity subject to the rule, or may make any other recommendations to the board as it considers appropriate.

e) When the board finally adopts a legislative rule, the board shall submit to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission six copies of the rule as adopted by the board. The board, at its discretion, may meet the filing requirement contained in this subsection by submitting the legislative rule in electronic format to the Legislative Oversight Commission on Education Accountability. Rules submitted electronically shall be transmitted in a timely manner and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

f) After reviewing the legislative rule, the commission may recommend to the Legislature any statutory changes needed to clarify the legislative intent of the statute upon which the rule is based or may make any other recommendations to the Legislature as it considers appropriate.
§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The board may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the State Register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity.

(b) The board shall file ten copies of the rules and of the required statement with the Legislative Oversight Commission on Education Accountability. At its discretion, the board may meet the filing requirement contained in this subsection by submitting the emergency rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency
rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the Legislative Oversight Commission on Education Accountability within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

(3) The board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated and in which case the emergency rule expires on the date the authorized rule is made effective.

(d) Any amendment to an emergency rule made by the board shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2) or (3), subsection (c) of this section.

(e) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2) or (3), subsection (c) of this section, the board may not refile the same or similar rule as an emergency rule.

(f) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(g) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.
(h) The Legislative Oversight Commission on Education Accountability may review any emergency rule to determine: (1) Whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature or the Secretary of State such action as it may deem proper.

CHAPTER 88

(Com. Sub. for S.B. 603 - By Senators Plymale, Edgell, Unger, Jenkins, McCabe, Foster and Hunter)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §18-2E-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-10 of said code, all relating to establishing a 21st Century Tools for 21st Century Schools Technology Initiative to replace and enhance current technology programs and provide formula funding therefor; findings; requiring a West Virginia 21st Century Strategic Technology Learning Plan and setting forth specific areas it should address; requiring that the provision of technologies and services to students and teachers be based on a plan aligned with the goals of the West Virginia 21st Century Strategic Technology Learning Plan; allocation of technology funds; purchasing; use of technology and technology infrastructure; including funding stream in public school
support plan from proportion of growth in local share; changing plans used for the allocation of funds to improve instructional programs; and including employment of technology integration specialists as justification prior to authorization to expend certain funds.

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

That §18-2E-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**


(a) The Legislature finds that:

1. The knowledge and skills children need to succeed in the twenty-first century are changing dramatically and that West Virginia students must develop proficiency in twenty-first century content, technology tools and learning skills to succeed and prosper in life, in school and on the job;

2. Students must be equipped to live in a multitasking, multifaceted, technology-driven world;

3. The provision of twenty-first century technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;
This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;

To promote twenty-first century learning, teachers must be competent in twenty-first century content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support twenty-first century skills acquisition;

For students to learn twenty-first century skills, students and teachers must have equitable access to high quality, twenty-first century technology tools and resources;

When aligned with standards and curriculum, technology-based assessments can be a powerful tool for teachers; and

Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content and twenty-first century skills.

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia 21st Century Strategic Technology Learning Plan to be developed by the Department of Education as an integral component of the county and school electronic strategic improvement plans as required in section five of this article. The provision of technologies and services to students and teachers shall be based on a plan developed by each individual school team and aligned with the goals and objectives of the West Virginia 21st Century Strategic Technology Learning Plan. This plan shall be an integral
component of the county and school electronic strategic
improvement plans as required in section five of this article.
Funds shall be allocated equitably to county school systems
following peer review of the plans that includes providing
necessary technical assistance prior to submission and allows
timely review and approval by the West Virginia Department
of Education. Technology tools, including hardware,
software, network cabling, network electronics and related
professional development, shall be purchased pursuant to the
provisions of article three, chapter five-a of this code in the
amount equal to anticipated revenues being appropriated and
based on the approved county and school plans. County
allocations that support this legislation shall adhere to state
contract prices: Provided, That contingent upon approval of
the county technology plan, counties that identify, within that
plan, specific software or peripheral equipment not listed on
the state contract, but necessary to support implementation of
twenty-first century skills, may request the West Virginia
Department of Education to secure state purchasing prices for
those identified items. Total expenditure to purchase these
additional items may not exceed ten percent of the annual
county allocation. To the extent practicable, the technology
shall be used:

(1) To maximize student access to learning tools and
resources at all times including during regular school hours,
before and after school or class, in the evenings, on weekends
and holidays and for public education, noninstructional days
and during vacations; and

(2) For student use for homework, remedial work,
independent learning, career planning and adult basic
education.

(c) The implementation of this section should provide a
technology infrastructure capable of supporting multiple
technology-based learning strategies designed to enable
students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

1. Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies, twenty-first century learning skills and twenty-first century learning tools;

2. Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate twenty-first century technology tools aligned with state standards for learning skills and technology tools;

3. Attainment of twenty-first century skills outcomes for all students in the use of technology tools and learning skills;

4. Proficiency in new, emerging twenty-first century content;

5. Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

6. Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

7. Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will
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help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia 21st Century Strategic Technology Learning Plan shall be an integral component of the electronic strategic county and school improvement plans as required in section five of this article. The West Virginia 21st Century Strategic Technology Learning Plan shall be comprehensive and shall address, but not necessarily be limited to, the following provisions:

(1) Allocation of adequate resources to provide students with equitable access to twenty-first century technology tools, including instructional offerings and appropriate curriculum, assessment and technology integration resources aligned to both the content and rigor of state content standards as well as to learning skills and technology tools;

(2) Providing students and staff with equitable access to a technology infrastructure that supports the acquisition of twenty-first century skills, including the ability to access
information, solve problems, communicate clearly, make informed decisions, acquire new knowledge, construct products, reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and enhance the attainment of twenty-first century skills outcomes for all students;

(4) Collaboration with various partners, including parents, community organization, higher education, schools of education in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds, philanthropic funds, other partnership funds or any combination of those types of funds to augment state appropriations and encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses related to education technology;

(6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as well as student and administrative workstations;

(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia-based evaluation projects;
(10) Continuing study of emerging technologies for application in a twenty-first century learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a twenty-first century education for all students and that aligns with state standards for technology, integrates twenty-first century skills into educational practice and supports the implementation of twenty-first century software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education as provided in section twenty-six, article two of this chapter and commonly referred to as the West Virginia Education Information System;

(16) Providing for an effective model for the distance delivery, virtual delivery or both types of delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an
(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into twenty-first century instruction such as with technology integration specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.
ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) The total allowance to improve instructional programs shall be the sum of the following:

1. For instructional improvement in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

    (A) One hundred fifty thousand dollars shall be allocated to each county;

    (B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county’s average daily attendance for the preceding year and the county’s second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to the county and school electronic strategic improvement plans required by section five, article two-e of this chapter and approved by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system.

    Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in

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29 counties after all applicable provisions of sections four and five of this article have been fully utilized.

30 Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia 21st Century Strategic Technology Learning Plan. County boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying county boards of the distribution of the allocation. The funds shall be distributed during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county’s inability to meet the requirements of state law or state board policy: Provided, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of the West Virginia 21st Century Strategic Technology Learning Plan provided for in section seven, article two-e of this chapter, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding
school year. The sum of these amounts shall be allocated to the counties as provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan; plus

(3) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to twenty-four million dollars from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.
AN ACT to amend and reenact §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, all relating to the State Teachers Retirement System; establishing deadline for remittance of contributions due the State Teachers Retirement System; requiring that a summary of amounts of contributions withheld accompany the remittance; and clarifying certain terms used in the language of the statute.

Be it enacted by the Legislature of West Virginia:

That §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13a. Resumption of service by retired teachers.
§18-7A-14. Contributions by members; contributions by employers.

§18-7A-13a. Resumption of service by retired teachers.

1 (a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair the teacher’s eligibility for a prior service pension or any other benefit provided by this article.
(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which such employment begins and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability shall receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all of his or her contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person’s retirement commences between the effective date of the enactment of this section in
two thousand two and the thirty-first day of December, two
thousand two: Provided, That the person shall not be eligible to
participate in any other state retirement system provided by this
code.

(e) The retirement board is herewith authorized to require of
the retired teachers and their employers such reports as it deems
necessary to effectuate the provisions of this section.

§18-7A-14. Contributions by members; contributions by
employers.

(a) At the end of each month every member of the
retirement system shall contribute six percent of that member’s
monthly gross salary to the retirement board: Provided, That
any member employed by a state institution of higher education
shall contribute on the member’s full earnable compensation,
unless otherwise provided in section fourteen-a of this article.
The sums are due the Teachers Retirement System at the end of
each calendar month in arrears and shall be paid not later than
fifteen days following the end of the calendar month. Each
remittance shall be accompanied by a detailed summary of the
sums withheld from the compensation of each member for that
month on forms, either paper or electronic, provided by the
Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be
credited to the member’s account in the Teachers Retirement
System Fund. The contributions shall be deducted from the
salaries of the members as prescribed in this section and every
member shall be considered to have given consent to the
deductions. No deductions, however, shall be made from the
earnable compensation of any member who retired because of
age or service and then resumed service unless as provided in
section thirteen-a of this article.

(c) The aggregate of employer contributions, due and
payable under this article, shall equal annually the total
deductions from the gross salary of members required by this
section. Beginning the first day of July, one thousand nine
hundred ninety-four, the rate shall be seven and one-half
percent; beginning on the first day of July, one thousand nine
hundred ninety-five, the rate shall be nine percent; beginning on
the first day of July, one thousand nine hundred ninety-six, the
rate shall be ten and one-half percent; beginning on the first day
of July, one thousand nine hundred ninety-seven, the rate shall
be twelve percent; beginning on the first day of July, one
thousand nine hundred ninety-eight, the rate shall be thirteen
and one-half percent; and beginning on the first day of July, one
thousand nine hundred ninety-nine and thereafter, the rate shall
be fifteen percent: Provided, That the rate shall be seven and
one-half percent for any individual who becomes a member of
the Teachers Retirement System for the first time on or after the
first day of July, two thousand five, or any individual who
becomes a member of the Teachers Retirement System as a
result of the merger contemplated in article seven-c of this
chapter.

(d) Payment by an employer to a member of the sum
specified in the employment contract minus the amount of the
employee's deductions shall be considered to be a full discharge
of the employer's contractual obligation as to earnable
compensation.

(e) Each contributor shall file with the retirement board or
with the employer to be forwarded to the retirement board an
enrollment form showing the contributor's date of birth and
other data needed by the retirement board.


(a) Benefits upon withdrawal from service prior to
retirement under the provisions of this article shall be as
follows:

(1) A contributor who withdraws from service for any cause
other than death or retirement shall, upon application, be paid
his or her accumulated contributions up to the end of the fiscal
year preceding the year in which application is made, but in no
event shall interest be paid beyond the end of five years
following the year in which the last contribution was made:

Provided, That such contributor, at the time of application, is
then no longer under contract, verbal or otherwise, to serve as
a teacher; or

(2) If such contributor has completed twenty years of total
service, he or she may elect to receive at retirement age an
annuity which shall be computed as provided in this article:

Provided, That if such contributor has completed at least five,
but fewer than twenty, years of total service in this state, he or
she may elect to receive at age sixty-two an annuity which shall
be computed as provided in this article. The contributor must
notify the retirement board in writing concerning the election.
If the contributor has completed fewer than five years of service
in this state, he or she shall be subject to the provisions as
outlined in subdivision (1) of this subsection.

(b) Benefits upon the death of a contributor prior to
retirement under the provisions of this article shall be paid as
follows:

(1) If the contributor was at least fifty years old and if his or
her total service as a teacher was at least twenty-five years at the
time of his or her death, then the surviving spouse of the
deceased, provided the spouse is designated as the sole refund
beneficiary, is eligible for an annuity computed as though the
deceased were actually a retired teacher at the time of death and
had selected a survivorship option which pays the spouse the
same monthly amount which would have been received by the
deceased; or

(2) If the facts do not permit payment under subdivision (1)
of this subsection, then the following sum shall be paid to the
refund beneficiary of the contributor: The contributor’s
accumulated contributions up to the year of his or her death plus
an amount equal to his or her employee contributions. The
latter sum shall emanate from the Employer’s Accumulation
Fund.
AN ACT to amend and reenact §18-9D-2 and §18-9D-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-20; and to amend said code by adding thereto a new article, designated §18-9F-1, §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8, all relating to the School Building Authority and school access safety generally; declaring legislative findings and intent; defining certain terms; authorizing the School Building Authority to facilitate and provide funding for enhancing the safe ingress to and egress from public schools; providing for county boards to develop and submit to the authority school access safety plans; requiring authority to establish certain guidelines and procedures regarding the plans, plan modifications and evaluation of projects developed pursuant to the plans; creating a special account in the State Treasury; authorizing carry-forward of account funds; providing process, requirements and eligibility for allocating and disbursing moneys to counties; establishing school access safety requirements for certain new school buildings; authorizing legislative rules; requiring refiling of authority rules; requiring certain rules of authority to be refiled as legislative rules; and requiring report on implementation of school access safety requirements.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2 and §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-20; that said code be
amended by adding thereto a new article, designated §18-9F-1, §18-9F-
2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8,
all to read as follows:

Article
9D. School Building Authority.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease
purchase options; limitation on time period for expenditure of project
allocation; county maintenance budget requirements; project disbursements
over period of years; preference for multicounty arrangements; submission
of project designs; set-aside to encourage local participation.


1 For the purposes of this article, unless a different meaning
2 clearly appears from the context:

3 (1) "Authority" means the School Building Authority of
4 West Virginia;

5 (2) "Bonds" means bonds issued by the authority pursuant
6 to this article;

7 (3) "Construction project" means a project in the furtherance
8 of a facilities plan with a cost greater than five hundred
9 thousand dollars for the new construction, expansion or major
10 renovation of facilities, buildings and structures for school
11 purposes, including:

12 (A) The acquisition of land for current or future use in
13 connection with the construction project;

14 (B) New or substantial upgrading of existing equipment,
15 machinery and furnishings;
16 (C) Installation of utilities and other similar items related to making the construction project operational.

18 (D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

25 (4) "Cost of project" means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

34 (5) "Facilities plan" means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that:

38 (A) Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

42 (B) Best serves the needs of individual students, the general school population and the communities served by the facilities;

44 (C) Includes the school major improvement plan;

45 (D) Includes the county board’s school access safety plan required by section three, article nine-f of this chapter;
(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) "Project" means a construction project or a major improvement project;

(7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

(8) "Revenue" or "revenues" means moneys:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article; and

(F) Received by the authority for the purposes of this article;

(9) "School major improvement plan" means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the authority and incorporated in its
Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

(10) "School major improvement project" means a project with a cost greater than fifty thousand dollars and less than five hundred thousand dollars for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or upgrading in the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which
§ 18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and
(4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational schools cooperating with community and technical college programs, or both. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.
(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

1. Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;
2. The issuance of revenue bonds for which moneys in the School Building Debt Service Fund are pledged as security;
3. Moneys paid into the School Construction Fund pursuant to section six of this article; and
4. Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

1. Moneys paid into the School Building Capital Improvements fund pursuant to section ten, article nine-a of this chapter;
2. The issuance of revenue bonds for which moneys in the School Building Debt Service Fund are pledged as security;
3. Moneys paid into the School Construction Fund pursuant to section six of this article; and
4. Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as
a first priority use. The authority may allocate and expend under
this subsection moneys for any purposes authorized in this
article on multiuse vocational-technical education facilities
projects, including equipment and equipment updates at the
facilities, authorized in accordance with the provisions of
section sixteen of this article. If the projects approved under this
subsection do not require the full amount of moneys reserved,
moneys above the amount required may be allocated and
expended in accordance with other provisions of this article. A
county board, the state board, an administrative council or the
joint administrative board of a vocational-technical education
facility which includes post-secondary programs may propose
projects for facilities or equipment, or both, which are under the
direct supervision of the respective body: Provided, That the
authority shall, before allocating any moneys for a project under
this subsection, consider all other funding sources available for
the project.

(e) The remaining moneys determined by the authority to be
available for distribution during the then current fiscal year
from:

(1) Moneys paid into the School Building Capital
Improvements Fund pursuant to section ten, article nine-a of this
chapter;

(2) The issuance of revenue bonds for which moneys in the
School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund
pursuant to section six of this article; and

(4) Any other moneys received by the authority, except
moneys deposited into the School Major Improvement Fund and
moneys deposited into the School Access Safety Fund pursuant
to section five, article nine-f of this chapter, shall be allocated
and expended on the basis of need and efficient use of resources
for projects funded in accordance with the provisions of section
sixteen of this article.
(f) If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) In the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;
(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to
the total funds available in the school construction fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over
any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.
(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed five hundred thousand dollars, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

(a) The authority is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(b) All rules adopted or promulgated by the authority and in effect immediately prior to the effective date of this section shall be refiled pursuant to the provisions of article three-a, chapter twenty-nine-a of this code on or before the first day of September, two thousand seven.

(1) Any interpretive or procedural rule shall continue in effect until rescinded or appropriately refiled by the authority.

(2) Any legislative rule shall continue in effect until approved or rejected by the Legislature or rescinded by the authority.

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§ 18-9F-1. Legislative findings and intent.
§ 18-9F-4. Guidelines and procedures for school access safety plans; project evaluation; on-site inspection of facilities.
§ 18-9F-6. Allocation of funds; eligibility for funding.
§ 18-9F-7. School access safety requirements for new schools.

§18-9F-1. Legislative findings and intent.

(a) The Legislature finds that:

(1) Establishing and maintaining safe and secure schools is critical to fostering a healthy learning environment and maximizing student achievement;
(2) All school facilities in the state should be designed, constructed, furnished and maintained in a manner that enhances a healthy learning environment and provides necessary safeguards for the health, safety and security of persons who enter and use the facilities;

(3) Adequate safeguards for the ingress to and egress from school facilities of pupils, school employees, parents, visitors and emergency personnel are critical to the overall safety of the public schools in this state;

(4) Safety upgrades to the means of ingress to and egress from school facilities for pupils, school employees, parents, visitors and emergency personnel must be part of a comprehensive analysis of overall school safety issues that takes into consideration the input of local law-enforcement agencies, local emergency services agencies, community leaders, parents, pupils, teachers, administrators and other school employees interested in the prevention of school crime and violence.

(b) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds for the design, construction, renovation, repair and upgrading of facilities so as to enhance school access safety and provide secure ingress to and egress from school facilities to pupils, school employees, parents, visitors and emergency personnel.


As used in this article, these terms have the meanings ascribed unless the context clearly indicates a different meaning:

(1) “Authority” means the School Building Authority of West Virginia;
(2) “Department of Education” means the West Virginia Department of Education;

(3) “New school building” means any public school in the state for educating students in any of grades kindergarten through twelve, for which design and construction begin after the first day of July, two thousand seven;

(4) “Project cost” means the cost of:

(A) Evaluating a school facility to ascertain its safety needs;

(B) Determining appropriate measures to address safety needs;

(C) Developing a safety plan;

(D) Administering a safety project;

(E) The design, construction, renovation, repair and safety upgrading of a school's means of ingress and egress;

(F) Equipment, machinery, installation of utilities and other similar items necessary to making the project operational;

(G) Effectively maintaining structural and equipment investments made pursuant to this article, including, but not limited to, such provisions as maintenance contracts on security equipment and video surveillance services; and

(H) All other charges necessary, appurtenant or incidental to the provisions of this subdivision, including the cost of administering this article;

(5) “School Access Safety Fund” means the special account established in section five of this article;
“School access safety plan” or “safety plan” means the comprehensive countywide school access safety plan that:

(A) Is prepared by each county board seeking funding under this article and incorporated into its comprehensive educational facilities plan in accordance with guidelines established by the authority;

(B) Addresses the access safety needs for all school facilities in the county;

(C) Includes a projected school access safety repair and renovation schedule for all school facilities of the county; and

(D) Is required prior to the disbursement of state funds for a school access safety project pursuant to this article; and

“School access safety project” or “safety project” means a project administered in furtherance of a school access safety plan pursuant to the provisions of this article.


(a) To facilitate the goals of this article and to ensure the prudent and resourceful expenditure of state funds, each county board seeking funds for school access safety projects during a fiscal year shall submit to the authority a school access safety plan or annual plan update that addresses the school access safety needs of each school facility in the county. In developing its plan, the county board shall consult with the Countywide Council on Productive and Safe Schools in accordance with the provisions of this section and section forty-two, article five of this chapter.

(b) The safety plan shall include at least the following:
(1) A countywide inventory of each school facility's means of ingress to and egress from the school for students, school employees, parents, visitors and emergency personnel including, but not limited to:

(A) The number of controlled points of ingress to the school facility;

(B) The number and placement of exterior doors;

(C) The use of monitoring systems on exterior doors;

(D) The use of timed, magnetic or other locks on exterior doors;

(E) The use of two-way communication systems between points of ingress and school personnel;

(F) The use of functional panic or other alarm hardware on exterior doors; and

(G) The use of remote visitor access systems on points of ingress;

(2) The recommendations and guidelines developed by the Countywide Council on Productive and Safe Schools pursuant to section forty-two, article five of this chapter, together with the county board's assessment of the recommendations and guidelines;

(3) Recommendations for effective communication and coordination between school facilities, local law-enforcement agencies and local emergency services agencies in the county;

(4) An assessment of the current status of crime committed on school campuses and at school-related functions;
(5) A projected school access safety repair and renovation schedule for all school facilities in the county;

(6) A prioritized list of all projects contained in the plan, including the projected cost of each project;

(7) A description of how:

(A) The plan addresses the goals of this article and guidelines established by the authority;

(B) Each project furthers the county board’s safety plan, facilities plan and school major improvement plan;

(8) Notation of the funds available for allocation and disbursement to the county board pursuant to section six of this article;

(9) A description of any source of local funds that the county board intends to contribute to the safety projects, or an approved financial hardship waiver, to satisfy the local contribution requirements of section six of this article; and

(10) Any other element considered appropriate by the authority or required by the guidelines established pursuant to section three of this article, including any project and maintenance specification.

§18-9F-4. Guidelines and procedures for school access safety plans; project evaluation; on-site inspection of facilities.

(a) By the first day of June, two thousand seven, the authority shall establish and distribute to each county board guidelines and procedures regarding school access safety plans and school access safety projects, which shall address at least the following:
(1) All of the necessary elements of the school access safety plan required in accordance with the provisions of section three of this article;

(2) The manner, time line and process for submission to the authority of each safety plan and annual plan update, including guidelines for modification of an approved safety plan;

(3) Any project and maintenance specifications considered appropriate by the authority;

(4) Procedures for a county board to submit a preliminary plan, plan outline or plan proposal to the authority prior to submitting the safety plan. The preliminary plan, plan outline or plan proposal shall be the basis for a consultation meeting between representatives of the county board and the authority. The meeting shall be held as soon as practicable following submission in order to:

   (A) Ensure understanding of the goals of this article;

   (B) Discuss ways the plan may be structured to meet the goals of this article; and

   (C) Ensure efficiency and productivity in the approval process; and

(5) Procedures for notifying county boards of the funds available for allocation and disbursement during each fiscal year pursuant to section six of this article.

(b) By the first day of June, two thousand seven, the authority shall establish and distribute to each county board guidelines and procedures for evaluating safety plans and safety projects that address at least the following:
(1) Whether the proposed safety project furthers the safety plan and complies with the guidelines established by the authority;

(2) How the safety plan and safety project will ensure the prudent and resourceful expenditure of state funds and achieve the purposes of this article;

(3) Whether the safety plan and safety project advance student health and safety needs, including, but not limited to, critical health and safety needs;

(4) Whether the safety plan and safety project include regularly scheduled preventive maintenance; and

(5) Consideration of the prioritized list of projects required by section three of this article.

(c) The authority shall establish guidelines and procedures for allocating and disbursing funds in accordance with section six of this article, subject to the availability of funds.

(d) Each county board receiving funds pursuant to this article annually shall conduct an on-site inspection and submit an audit review to the state board. The inspection shall be conducted in accordance with the provisions of the Department of Education’s Handbook on Planning School Facilities.


(a) There is hereby established in the State Treasury a special account designated the School Access Safety Fund.

(b) All funds accruing to the authority pursuant to the provisions of this article shall be deposited into the fund and expended in accordance with provisions of this article.
c) Any funds remaining in the account at the end of a fiscal year, including accrued interest, do not revert to the General Revenue Fund, but remain in the account.

d) The authority may transfer moneys from the fund to custodial accounts maintained by the authority with a state financial institution, as necessary to the performance of any contracts executed by the authority in accordance with the provisions of this article.

§18-9F-6. Allocation of funds; eligibility for funding.

a) On or before the first day of May of each year, the authority shall determine the amount of funds available in the School Access Safety Fund for allocation and disbursement during that fiscal year.

b) The authority shall divide the amount of funds available pursuant to subsection (a) of this section by the total net enrollment in public schools for the state as a whole. That quotient is the per pupil amount. The authority shall allocate to each county board the per pupil amount of funds for each student in net enrollment of that county, as defined in section two, article nine-a of this chapter.

c) The authority shall notify in writing each county board of education the amount of funds available to that board as soon as practicable upon determining that amount pursuant to subsection (b) of this section.

d) Except as provided in subdivision (3) of this subsection, to be eligible to receive a disbursement of funds pursuant to this article, a county board shall contribute local funds derived from bonding, special levy or other identified sources to the school access safety projects contained in the county board’s school access safety plan.
(1) The amount of a county board’s contribution shall equal at least fifteen percent of the funds available to the county board pursuant to subsection (b) of this section.

(2) A county board may submit a financial hardship waiver request to the state board for consideration regarding the county board’s inability to provide the contribution required by this subsection. Upon review and approval of the request by the state board, the authority shall waive the contribution requirement for that county board and allocate and disburse funds pursuant to this article.

(e) The authority may disburse funds pursuant to this section only to a county board that:

(1) Has a safety plan that has been approved by the authority; and

(2) Is prepared to commence expending the funds during the fiscal year in which the funds are disbursed.

(f) The authority may disburse funds to a county board in a lump sum or according to a schedule of payments adopted by the authority that is consistent with its guidelines.

(g) To encourage county boards to proceed promptly with school access safety planning and to prepare for the expenditure of funds derived pursuant to this article, a county board forfeits any funds that it fails to expend within one year of disbursement by the authority. The county board is ineligible for any additional allocation or disbursement pursuant to this article until it is prepared to expend funds according to an approved school access safety plan.
(1) The authority may authorize an extension beyond the one-year forfeiture period not to exceed an additional six months.

(2) Any forfeited funds shall be returned to the School Access Safety Fund and made available for future allocation and disbursement.

§18-9F-7. School access safety requirements for new schools.

(a) Notwithstanding any other provision of this code to the contrary, and in an effort to enhance school access safety, the design and construction of any new school building receiving funds from the authority shall comply with the school access safety standards established by the authority. Any new school building that does not comply with the school access safety standards may not receive any funds from the authority pursuant to this article.

(b) The authority shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code that establishes standards for school access safety in public school buildings. The rule shall require for any project that will receive funding pursuant to this article that the county board shall submit any new school design to the authority for review and approval for compliance with this section prior to preparing final bid documents.


The authority shall report to the Legislative Oversight Commission on Education Accountability during the June and September, two thousand seven, and January, two thousand eight, interim meeting periods regarding implementation of the provisions of this article.
AN ACT to amend and reenact §18A-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-2-5a, all relating to employment of teachers and other school employees; eliminating the early notification payment for a classroom teacher who gives notice of resignation; authorizing a payment for early notification of retirement to employees other than classroom teachers under certain circumstances; and making certain technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2 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-2-5a, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board.

(b) A teacher's contract, under this section, shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for a bachelor's degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the three-year probationary period shall upon qualifying for the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status; and

(2) A teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if the employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.
(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the county board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action on the termination issue; or

(B) By written resignation of the teacher before that date, to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four--one thousand nine hundred eighty-five shall remain in full force and effect;

(6) A continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The
written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or who violates any lawful provision
of the contract, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year and the State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation: Provided, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before the fifteenth day of July of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher's public employee insurance coverage until the thirty-first day of August of the same year.

(g) Any classroom teacher who gives written notice to the county board on or before the first day of February of the school year of their retirement from employment with the board at the conclusion of the school year shall be paid five hundred dollars from the Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.

1 Each county board is authorized to pay, entirely from local funds, five hundred dollars or less to any service employee, or to any professional employee who is not a classroom teacher, who gives written notice to the county board on or before the first day of February of the school year of his or her retirement from employment with the board at the conclusion of the school year.

CHAPTER 92

(H.B. 2105 - By Delegates M. Poling, Paxton, Perry, Wells, Stephens, Tabb, Wysong, Duke, Fragale and Sumner)

[Passed January 24, 2007; in effect from passage.]
[Approved by the Governor on February 2, 2007.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to extending expiration date of provisions permitting retired teachers to accept employment as substitutes in areas of critical need and shortage for an unlimited number of days without affecting retirement benefits.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties: (1) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (2) to fill a teaching position of a regular teacher on leave of absence; and (3) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law. The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one of this chapter.
(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, “area of critical need and shortage” means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under the provisions of article seven-a of this chapter or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage;

(B) The policy sets forth the areas of critical need and shortage in the county in accordance with the definition of area of critical need and shortage set forth in subdivision (1) of this subsection;
(C) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis in areas of critical need and shortage as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage as provided in this subsection; and

(G) Prior to employment of a substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the Consolidated Public Retirement Board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall
lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

(5) When a retired teacher is employed as a substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher.

(6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to the first day of February of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on expanding the use of retired substitute teachers to address areas of critical need and shortage.

(7) The provisions of this subsection shall expire on the thirtieth day of June, two thousand ten.
(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.
(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the Legislative Oversight Commission on Education Accountability on or before the first day of November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

(C) The teaching fields in which personnel were hired;

(D) The venue from which personnel were employed;

(E) The place of residency of the individual hired; and

(F) The state board’s recommendations on the prospective employable professional personnel program.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-14, relating to requiring county boards of education to reimburse school personnel for mileage costs when the employee is required to use a personal vehicle in the course of employment; and establishing parameters for rate of reimbursement.

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 §18A-2-14, to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.


1 A county board shall reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment. The county board shall reimburse at the same rate for all employees in that county. The rate of reimbursement shall be at least the lesser of, and not more than the greater of, the federal standard mileage rate and the rate authorized by the travel management rule of the Department of Administration.
AN ACT to amend and reenact §18A-3-3a of the Code of West Virginia, 1931, as amended, relating to the reimbursement of tuition, registration and other required fees for coursework completed by teachers for certification renewal and an additional endorsement in a shortage area; creating priority for reimbursement of courses for renewals and endorsement in shortage areas if insufficient funds appropriated; and limiting semester hours of courses reimbursed for any teacher.

Be it enacted by the Legislature of West Virginia:

That §18A-3-3a 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-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.

(a) The West Virginia Department of Education shall promulgate rules to administer the reimbursement of tuition, registration and other required fees for coursework completed by teachers in accordance with the provisions of this section.
completed toward both certification renewal and additional endorsement in a shortage area.

(b) As used in this section, the following words and phrases have the meanings ascribed to them:

(1) "Teacher" has the meaning provided in section one, article one, chapter eighteen of this code.

(2) "Shortage area" shall be defined by state board policy to indicate the subject areas for which an insufficient number of teachers are available.

(3) "Certification" and "certificate" mean a valid West Virginia:

(A) Professional teaching, service or administrative certificate, or its equivalent; or

(B) Provisional professional teaching, service or administrative certificate, or its equivalent.

(4) "Requirements for certification renewal" are those requirements of the State Department of Education as provided in section three of this article.

(5) "Requirements for additional endorsement" are those requirements of the State Department of Education as provided in section three of this article.

(6) "State institution of higher education" has the meaning provided in section two, article one, chapter eighteen-b of this code.
(c) To the extent of funds appropriated for the purposes specified in this section, payment shall be made to any teacher who:

(1) Holds either a valid West Virginia:

(A) Certificate; or

(B) First class permit for full-time employment; and

(2) Is seeking:

(A) An additional endorsement in a shortage area, and either resides in the state or is employed regularly for instructional purposes in a public school in the state; or

(B) Certification renewal, and has a continuing contract with a county board.

(d) The payment shall be made as reimbursement for the tuition, registration and other required fees for any course completed at:

(1) Any college or university within the state; or

(2) A college or university outside the state if prior approval is granted by the department.

(e) A course is eligible for reimbursement if it meets the requirements for:

(1) An additional endorsement in a shortage area; or

(2) Certification renewal.
(f) If funds appropriated for the purposes specified in this section are insufficient for the reimbursement of all eligible courses within the limits provided in this section, the West Virginia Department of Education shall make the reimbursements for courses for additional endorsement in a shortage area and certification renewal in a shortage area first.

(g) Payment made for any single fee may not exceed the amount of the highest corresponding fee charged at a state institution of higher education.

(h) Reimbursement for courses completed toward certification renewal is limited to fifteen semester hours of courses for any teacher. Reimbursement for courses completed toward additional endorsement in a shortage area is limited to fifteen semester hours of courses for any teacher.

(i) The West Virginia Department of Education shall seek funding from sources other than general revenue appropriation, including, but not limited to, workforce investment funds.

(j) No provision of this section may be construed to require any appropriation or any specific amount of appropriation for the purposes specified in this section, or to require the department to expend funds for those purposes from any other amounts appropriated for expenditure by the department.
AN ACT to amend and reenact §18A-4-2, §18A-4-2a, §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to providing for compensation generally; increasing annual salaries of public school teachers; increasing the annual salary bonus for classroom teachers with national board certification; creating new service personnel class title for compensation purposes and preventing such new title from resulting in displacement of other employees; increasing monthly salaries of service personnel and clarifying certain workday parameters for such; providing and modifying certain pay grades; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-2a, §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.
§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.
§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-2. State minimum salaries for teachers.

(a) Effective the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight, each teacher shall receive the amount prescribed in the 2007-08 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

Effective the first day of July, two thousand eight, and thereafter, each teacher shall receive the amount prescribed in the 2008-09 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

2007-08 STATE MINIMUM SALARY SCHEDULE

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## Education

**2008-09 State Minimum Salary Schedule**

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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§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) Three 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-4-8. Employment term and class titles of service personnel; definitions.*

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than

*CLERK’S NOTE: This section was also amended by H.B. 2189 (Chapter 86), which passed subsequent to this act.*
ten months. A month is defined as twenty employment days: 

Provided, That the county board may contract with all or part 
of these service personnel for a longer term. The beginning 
and closing dates of the ten-month employment term may not 
exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-
month basis may be employed by calendar months. 
Whenever there is a change in job assignment during the 
school year, the minimum pay scale and any county 
supplement are applicable.

(c) Service personnel employed in the same classification 
for more than the two hundred day minimum employment 
term shall be paid for additional employment at a daily rate 
of not less than the daily rate paid for the two hundred day 
minimum employment term.

(d) A service person may not be required to report for 
work more than five days per week without his or her 
agreement, and no part of any working day may be 
accumulated by the employer for future work assignments, 
unless the employee agrees thereto.

(e) If a service person whose regular work week is 
scheduled from Monday through Friday agrees to perform 
any work assignments on a Saturday or Sunday, the service 
person shall be paid for at least one-half day of work for each 
day he or she reports for work. If the service person works 
more than three and one-half hours on any Saturday or 
Sunday, he or she shall be paid for at least a full day of work 
for each day.

(f) A custodian, aide, maintenance, office and school 
lunch service person required to work a daily work schedule 
that is interrupted shall be paid additional compensation.
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35 (1) A maintenance person is defined as a person who 
36 holds a classification title other than in a custodial, aide, 
37 school lunch, office or transportation category as provided in 
38 section one, article one of this chapter.

39 (2) A service person’s schedule is considered to be 
40 interrupted if he or she does not work a continuous period in 
41 one day. Aides are not regarded as working an interrupted 
42 schedule when engaged exclusively in the duties of 
43 transporting students;

44 (3) The additional compensation provided for in this 
45 subsection:

46 (A) Is equal to at least one eighth of a service person’s 
47 total salary as provided by the state minimum pay scale and 
48 any county pay supplement; and

49 (B) Is payable entirely from county board funds.

50 (g) When there is a change in classification or when a 
51 service person meets the requirements of an advanced 
52 classification, his or her salary shall be made to comply with 
53 the requirements of this article and any county salary 
54 schedule in excess of the minimum requirements of this 
55 article, based upon the service person’s advanced 
56 classification and allowable years of employment.

57 (h) A service person’s, contract as provided in section 
58 five, article two of this chapter, shall state the appropriate 
59 monthly salary the employee is to be paid, based on the class 
60 title as provided in this article and on any county salary 
61 schedule in excess of the minimum requirements of this 
62 article.
(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the armed forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) "Class title" means the name of the position or job held by a service person;

(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary
responsibility for the accounts payable function and who
either has completed twelve college hours of accounting
courses from an accredited institution of higher education or
has at least eight years of experience performing
progressively difficult accounting tasks. Responsibilities of
this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a
teacher-aide classification such as monitor aide, clerical aide,
classroom aide or general aide;

(9) "Aide II" means a service person referred to in the
"Aide I" classification who has completed a training program
approved by the State Board, or who holds a high school
diploma or has received a general educational development
certificate. Only a person classified in an Aide II class title
may be employed as an aide in any special education
program;

(10) "Aide III" means a service person referred to in the
"Aide I" classification who holds a high school diploma or a
general educational development certificate; and

(A) Has completed six semester hours of college credit at
an institution of higher education; or

(B) Is employed as an aide in a special education program
and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the
"Aide I" classification who holds a high school diploma or a
general educational development certificate; and

(A) Has completed eighteen hours of State Board-
approved college credit at a regionally accredited institution
of higher education, or
(B) Has completed fifteen hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means a person employed to provide braille and/or sign language assistance to students. A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;
(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

(21) "Carpenter II" means a person classified as a journeyman carpenter;

(22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means a person employed to perform clerical tasks;

(24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(25) "Computer operator" means a qualified person employed to operate computers;
(26) "Cook I" means a person employed as a cook's helper;

(27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

(28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.
(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."

(C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes; and

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person;

(35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the state fire marshal;

(37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the state fire marshal;

(38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;
(39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(43) "General maintenance" means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(45) "Graphic artist" means a person employed to prepare graphic illustrations;
(46) “Groundsman” means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(47) "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

(48) "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(49) "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(50) "Heavy equipment operator" means a person employed to operate heavy equipment;

(51) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(52) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(53) “Licensed practical nurse” means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;
(54) "Locksmith" means a person employed to repair and maintain locks and safes;

(55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(61) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more
class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(63) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(64) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(65) "Painter" means a person employed to perform duties of painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and
(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(67) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(68) "Plumber I" means a person employed as an apprentice plumber and helper;

(69) "Plumber II" means a person employed as a journeyman plumber;

(70) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(71) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(72) "Programmer" means a person employed to design and prepare programs for computer operation;

(73) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(74) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to
ensure the safety of the plant's effluent for human consumption or environmental protection;

(75) "School bus supervisor" means a qualified person employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees;

(76) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(77) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(78) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";
(79) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(80) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

(81) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(82) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(84) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(85) "Welder" means a person employed to provide acetylene or electric welding services for a school system;
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(86) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.
(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The
workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade” set forth in this section:

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Electronic Technician II ........................................... G
Executive Secretary ..................................................... G
Food Services Supervisor ............................................. G
Foreman ........................................................................ G
General Maintenance ..................................................... G
Glazier ........................................................................ D
Graphic Artist ................................................................ D
Groundsman .................................................................. B
Handyman ..................................................................... B
Heating and Air Conditioning Mechanic I .......................... E
Heating and Air Conditioning Mechanic II ........................ G
Heavy Equipment Operator ............................................. E
Inventory Supervisor ..................................................... D
Key Punch Operator ....................................................... B
Licensed Practical Nurse ............................................... F
Locksmith ..................................................................... G
Lubrication Man ........................................................... C
Machinist ..................................................................... F
Mail Clerk ..................................................................... D
Maintenance Clerk ........................................................ C
Mason .......................................................................... G
Mechanic ....................................................................... F
Mechanic Assistant ........................................................ E
Office Equipment Repairman I ........................................ F
Office Equipment Repairman II ....................................... G
Painter .......................................................................... E
Paraprofessional ............................................................ F
Payroll Supervisor ........................................................ G
Plumber I ....................................................................... E
Plumber II ....................................................................... G
Printing Operator .......................................................... B
Printing Supervisor ......................................................... D
Programmer .................................................................... H
Roofing/SHEET Metal Mechanic ..................................... F
Sanitation Plant Operator ................................................ G
School Bus Supervisor ..................................................... E
(b) An additional twelve dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(c) An additional eleven dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

1. A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

2. A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

3. A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

4. A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional forty dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds an associate’s degree;

(2) A service employee who holds a bachelor’s degree;

(3) A service employee who holds a master’s degree;

(4) A service employee who holds a doctorate degree.
(e) An additional eleven dollars per month shall be added to the minimum monthly pay of each service employee for each of the following:

1. A service employee who holds a bachelor’s degree plus fifteen college hours;
2. A service employee who holds a master’s degree plus fifteen college hours;
3. A service employee who holds a master’s degree plus thirty college hours;
4. A service employee who holds a master’s degree plus forty-five college hours; and
5. A service employee who holds a master’s degree plus sixty college hours.

(f) When any part of a school service employee’s daily shift of work is performed between the hours of six o’clock p.m. and five o’clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

(g) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee’s usual hourly rate.

(h) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.
(i) No service employee may have his or her daily work schedule changed during the school year without the employee’s written consent and the employee’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(j) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee’s daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(k) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved...
in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(l) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of certificated professional personnel” means that certificated professional personnel is present, with and accompanying the aide.
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 the West Virginia Higher Education Grant Program and the Workforce Development Initiative Program.

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.

(e) The legislative rule filed in the State Register on the twenty-third day of August, two thousand six, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) 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.

(c) The legislative rule filed in the State Register on the thirtieth day of October, two thousand six, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.

CHAPTER 97

(S.B. 596 - By Senators Kessler and Plymale)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend and reenact §3-1-2a of the Code of West Virginia, 1931, as amended, relating to municipal elections; and providing that municipal personnel responsible for elections must attend biannual training conducted by the office of the Secretary of State.

Be it enacted by the Legislature of West Virginia:

That §3-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

3-1-2a. Municipal elections.

(a) Notwithstanding other provisions of this code or of any special legislative or home rule city charter, the
provisions of: (1) Articles eight and nine of this chapter; (2) any rules promulgated under authority granted in articles eight and nine of this chapter; and (3) any provisions of this chapter making a practice or conduct unlawful shall apply to every municipal election held for any purpose.

(b) For purposes of:

(1) This section;

(2) The application of articles eight and nine of this chapter;

(3) The application of the rules mentioned in this section; and

(4) The application of provisions of this chapter making a practice or conduct unlawful, the provisions of law which impose any duty upon or define any offense or prohibition with respect to the duty or authority of a county officer or county election officer or body of county election officers shall be construed to and shall apply with equal force and effect to the person or persons in a municipal election upon whom this code or the city charter or ordinance imposes such duty or vests the same or similar authority.

(c) Every municipality shall by charter or ordinance designate the persons in the municipality who perform the same duties as any officer in a county election. The designated persons shall attend a biannual election training held and conducted by the office of the Secretary of State.

(d) This section shall not be construed to abrogate the applicability of other provisions of this chapter to municipal elections.
AN ACT to amend and reenact §3-1-9 of the Code of West Virginia, 1931, as amended, relating to political party executive committees; requiring clerk of county commission to report election of members of and vacancies on executive committees; establishing definite terms of office for executive committee members; providing time after election of executive committee members for holding organizational meeting; changing time to fill vacancies on executive committees; setting time for submission of changes in executive committee membership to the Secretary of State; removing deadline for chair of executive committee to fill vacancies; and providing for chair of state executive committee to fill vacancy on district executive committee where chair of county executive committee fails to fill vacancy.

Be it enacted by the Legislature of West Virginia:

That §3-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

(a) Every fourth year at the primary election, the voters of each political party in each state senatorial district shall
ELECTIONS

3 elect four members consisting of two male members and two
4 female members of the state executive committee of the
5 party. In state senatorial districts containing two or more
6 counties, not more than two elected committee members shall
7 be residents of the same county: Provided, That at each
8 election the votes shall be tallied from highest to lowest
9 without regard to gender or county of residence. The two
10 candidates with the highest votes shall be elected first and the
other candidates shall be qualified based on vote tallies,
12 gender and county of residence. Upon completion of the
13 canvass, the clerk of the county commission from each
14 county shall send the results of the election of members of
15 each state executive committee and certificates of
16 announcement, if any, to the Secretary of State. Upon
17 certification of the election results, the Secretary of State
18 shall make known to each state executive committee the
members elected to such committee and the vacancies, if any.
20 The committee, when convened and organized as herein
21 provided, shall appoint three additional members of the
22 committee from the state at large which shall constitute the
entire voting membership of the state executive committee:
24 Provided, however, That if it chooses to do so, the committee
25 may by motion or resolution and in accordance with party
26 rules, may expand the voting membership of the committee.
27 When senatorial districts are realigned following a decennial
28 census, members of the state executive committee previously
29 elected or appointed shall continue in office until the
30 expiration of their terms. Appointments made to fill
31 vacancies on the committee until the next election of
32 executive committee members shall be selected from the
previously established districts. At the first election of
34 executive committee members following the realignment of
35 senatorial districts, members shall be elected from the newly
36 established districts.
(b) At the primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the state senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each congressional district, state senatorial district and delegate district executive committee of each party to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to each congressional district, state senatorial district and delegate district executive committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members will represent the county if the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of
the party's county executive committee except that in
counties having three executive committee districts, there
shall be elected two male and two female members of the
party's executive committee from each magisterial or
executive committee district. Upon completion of the
canvass, the clerk of the county commission from each
county shall send the results of the election of members of
the county executive committee of each party along with the
certificates of announcement to the Secretary of State. Upon
certification of the election results, the Secretary of State
shall make known to each state executive committee the
members elected to the county committee and the vacancies,
if any. Upon receipt, the state executive committee shall
make known any vacancies to the applicable county
executive committee for the purpose of filling said vacancies
as provided in subsection (f) of this section.

(d) For the purpose of complying with the provisions of
this section, the county commission shall create the executive
committee districts. The districts shall not be fewer than the
number of magisterial districts in the county, nor shall they
exceed in number the following: Forty for counties having a
population of one hundred thousand persons or more; thirty
for counties having a population of fifty thousand to one
hundred thousand; twenty for counties having a population of
twenty thousand to fifty thousand; and the districts in
counties having a population of less than twenty thousand
persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly
equal in population as practicable and shall each be
composed of compact, contiguous territory. The county
commissions shall change the territorial boundaries of the
districts as required by the increase or decrease in the
population of the districts as determined by a decennial
(f) All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year two thousand ten will begin on the first day of July, following the primary election and continue for four years thereafter, except as provided in subsection (g) of this section. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, state senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which the vacancy exists for the unexpired term.

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to the first day of July, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to the first day of July, the new committee shall serve out the remainder of the outgoing committee’s term and is authorized to conduct
official business. A current listing of all executive committees’ members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than sixty days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within ten days of a change occurring. Executive committee membership lists shall include at least the member’s name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the sixty-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party’s state executive committee shall fill such vacancy.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be conducted according to party rules, all official actions shall be made by voice vote and minutes shall be maintained and shall be open to inspection by members affiliated with the party.
AN ACT to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-16 and §3-4A-30 of said code, all relating to election day procedures and preparation; providing for handicapped individuals to vote on election day; providing that clerks must assure voter privacy by placement of voting devices and/or booths; and providing for sufficient space and notice of precinct consolidation.

Be it enacted by the Legislature of West Virginia:

That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-4A-16 and §3-4A-30 of said code be amended and reenacted, all to read as follows:

Article
4A. Electronic Voting Systems.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the space marked "signature of voter" on the pollbook provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other, and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the pollbook or his or her signature is affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot
shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.
(e) (1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this chapter in the presence of an election commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.
The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter thereof received assistance in voting it when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(4) An election commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter or which ticket
he or she had voted or how he or she had voted on any public
question or anything occurring within the voting booth or
compartment or voting machine booth except when required
pursuant to law to give testimony as to the matter in a judicial
proceeding; and

(B) Shall sign a written oath or affirmation before
assisting the voter on a form prescribed by the Secretary of
State stating that he or she will not override the actual
preference of the voter being assisted, attempt to influence
the voter's choice or mislead the voter into voting for
someone other than the candidate of voter's choice. The
person assisting the voter shall also swear or affirm that he or
she believes that the voter is voting free of intimidation or
manipulation: Provided, That no person providing assistance
to a voter is required to sign an oath or affirmation where the
reason for requesting assistance is the voter's inability to vote
without assistance because of blindness as defined in section
three, article fifteen, chapter five of this code and the inability
to vote without assistance because of blindness is certified in
writing by a physician of the voter's choice and is on file in
the office of the clerk of the county commission.

(5) In accordance with instructions issued by the
Secretary of State, the clerk of the county commission shall
provide a form entitled "list of assisted voters", the form of
which list shall likewise be prescribed by the Secretary of
State. The commissioners shall enter the name of each voter
receiving assistance in voting the ballot, together with the
poll slip number of that voter and the signature of the person
or the commissioner from each party who assisted the voter.
If no voter has been assisted in voting, the commissioners
shall likewise make and subscribe to an oath of that fact on
the list.
After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit thereof and may not return except by permission of the commissioners.

Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and shall preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record: Provided, That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or
confined in the county or regional jail for a period of not more than one year, or both fined and confined.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-16. Delivery of vote-recording devices; time, arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, where applicable, and the package of ballots to the polling place where they are to be employed. The delivery is to be made not less than one hour prior to the opening of the polls and is to be made in the presence of the precinct election commissioners. At the time of the delivery of the vote recording device, where applicable, and the ballots, the device is to be sealed to prevent its use prior to the opening of the polls and any tampering with the ballot labels; and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote-recording device is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices, where
applicable, and the ballots have been delivered in their
presence, that the devices and packages of ballots were found
to be sealed upon delivery, and that the seals have been
broken and the devices opened in their presence, as may be
appropriate. The election commissioners shall then cause the
vote-recording device and booth to be arranged so that the
front of the vote-recording device will not be visible, when
the vote-recording device is being operated, to any person
other than the voter. The poll clerks shall ensure that the
vote-recording device is placed in a location that maintains
voter privacy through the entire period of voting.

§3-4A-30. Adjustments in voting precincts where electronic
voting system used.

(a) The provisions of section five, article one of this
chapter, relating to the number of registered voters in each
precinct, shall apply to and control in precincts in counties in
which electronic voting systems have been adopted, except
that the maximum number of registered voters shall be one
thousand five hundred per precinct. The county commissions
of such counties, subject to other provisions of this chapter
with respect to the altering or changing of the boundaries of
voting precincts, may change the boundaries of precincts or
consolidate precincts as practicable, to achieve the maximum
advantage from the use of electronic voting systems.

(b) The county commission may, in the urban centers of
any county adopting an electronic voting system, designate
a voting place outside the boundaries of a precinct, provided
such voting place is in a public building of sufficient size and
in an adjoining precinct. In such event, more than one
precinct may vote in any such public building. Upon
combination of adjoining precincts pursuant to this
subsection, the county commission shall: (1) Publish its order
combining the precincts in the same manner as an order of consolidation pursuant to section seven, article one of this chapter; and (2) cause its order to be published with each sample ballot publication required by this chapter.

CHAPTER 100

(Com. Sub. for S.B. 617 - By Senators Kessler, Edgell, Minard, Hunter and Foster)

[Passed March 6, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, all relating to voter registration; providing for the voting history of a voter on the statewide registration system; providing that agencies may not withhold information for statewide voter registration system without a court order; allowing for Division of Motor Vehicles’ identification card in lieu of driver’s license for voter registration purposes; providing that the voter has four business days to correct errors on voter registration card; requiring the Department of Revenue to provide a check box for voter registration interest; requiring voting coordinators to receive training; removing provisions requiring manual voter registration lists by county clerks in lieu of electronic files; requiring county clerk to provide a copy of voter registration list availability policy to the Secretary of State’s office; and modifying the cost of purchasing the voter registration list.
Be it enacted by the Legislature of West Virginia:

That §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-4a. Statewide voter registration list.
§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.
§3-2-6. Time of registration application before an election.
§3-2-11. Registration in conjunction with driver licensing.
§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.
§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

§3-2-4a. Statewide voter registration list.

1 (a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration list of every legally registered voter in the state, which shall include the following:

5 (1) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

8 (2) The computerized list shall contain the name, registration information and voter history of every legally registered voter in the state.

11 (3) Under the computerized list, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.
(4) The computerized list shall be coordinated with other agency databases within the state.

(5) The Secretary of State and any clerk of the county commission may obtain immediate electronic access to the information contained in the computerized list.

(6) The clerk of the county commission shall electronically enter voter registration information into the computerized list on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The computerized list shall serve as the official voter registration list for conducting all elections in the state.

(b) The Secretary of State or any clerk of a county commission shall perform maintenance with respect to the computerized list on a regular basis as follows:

(1) If an individual is to be removed from the computerized list, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the computerized list with state agency records and remove the names of individuals who are not qualified to vote because of felony status or death: Provided, That no state agency may withhold information regarding a voter’s status as deceased or as a felon unless ordered by a court of law.
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42 (c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

44 (1) The name of each registered voter appears in the computerized list;

46 (2) Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

48 (3) Duplicate names are eliminated from the computerized list.

50 (d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

54 (e) The Secretary of State shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

57 (1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, _et seq._, registrants who have not responded to a notice sent pursuant to section twenty-four, article three of this chapter and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote; and

67 (2) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.
(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant’s driver’s license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant’s identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's social security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles’ identification card or a social security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the database of the statewide voter registration system with information in the database of the Division of Motor Vehicles to the extent
required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §301, et seq., the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve, article two of this chapter.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the Secretary of State and shall conform with the requirements of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993 and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the Secretary of State to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the mail voter registration
application form prescribed by the Federal Election Commission pursuant to 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993, shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993;

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration unless the political party has determined otherwise;

(4) The applicant's driver's license number or an identification number issued by the Division of Motor Vehicles. If the applicant does not have a driver's license or an identification card issued by the Division of Motor Vehicles, 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.
74 (d) The applicant shall be requested to provide the
75 following information, but no application shall be rejected for
76 lack of this information:

77 (1) An indication whether the application is for a new
78 registration, change of address, change of name or change of
79 party affiliation;

80 (2) The applicant's choice of political party affiliation, if
81 any, or an indication of no affiliation: Provided, That any
82 applicant who does not enter any choice of political party
83 affiliation shall be listed as having no party affiliation on the
84 voting record;

85 (3) The applicant's residence mailing address if different
86 than the residence street address;

87 (4) The last four digits of the applicant's social security
88 number;

89 (5) The applicant's telephone number;

90 (6) The address at which the applicant was last registered
91 to vote, if any, for the purpose of canceling or transferring the
92 previous registration; and

93 (7) The applicant's gender.

94 (e) The Secretary of State shall prescribe the printing
95 specifications of each type of voter registration application
96 and the voter registration application portion of any form
97 which is part of a combined agency form.

98 (f) Application forms prescribed in this section may refer
99 to various public officials by title or official position, but in
100 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.

§3-2-6. Time of registration application before an election.

(a) Voter registration before an election shall close on the twenty-first day before the election, or on the first day thereafter which is not a Saturday, Sunday or legal holiday.

(b) An application for voter registration, transfer of registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary, general or special election if the following conditions are met:

(1) The application contains the information required by subsection (c), section five of this article; Provided, That incomplete applications for registration containing information which are submitted within the required time may be corrected within four business days after the close of registration if the applicant provides the required information; and
(2) The application is received by the appropriate clerk of
the county commission no later than the hour of the close of
registration or is otherwise submitted by the following
deadlines:

(A) If mailed, the application shall be addressed to the
appropriate clerk of the county commission and is
postmarked by the postal service no later than the date of the
close of registration: Provided, That if the postmark is
missing or illegible, the application shall be presumed to have
been mailed no later than the close of registration if it is
received by the appropriate clerk of the county commission
no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle
licensing office, the application is received by that agency or
office no later than the close of registration;

(C) If accepted through a registration outreach program,
the application is received by the clerk, deputy clerk or
registrar no later than the close of registration; and

(3) The verification notice by the provisions of section
sixteen of this article mailed to the voter at the residence
indicated on the application is not returned as undeliverable.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or any other division
or department that may be established by law to perform
motor vehicle driver licensing services shall provide each
qualified registrant, as an integral and simultaneous part of
every process of application for the issuance, renewal or
change of address of any motor vehicle driver's license or
official identification card, pursuant to the provisions of
article two, chapter seventeen-b of this code, a voter registration application as prescribed in section five of this article.

(b) Any person who fails to sign the voter registration application or who fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office shall be considered to have declined to register. Information regarding any person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(c) Any qualified voter who submits the application for registration pursuant to the provisions of subsection (a) of this section in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time shall not be required to make his or her first vote in person or to again present identification in order to make that registration valid.

(d) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing shall be required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article: Provided, That if the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.
(e) Any application for voter registration submitted pursuant to the provisions of this section shall be considered as updating any previous voter registration by the applicant and shall authorize the cancellation of registration in any other county or state in which the applicant was previously registered.

(f) Any change of address from one residence to another within the same county which is submitted for driver licensing purposes in accordance with applicable law shall also serve as a notice of change of address for voter registration purposes unless the individual indicates on the form that the change of address is not for voter registration purposes.

(g) Completed applications for voter registration or change of address for voting purposes received by any office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt, unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(h) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected and maintained for two years according to procedural rules promulgated by the Secretary of State.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or
a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) The following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the Aid to Families with Dependent Children (AFDC) program, the Women, Infants and Children (WIC) program and the Medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices;

(4) Armed services recruitment offices, as required by federal law; and

(5) The Department of Revenue, if it provides a check box on any form provided to the general public authorizing the Department of Revenue to request a voter registration application by mail from the Secretary of State on behalf of the applicant.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with
disabilities and shall promulgate an emergency rule pursuant 
to the provisions of chapter twenty-nine-a of this code 
designating the specific programs and offices required to 
provide voter registration services in order to comply with 
the requirements of this section and the requirements of the 
National Voter Registration Act of 1993 (42 U. S. C. 
§1973gg, et seq.). The offices and programs so designated 
shall begin providing voter registration services on the first 
day of January, one thousand nine hundred ninety-five.

(d) In each even-numbered year, the Secretary of State 
shall, in conjunction with the designated representatives of 
the appropriate state agencies, perform the review as required 
by the provisions of subsection (c) of this section. The 
Secretary of State shall periodically review and revise, if 
necessary, the legislative rule designating the specific 
agencies required to provide voter registration services.

(e) Each state agency required to provide services 
pursuant to the provisions of this article shall designate a 
current employee of that agency to serve as a state supervisor 
to administer voter registration services required in all 
programs under the agency's jurisdiction. Each state 
supervisor is responsible for coordination with the Secretary 
of State, overall operation of the program in conjunction with 
services within the agency, designation and supervision of 
local coordinators and for the review of any complaints filed 
against employees relating to voter registration as provided 
in this chapter.

(f) The state supervisor shall designate a current 
employee as a local coordinator for voter registration services 
for each office or program delivery center who shall be 
responsible for the proper conduct of voter registration 
services, timely return of completed voter registration
applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the Secretary of State and within five days following any change of designation. Each local coordinator shall receive biannual training provided by the Secretary of State.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of section five of this article.

(h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of 42 U. S. C. §1973gg, et seq., section 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the "declination form".

(i) A person who provides voter registration services may not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

(a) The active, inactive, rejected and canceled voter registration records shall be made available for public inspection during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person shall be allowed to examine these files under the supervision of the clerk and obtain copies of records except when a precinct book is in temporary use for updating and preparing lists or during the time the books are sealed for use in an election. Other original voter registration records, including canceled voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents, shall be available for inspection upon specific request; and
(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person shall be allowed to examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available shall include all registration and voting information maintained in the file, except that the telephone number and social security number of any voter shall not be available for inspection or copying in any format.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.

(c) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the telephone number or social security number of the registrant. The clerk shall establish a written policy, which shall be posted within public view, listing the options which may be requested for selection and sorting criteria and available data elements, which shall include at least the name, residence address, political party affiliation and status and the format of the lists and the times at which lists will be prepared. A copy of the policy shall be filed with the Secretary of State no later than the first day of January of each even-numbered year.

(d) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No
data file prepared under this subsection may include the 
television number or social security number of the registrant.

(e) The fees received by the clerk of the county
commission shall be kept in a separate fund under the
supervision of the clerk for the purpose of defraying the cost
of the preparation of the voter lists. Any unexpended balance
in the fund shall be transferred to the general fund of the
county commission.

(f) The Secretary of State may make voter lists available
for sale subject to the limitations as provided in this section
for counties. The cost for a partial list shall be one and
one-half cents per name plus ten dollars for each disk
required; the cost for a complete statewide list shall be
one-half cent per name and a flat fee of one thousand dollars.
One cent per name for each voter from a particular county on
each partial list, and one-half cent per name for each voter
from a particular county on each statewide list sold shall be
reimbursed to the appropriate county. The disk fee and
one-half cent per name associated with a partial list and the
flat fee of one thousand dollars associated with a complete
statewide list shall be deposited to a special revenue account
for purpose of defraying the cost of the preparation of the
lists.

(g) An update to a previously purchased list may be
provided by the Secretary of State or the clerk of the county
commission at a prorated cost based on the amount of
additional information provided. The additional rates
charged by the clerk of the county commission shall be
specified in the policy established pursuant to subsection (c)
of this section.
(h) No voter registration lists or data files containing the names, addresses or other information relating to voters derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale.

CHAPTER 101

(S.B. 616 - By Senators Kessler, Edgell, Minard and Hunter)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to repeal §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-20, §3-1-21 and §3-1-41 of said code; to amend and reenact §3-4A-11a and §3-4A-15 of said code; to amend and reenact §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code; and to amend and reenact §3-6-2 and §3-6-3 of said code, all relating to election ballots; providing for two copies of sample ballots for each voting place; providing that paper ballots used in conjunction with electronic voting systems must be prepared for eighty percent of registered voters eligible to vote; providing that the number of regular official ballots packaged for each precinct shall equal at least seventy-five percent of the number of registered voters in a precinct; providing for the board of canvassers to protect the privacy of provisional ballots; clarifying ballot lay out; clarifying voter instructions and models; providing print size of sample ballots; and
changing date upon which a person may challenge a candidate’s eligibility before the State Election Commission.

Be it enacted by the Legislature of West Virginia:

That §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §3-1-20, §3-1-21 and §3-1-41 of said code be amended and reenacted; that §3-4A-11a and §3-4A-15 of said code be amended and reenacted; that §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code be amended and reenacted; and that §3-6-2 and §3-6-3 of said code be amended and reenacted, all to read as follows:

Article
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

1 (a) The board of ballot commissioners of each county shall provide cards of general information which will include:

3 (1) The date of the election and the hours during which polling places will be open;

5 (2) Instruction for mail-in registrants and first-time voters;

7 (3) Voters' rights; and
(4) Prohibitions against fraud and misrepresentation. The board of ballot commissioners shall also provide cards of instruction for voters in preparing their ballots and casting a provisional ballot as prescribed by the Secretary of State. The board of ballot commissioners shall furnish a sufficient number of cards to the commissioners of election at the same time they deliver the ballots for the precinct.

(b) The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled.

(c) The commissioners of election shall post one or more other cards of general information at places inside and outside of the voting place where voters pass or wait to vote. The commissioners shall also post the official write-in candidates in the same locations inside and outside of the voting place.

(d) The ballot commissioners shall have printed, on a different color paper than the official ballot, two or more copies of sample ballots for each voting place for each election. Sample ballots shall be furnished and posted with the cards of general information at each voting place.

(e) During the period of early in-person voting, the clerk of the county commission shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.
§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.

1 (a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

2 (b) The persons required to provide the ballots necessary for conducting all other elections are:

3 (1) The Secretary of State, for any statewide special election ordered by the Legislature;

4 (2) The board of ballot commissioners, for any countywide special election ordered by the county commission;

5 (3) The Board of Education, for any special levy or bond election ordered by the Board of Education; or

6 (4) The municipal board of ballot commissioners, for any election conducted for or within a municipality except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those printed by the proper authorities as specified in this section may not be cast, received or counted in any election.

7 (c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. When paper ballots are used in conjunction with or as part of an electronic voting system, the total number of regular official ballots printed shall equal at
a minimum eighty percent of the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal at a minimum seventy-five percent of the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the clerk of the county commission, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the clerk of the county commission of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be delivered to the clerk of the county commission of the appropriate county not later than twenty-eight days before the election.

(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude to confuse or mislead the voters, the board shall cause the error to be corrected
either by the reprinting of the ballots or by the use of stickers
printed with the correction and of suitable size to be placed
over the error without covering any other portion of the
ballot.

§3-1-41. Challenged and provisional voter procedures;
counting of provisional voters' ballots; ballots of
election officials.

(a) It is the duty of the members of the receiving board,
jointly or severally, to challenge the right of any person
requesting a ballot to vote in any election:

(1) If the person's registration record is not available at
the time of the election;

(2) If the signature written by the person in the poll book
does not correspond with the signature purported to be his or
hers on the registration record;

(3) If the registration record of the person indicates any
other legal disqualification; or

(4) If any other valid challenge exists against the voter
pursuant to section ten, article three of this chapter.

(b) Any person challenged shall nevertheless be
permitted to vote in the election. He or she shall be furnished
an official ballot not endorsed by the poll clerks. In lieu of
the endorsements, the poll clerks shall complete and sign an
appropriate form indicating the challenge, the reason thereof
and the name or names of the challengers. The form shall be
securely attached to the voter's ballot and deposited together
with the ballot in a separate box or envelope marked
"provisional ballots".
(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(e) Any person duly appointed as an election commissioner or clerk under the provisions of section twenty-eight of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: Provided, That the county commission
may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(f) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates
within each office are to conform as nearly as possible to the provisions of section two, article six of this chapter, except as otherwise provided in this article.

(3) Nonpartisan elections for board of education and any question to be voted upon are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are
to be printed in the color of ink specified by the Secretary of
State for the various political parties, and the general election
ballot is to be printed in black ink. For electronic voting
systems that utilize screens upon which votes may be
recorded by means of a stylus or by means of touch, the
primary ballots and the general election ballot are to be
printed in black ink. All ballots are to be printed, where
applicable, on white paper suitable for automatic tabulation
and are to contain a perforated stub at the top or bottom of
the ballot, which is to be numbered sequentially in the same
manner as provided in section thirteen, article five of this
chapter, or are to be displayed on the screens of the electronic
voting system upon which votes are recorded by means of a
stylus or touch. The number of ballots printed and the
packaging of ballots for the precincts are to conform to the
requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot
commissioners shall provide all other materials and
equipment necessary to the proper conduct of the election.

§3-4A-15. Instructions and help to voters; vote-recording
device models; facsimile diagrams; sample
ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day
in counties utilizing an electronic voting system that uses a
screen upon which votes may be recorded by means of a
stylus or by means of touch, the ballot commissioners shall
provide for each polling place a sample ballot with each
screen as it will appear on the devices, together with written
instructions regarding the operation of the devices. Upon
request, the election officers shall offer instruction to each
voter, before voting, in the operation of the vote-recording
device.
(b) The ballot commissioners shall also provide facsimile ballots, at least two of which, or complete sets of which, are to be posted on the walls of each polling place. The facsimile diagrams are exact diagrams of the ballots or screens so that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the county commission, or the county commission may, prepare and mail to each qualified voter at the address shown on the registration books a facsimile sample of the ballot or screens for his or her precinct.

(d) In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five and six of this chapter, which specify the publication of a facsimile sample ballot, are to consist of a facsimile of the ballot or screens with the names of the candidates and the offices for which they are running shown in their proper positions.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

§3-5-10. Publication of sample ballots and lists of candidates.

§3-5-13. Form and contents of ballots.

§3-5-19. Vacancies in nominations; how filled; fees.

§3-5-7. **Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this
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(b) The certificate of announcement shall be filed as follows:

(1) With the Secretary of State if it be an office or political position to be filled by the voters of more than one county;

(2) With the clerk of the county commission if it be for an office to be filled by the voters of a single county or of a subdivision less than a county;

(3) With the recorder or city clerk if it be for an office to be filled by the voters of a municipality.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;
(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;
The words "subscribed and sworn to before me this _____ day of ____________, 20____" and a space for the signature of the officer giving the oath.

The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or
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her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) No person shall be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention.

(i) Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-one shall apply to the primary election held in the year one thousand nine hundred ninety-two and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight shall apply to the primary election held in the year two thousand and every primary election held thereafter.

§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official primary ballot for each party and, as the case may be, for the nonpartisan candidates to be voted for at
the primary election, according to the provisions of this
article and articles four and four-a of this chapter, as
appropriate to the voting system. If any ballot issue is to be
voted on in the primary election, the ballot commissioners
shall likewise prepare a sample official ballot for that issue
according to the provisions of law authorizing the election.

(b) The facsimile sample ballot for each political party
and for nonpartisan candidates or ballot issues shall be
published as follows:

(1) For counties in which two or more qualified
newspapers publish a daily newspaper, not more than
twenty-six nor less than twenty days preceding the primary
election, the ballot commissioners shall publish each sample
official primary election ballot as a Class I-0 legal
advertisement in the two qualified daily newspapers of
different political parties within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of this code;

(2) For counties having no more than one daily
newspaper, or having only one or more qualified newspapers
which publish weekly, not more than twenty-six nor less than
twenty days preceding the primary election, the ballot
commissioners shall publish the sample official primary
election ballot as a Class I legal advertisement in the
qualified newspaper within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic
reproduction of the official sample ballot or ballot pages and
shall be printed in a size no less than sixty-five percent of the
actual size of the ballot, at the discretion of the ballot
commissioners: *Provided*, That when the ballots for the
 precincts within the county contain different senatorial,
delegate, magisterial or executive committee districts or
when the ballots for precincts within a city contain different
municipal wards, the facsimile shall be altered to include
each of the various districts in the appropriate order. If, in
order to accommodate the size of each ballot, the ballot or
ballot pages must be divided onto more than one page, the
arrangement and order shall be made to conform as nearly as
possible to the arrangement of the ballot. The publisher of
the newspaper shall submit a proof of the ballot and the
arrangement to the ballot commissioners for approval prior
to publication.

(c) The ballot commissioners of each county shall
prepare, in the form and manner prescribed by the Secretary
of State, an official list of offices and candidates for each
office which will appear on the primary election ballot for
each party and, as the case may be, for the nonpartisan
candidates to be voted for at the primary election. All
information which appears on the ballot, including
instructions as to the number of candidates for whom votes
may be cast for the office, any additional language which will
appear on the ballot below the name of the office, any
identifying information relating to the candidates, such as his
or her residence and magisterial district or presidential
preference, shall be included in the list in the same order in
which it appears on the ballot. Following the names of all
candidates, the list shall include the full title, text and voting
positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided
in subsection (c) of this section shall be published as follows:
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(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class 1-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words "official list of candidates", the name of the county, the words "primary election", the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than fourteen point; (B) the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates shall be printed in all capital
letters in bold type no smaller than ten point and the
residence information shall be printed in type no smaller than
ten point; and

(4) When any ballot issue is to appear on the ballot, the
title of that ballot shall be printed in all capital letters in bold
type no smaller than fourteen point. The text of the ballot
issue shall appear in no smaller than eight point type. The
ballot commissioners may require the publication of the
ballot issue under this subsection in the facsimile sample
ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and
(d) of this section, beginning with the primary election to be
held in the year two thousand, the ballot commissioners of
any county may choose to publish a facsimile sample ballot
for each political party and for nonpartisan candidates or
ballot issues instead of the official list of offices and
candidates for each office for purposes of the last publication
required before any primary election.

§3-5-13. Form and contents of ballots.

The face of every primary election ballot shall conform
as nearly as practicable to that used at the general election.

(1) The heading of every ballot is to be printed in display
type. The heading is to contain a ballot title, the name of the
county, the state, the words "Primary Election" and the
month, day and year of the election. The ballot title of the
political party ballots is to contain the words "Official Ballot
of the (Name) Party" and the official symbol of the political
party may be included in the heading. The ballot title of any
separate paper ballot or portion of any electronic or voting
machine ballot for the Board of Education is to contain the
words "Nonpartisan Ballot of Election of Members of the _______ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(2) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a presidential election year, "National Convention" or, in a nonpresidential election year, "District Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of
the division, if any, and the words "Vote for ________" with
the number to be nominated or elected or "Vote For Not
More Than ________" in multicandidate elections. For
offices in which there are limitations relating to the number
of candidates which may be nominated, elected or appointed
to or hold office at one time from a political subdivision
within the district or county in which they are elected, there
is to be a clear explanation of the limitation, as prescribed by
the Secretary of State, printed in bold type immediately
preceding the names of the candidates for those offices on the
ballot in every voting system. For counties in which the
number of county commissioners exceeds three and the total
number of members of the county commission is equal to the
number of magisterial districts within the county, the office
of county commission is to be listed separately for each
district to be filled with the name of the magisterial district
and the words "Vote for One" printed below the name of the
office: Provided, That the office title and applicable
instructions may span the width of the ballot so as it is
centered among the respective columns.

(D) The location for indicating the voter's choices on the
ballot is to be clearly shown. For paper ballots, other than
those tabulated electronically, the official primary ballot is to
contain a square formed in dark lines at the left of each name
on the ballot, arranged in a perpendicular column of squares
before each column of names.

(3) (A) The name of every candidate certified by the
Secretary of State or the board of ballot commissioners is to
be printed in capital letters in no smaller than eight point type
on the ballot for the appropriate precincts. Subject to the
rules promulgated by the Secretary of State, the name of each
candidate is to appear in the form set out by the candidate on
the certificate of announcement, but in no case may the name
misrepresent the identity of the candidate nor may the name
include any title, position, rank, degree or nickname implying
or inferring any status as a member of a class or group or
affiliation with any system of belief.

(B) The city of residence of every candidate, the state of
residence of every candidate residing outside the state, the
county of residence of every candidate for an office on the
ballot in more than one county and the magisterial district of
residence of every candidate for an office subject to
magisterial district limitations are to be printed in lower case
letters beneath the names of the candidates.

(C) The arrangement of names within each office must be
determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the
space available on a column or ballot page and requires that
candidates for a single office be separated, to the extent
possible, the number of candidates for the office on separate
columns or pages are to be nearly equal and clear instructions
given the voter that the candidates for the office are
continued on the following column or page.

(4) When an insufficient number of candidates has filed
for a party to make the number of nominations allowed for
the office or for the voters to elect sufficient members to the
board of education or to executive committees, the vacant
positions on the ballot shall be filled with the words "No
Candidate Filed": Provided, That in paper ballot systems
which allow for write-ins to be made directly on the ballot, a
blank line shall be placed in any vacant position in the office
of board of education or for election to any party executive
committee. A line shall separate each candidate from every
other candidate for the same office. Notwithstanding any
other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to national convention.

(6) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(7) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(8) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".
(9) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

*§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy shall occur in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: Provided, That if the executive committee holds a duly called meeting in accordance with section nine, article one of this chapter but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under

*Clerk's Note: This section was also amended by S.B. 753 (Chapter 104), which passed subsequent to this act.
subdivision (4), (5), (6) or (7) of this subsection, the filing fee
or waiver of fee as prescribed in section eight or eight-a of
this article. The proper filing officer is the officer with whom
the original certificate of nomination is regularly filed for that
office.

(3) If a vacancy in nomination is caused by the failure of
a candidate to file for an office, or by withdrawal of a
candidate no later than the third Tuesday following the close
of candidate filing pursuant to the provisions of section
eleven of this article, a nominee may be appointed by the
executive committee and certified to the proper filing officer
no later than the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the
disqualification of a candidate and the vacancy occurs not
later than eighty-four days before the general election, a
nominee may be appointed by the executive committee and
certified to the proper filing officer not later than
seventy-eight days before the general election. A candidate
may be determined ineligible if a written request is made by
an individual with information to show a candidate's
ineligibility to the State Election Commission no later than
eighty-four days before the general election explaining
grounds why a candidate is not eligible to be placed on the
general election ballot or not eligible to hold the office, if
elected. The State Election Commission shall review the
reasons for the request. If the commission finds the
circumstances warrant the disqualification of the candidate,
the commission may authorize appointment by the executive
committee to fill the vacancy. Upon receipt of the
authorization a nominee may be appointed by the executive
committee and certified to the proper filing officer no later
than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the incapacity
of the candidate and if the vacancy occurs not later than
eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than eighty-four days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected and if the candidate or the chairperson of the executive committee for the political division applies in writing to the State Election Commission no later than eighty-four days before the general election for permission to remove the candidate's name from the general election ballot, the State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the withdrawal of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of death or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary
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90 election but not later than eighty-four days before the general
91 election, a nominee of each political party may be appointed
92 by the executive committee and certified to the proper filing
93 officer no later than seventy-eight days before the general
94 election. Appointments shall be filed in the same manner as
95 provided in subsection (a) of this section, except that the
96 filing fee shall be paid before the appointment is complete.

97 (c) When a vacancy occurs in the board of education after
98 the close of candidate filing for the primary election but not
99 later than eighty-four days before the general election, a
100 special candidate filing period shall be established.
101 Candidates seeking election to any unexpired term for board
102 of education shall file a certificate of announcement and pay
103 the filing fee to the clerk of the county commission no earlier
104 than the first Monday in August and no later than
105 seventy-seven days before the general election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF
ELECTIONS.

§3-6-2. Preparation and form of general election ballots.
§3-6-3. Publication of sample ballots and lists of candidates.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this
2 section are to contain:

3 (1) The name and ticket of each party which is a political
4 party under the provisions of section eight, article one of this
5 chapter;

6 (2) The name chosen as the party name by each group of
7 citizens which has secured nomination for two or more
8 candidates by petition under the provisions of section
9 twenty-three of this article;

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The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this chapter; subdivision (3) of said section; paragraphs (A) and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words "Official Ballot, General Election" and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting is to be a heavy circle, three-fourths inch in diameter, surrounded by the words "For a straight ticket mark within this circle" printed in bold six-point type. On all other ballots or ballot labels, the positions for straight party voting is to be marked "Straight Party Ticket".

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for
president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

(4)(A) The following general instructions for straight party voters are to be printed in no smaller than eight point bold type: "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office". The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.

On paper ballots, the general instructions are to be placed below the party name and across the top of all columns, followed by a heavy line separating them from the rest of the ballot: Provided, That the instructions may be centered among the columns running the full width of the ballot. On ballots marked with electronically sensible ink, the general instructions are to be placed after the position for straight voting and before any office.

(B) The following specific instructions are to be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: "If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office".

On paper ballots, the specific instructions are to be placed below the office name of any partisan office where more than one is to be elected and across the top of all columns for that
office or centered among the columns before the names of any candidates. On all other ballots and ballot labels, the specific instructions are to be placed above or to the side of the names of the candidates as the voting system requires.

For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.

The arrangement of names within each office for all ballot systems is to be as follows:

In elections for presidential electors, the names of the candidates for president and vice president of each party are to be placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a. m.

In any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the
example below: Provided, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.

<table>
<thead>
<tr>
<th>113</th>
<th>For House of Delegates</th>
<th>For House of Delegates</th>
</tr>
</thead>
<tbody>
<tr>
<td>114</td>
<td>First Delegate District</td>
<td>First Delegate District</td>
</tr>
<tr>
<td>115</td>
<td>(Vote For Not More Than Two)</td>
<td>(Vote For Not More Than Two)</td>
</tr>
<tr>
<td>116</td>
<td>SUSAN B. ANTHONY</td>
<td></td>
</tr>
<tr>
<td>117</td>
<td>City (County)</td>
<td></td>
</tr>
<tr>
<td>118</td>
<td></td>
<td></td>
</tr>
<tr>
<td>119</td>
<td>JOHN ADAMS</td>
<td></td>
</tr>
<tr>
<td>120</td>
<td>ABRAHAM LINCOLN</td>
<td></td>
</tr>
<tr>
<td>121</td>
<td>City (County)</td>
<td></td>
</tr>
<tr>
<td>122</td>
<td></td>
<td></td>
</tr>
<tr>
<td>123</td>
<td>JAMES MONROE</td>
<td></td>
</tr>
<tr>
<td>124</td>
<td>City (County)</td>
<td></td>
</tr>
</tbody>
</table>

(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate is to be placed under the proper office for each vacancy in nomination and for an office for which more than one is to be elected, any vacancy is to appear after any
other candidates for the office. If no write-in lines are included on the ballot, specific instructions are to be added to the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and office on any location on the front of the ballot.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" is to be printed in the space that would be occupied by the name of the candidate and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate section or page of the ballot is to be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates and is to be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment is to be placed following all offices, followed by any other issue upon which the voters are to cast a vote. The heading for each amendment or issue is to be printed in large, bold type according to the requirements of the resolution authorizing the election.
§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or independent nominees, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of this article and articles four and four-a of this chapter, as appropriate to the voting system, and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than twenty-six nor less than twenty days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest
circulation in compliance with the provisions of article three, 
chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic 
reproduction of the official sample ballot or ballot pages and 
shall be printed in a size no less than sixty-five percent of the 
actual size of the ballot, at the discretion of the ballot 
commissioners: Provided, That when the ballots for the 
precincts within the county contain different senatorial, 
delegate, magisterial or executive committee districts or 
when the ballots for precincts within a city contain different 
municipal wards, the facsimile shall be altered to include 
each of the various districts in the appropriate order. If, in 
order to accommodate the size of each ballot, the ballot or 
ballot pages must be divided onto more than one page, the 
arrangement and order shall be made to conform as nearly as 
possible to the arrangement of the ballot. The publisher of 
the newspaper shall submit a proof of the ballot and the 
arrangement to the ballot commissioners for approval prior 
to publication.

(c) The ballot commissioners of each county shall 
prepare, in the form and manner prescribed by the Secretary 
of State, an official list of offices and nominees for each 
office which will appear on the general election ballot for 
each political party or as independent nominees and, as the 

(1) All information which appears on the ballot, including 
the names of parties for which a straight ticket may be cast, 
instructions relating to straight ticket voting, instructions as 
to the number of candidates for whom votes may be cast for 
the office, any additional language which will appear on the 
ballot below the name of the office, any identifying 
information relating to the candidates, such as his or her 
residence and magisterial district or presidential preference.
Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the straight ticket positions, offices and candidates for each office and the manner of designating the parties shall be as follows:

(A) The straight ticket positions shall be designated "straight (party name) ticket", with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be;

(B) The offices shall be listed in the same order in which they appear on the ballot;

(C) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and

(D) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in paragraph (C) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the
general election, the ballot commissioners shall publish the
official list of nominees and issues as a Class I-0 legal
advertisement in the two qualified daily newspapers of
different political parties within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or
having only one or more qualified newspapers which publish
weekly, on the last day on which a newspaper is published
immediately preceding the general election, the ballot
commissioners shall publish the sample official list of
nominees and issues as a Class I legal advertisement in the
qualified newspaper within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of this code;

(3) The publication of the official list of nominees for
each party and for nonpartisan candidates shall be in single
or double columns, as required to accommodate the type size
requirements as follows:

(A) The words "official list of nominees and issues", the
name of the county, the words "General Election" and the
date of the election shall be printed in all capital letters and
in bold type no smaller than fourteen point;

(B) The designation of the straight ticket party positions
shall be printed in all capital letters in bold type no smaller
than twelve point and the title of the office shall be printed in
bold type no smaller than twelve point and any voting
instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and

(C) The names of the candidates and the initial within parenthesis designating the candidate's affiliation shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than twelve point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the general election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.
AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating to absentee voting; providing that the application for absentee voting may be distributed and returned by electronic mail; providing for distribution and return by facsimile of ballots for an absent uniformed services voter or overseas voter; and providing procedures for securely receiving and tabulating facsimile ballots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, by electronic mail or by facsimile the appropriate application for voting absentee by mail as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.
(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, by electronic mail or by facsimile within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to absent uniformed services and overseas voters, not earlier than the first day of January of an election year or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of paragraph (A) or (B),
subdivision (2), subsection (b), section one of this article; or subdivision (3) or (4) of said subsection;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

d) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

e) (1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) One envelope, unsealed, which may have no marks except the designation “Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;
(C) One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";

(D) Instructions for voting absentee by mail;

(E) For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

(F) Notice that a list of write-in candidates is available upon request; and

(G) Any other supplies required for voting in the particular voting system.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U. S. C.§1973, et seq., the official designated to supervise and conduct absentee voting may voluntarily upon request of the voter transmit the ballot to the voter via facsimile. If the ballot is transmitted by facsimile pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit via facsimile:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee utilizing the Federal Voting Assistance Program Electronic Transmission System. For the purposes of this subsection, the “Federal Voting Assistance Program Electronic Transmission System” is the system established by the Department of Defense for the explicit purpose of sending and receiving absentee ballots by military and overseas United States citizens;

(C) Notice that a list of write-in candidates is available upon request.

The official designated to supervise and conduct absentee voting is not required to mail to the voter the materials listed
in paragraphs (B), (C) and (E), subdivision (1) of this subsection.

(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted via facsimile as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot via facsimile to the designated facsimile number of the Federal Voting Assistance Program Electronic Transmission System, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and
conduct absentee voting no later than the hour at which the
board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States
mail from persons eligible to vote an absentee ballot under
the provisions of subdivision (3), subsection (b), section one
of this article, relating to uniform services and overseas
voters, are to be accepted if the ballot is received by the
official designated to supervise and conduct absentee voting
no later than the hour at which the board of canvassers
convenes to begin the canvass.

(i) Ballots transmitted via facsimile pursuant to
subdivision (2), subsection (f) of this section are to be
accepted if the ballot is received by the official designated to
supervise and conduct absentee voting no later than the close
of polls on election day: Provided, That the Secretary of
State’s office shall enter into an agreement with the Federal
Voting Assistance Program of the United States Department
of Defense to transmit the ballots to the county clerks at a
time when two individuals of opposite political parties are
available to process the received ballots.

(j) Ballots received after the proper time which cannot be
accepted are to be placed unopened in an envelope marked
for the purpose and kept secure for twenty-two months
following the election, after which time they are to be
destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be
accepted if they are received by the official designated to
supervise and conduct absentee voting no later than the day
preceding the election: Provided, That no person may hand
deliver more than two absentee ballots in any election and
any person hand delivering an absentee ballot is required to
certify that he or she has not examined or altered the ballot.
Any person who makes a false certification violates the
provisions of article nine of this chapter and is subject to those provisions.

(1) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted via facsimile pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked “Absentee by Facsimile” with the completed waiver: Provided, That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received by facsimile prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received by facsimile.
AN ACT to amend and reenact §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, all relating to electronic voting systems generally; requiring each county to develop a policy for securing electronic voting equipment; requiring vendor of electronic voting equipment to provide an annual report of any difficulties with electronic voting machines; restricting certain recording and electronic devices from the voting booth; providing for additional testing of electronic voting machines in certain circumstances; providing for testing a set of preaudited group of ballots; and allowing qualified individuals to demand recount.

Be it enacted by the Legislature of West Virginia:

That §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEM.

§3-4A-1. Use of electronic voting systems authorized.

§3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.

§3-4A-23. Persons prohibited about voting booths; penalties.

§3-4A-26. Test of automatic tabulating equipment.

§3-4A-28. Post-election custody and inspection of vote-recording devices; canvass and recounts.

§3-4A-1. Use of electronic voting systems authorized.

1 (a) Electronic voting systems may be used for the
2 purpose of registering or recording and computing votes cast
in general, special and primary elections: Provided, That the use of the electronic voting systems shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

(b) Each county which is authorized to use electronic voting systems in any statewide election shall establish a written policy for securing the electronic voting equipment. The policy shall outline how the equipment is secured from tampering and under what circumstances county personnel are authorized to have access. The clerk of the county commission shall submit a copy of the policy to the Secretary of State by the first day of February in each even-numbered year. The clerk shall also submit a copy of any change to the policy within thirty days after its adoption.

§3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.

(a) Any person or corporation owning or interested in any electronic voting system may apply to the State Election Commission so that the system may be examined and a report be made on its accuracy, efficiency, capacity and safety. Upon the written application of any vendor tendered to the Secretary of State or to any clerks in his or her office in charge of receiving filings for any purpose, the Secretary of State shall fix a date, time and place, not more than thirty days after the receipt of the application, for a meeting of the State Election Commission for mutual consideration of the application. The Secretary of State shall mail notice of the hearing by certified mail to each member of the commission.

(b) The State Election Commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports on the system to the commission within thirty days from the date
17 of the application. They shall state in the report whether the
18 examined system complies with the requirements of this
19 article and can be safely used by voters at elections under the
20 conditions prescribed in this article. If the report is in the
21 affirmative on that question, the commission may approve
22 the system and adopt a system of its make and design for use
23 at elections as provided in this article: Provided, That under
24 no circumstances may a system be approved that is not
25 capable of accurately tabulating returns based upon all
26 possible combinations of voting patterns including, but not
27 limited to, crossover voting and in accordance with section
28 five, article six of this chapter. The vendor of the approved
29 system shall provide the State Election Commission with a
30 report, due on the first day of January of each even-numbered
31 year, that outlines any problem that has been experienced
32 with the equipment by any jurisdiction in the state or in any
33 jurisdiction outside the state that uses the same or a similar
34 version of the equipment that has been certified for use in this
35 state.

36 (c) No electronic voting system may be used at any
37 election unless it has been approved under this section or its
38 former provisions and by the appropriate agency of the
39 federal government whose purpose is to review and issue a
40 certificate of approval. Each of the two qualified computer
41 experts appointed by the commission are entitled to
42 reasonable compensation and expenses in making the
43 examination and report, to be paid in advance of the
44 examination required by subsection (b) of this section by the
45 person or corporation applying for the examination. This
46 sum shall be the sole compensation to be received by any
47 expert for any work performed pursuant to this section.

§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting election officials acting under authority of
2 sections nineteen, twenty, twenty-one and twenty-two of this
3 article in the conduct of the election, and qualified persons
assisting voters pursuant to section twenty-two of this article, no person other than the voter may be in, about or within five feet of the voting booth during the time the voter is voting at any election. While the voter is voting, no person may communicate with the voter in any manner and the voter may not communicate with any other person or persons. No person may enter a voting booth with any recording or electronic device in order to record or interfere with the voting process. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, except as expressly provided in this article, is a violation of this section. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or be sentenced to imprisonment in the county jail for a period not more than twelve months or, in the discretion of the court, shall be subject to both such fine and imprisonment.

§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 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. This test shall consist of a test of the entire voting system, including removal of data from a vote-recording device and its transferral to automatic tabulating equipment. The county commission shall give public notice of the time and place of the test 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) Following the close of early voting, the personal electronic ballot and the programable memory chip shall be removed and replaced with another personal electronic ballot and programable memory chip prepared for, but unused during, the current election period;

(B) The printed paper trail used during the early voting period shall be removed and replaced with a new paper trail; and

(C) The vote-recording device shall be retested prior to being used on election day.

(2) Any personal electronic ballot 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 by processing a set of preaudited ballots marked to record a predetermined number of valid votes for each candidate or each measure. For each multicandidate office, the test shall include one or more ballots 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 any other applicable law. For each office, the test shall include one or more ballots 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 each commissioner, the nature of the error, its cause and
the type of corrective action taken. The certification shall be
recorded in the office of the clerk of the county commission
in the record book. Immediately after conclusion of this
completed test, a certified duplicate copy of the test results
shall 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 tabulating equipment to be used in the election
shall be immediately certified by the county commission to
be free from error as determined by the test. All testing
material shall 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
shall be 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 shall be opened to conduct the test
required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start
of the official count and 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, filed in the office of the
clerk of the county commission and immediately recorded in
the record book. On completion of the count, the test
materials and test ballots 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. The number of locks and
keys shall be the same as the number of county commissioners together with the county clerk, with each
§3-4A-28. Post-election custody and inspection of vote-recording devices; canvass and recounts.

(a) The vote-recording devices, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year: Provided, however, That the vote-recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed and any of the electronic voting equipment discussed in this section may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine, as required by subsection (d) of this section, all of the vote-recording devices, the automatic tabulating equipment used in the election and those voter-verified paper ballots generated by direct recording electronic vote machines, shall determine the number of votes cast for each candidate and for and against each question and, by this examination, shall procure the correct returns and ascertain
the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any qualified individual demands a recount of the votes cast at an election, the voter-verified paper ballot shall be used according to the same rules that are used in the original vote count pursuant to section twenty-seven of this article. For purposes of this subsection, “qualified individual” means a person who is a candidate for office on the ballot or a voter affected by an issue, other than an individual’s candidacy, on the ballot.

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.
AN ACT to amend and reenact §3-5-19 of the Code of West Virginia, 1931, as amended, relating to filling vacancies in nominations.

Be it enacted by the Legislature of West Virginia:

That §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

*§3-5-19. Vacancies in nominations; how filled; fees.*

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: Provided, That if the executive committee holds a duly called meeting in accordance with section nine, article one of this chapter but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive

*CLERK’S NOTE: This section was also amended by S.B. 616 (Chapter 101), which passed prior to this act.*
committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than thirty days after the last day to file a certificate of announcement pursuant to section seven of this article.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than seventy-eight days before the general election. A candidate may be determined ineligible if a written request is made by an individual with information to show a candidate’s ineligibility to the State Election Commission no later than eighty-four days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the
reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission may authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than eighty-four days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected and if the candidate or the chairperson of the executive committee for the political division applies in writing to the State Election Commission no later than eighty-four days before the general election for permission to remove the candidate’s name from the general election ballot, the State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the withdrawal of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.
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(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of death or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than seventy-seven days before the general election.
AN ACT to amend and reenact §3-6-4a of the Code of West Virginia, 1931, as amended, relating to filing requirements for write-in candidates; and requiring a certificate of announcement to be filed no later than forty-two days before an election.

Be it enacted by the Legislature of West Virginia:

That §3-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter, shall file a write-in candidate's certificate of announcement as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.

10 (a) The write-in candidate's certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths containing the following information:

15 (1) The name of the office sought and the district and division, if any;
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(2) The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;

(3) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(4) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

(5) The words "subscribed and sworn to before me this _____ day of ____________, ___" and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

(1) Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the forty-second day before the election at which the office is to be filled;

(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;
(3) When a vacancy occurs in an elective office which would not otherwise appear on the ballot in the election, but which creates an unexpired term of one or more years which, according to the provisions of this chapter, is to be filled by election in the next ensuing election and the vacancy occurs no earlier than the twenty-first day and no later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate's certificate of announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:

(1) The Secretary of State shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the county commissions of the appropriate counties.

(2) The clerk of the county commission shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate precincts, the names of all official write-in candidates and the office sought by each for statewide, district and county offices on the ballot in the precinct for which valid write-in votes will be counted and the names shall be posted at the office where absentee voting is conducted and at the precincts in accordance with section twenty, article one of this chapter.
AN ACT to amend and reenact §3-8-1a, §3-8-2, §3-8-2b, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b and §3-8-5e of the Code of West Virginia, 1931, as amended, all relating to campaign finance filings; defining terms; setting value for in-kind contributions; permitting a political committee created by a membership organization to solicit contributions only from its members; requiring expedited filings of independent expenditure filings within fifteen days of election; requiring certain independent expenditures to be filed as electioneering communications; requiring disclosure as to whether an electioneering communication is intended to support or oppose an identified candidate; lowering the threshold of electioneering communications to be reported fifteen days prior to an election; modifying requirements for political committee treasurers of candidates from offices larger than one county; modifying the reporting periods; requiring certain information for contributions in excess of two hundred fifty dollars; clarifying that details of third-party expenditures must be filed; requiring electronic filing for statewide candidates; and clarifying where campaign finance reports are filed.

Be it enacted by the Legislature of West Virginia:

That §3-8-1a, §3-8-2, §3-8-2b, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b and §3-8-5e 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.
§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.
§3-8-2b. Disclosure of electioneering communications.
§3-8-3. Committee treasurers; required to receive and disburse funds.
§3-8-4. Treasurers and financial agents; written designation requirements.
§3-8-5. Detailed accounts and verified financial statements required.
§3-8-5a. Information required in financial statement.
§3-8-5b. Where financial statements shall be filed; filing date prescribed.
§3-8-5c. Precandidacy financing and expenditures.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(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.

(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.

(3) "Candidate" means an individual who:

(A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(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: Provided, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.
(7) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(8) "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.

(9) "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 additional expenditures totaling five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications.

(10) "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
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constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(11) (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:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) 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:
(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) 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) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five 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 by a party executive committee or caucus committee or a political action committee 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 Secretary 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 organization, 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.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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 organization" does not include organizations
that grant membership upon receiving a contribution.

(17) "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.

(18) "Person" means an individual, partnership,
committee, association and any other organization or group
of individuals.

(19) "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. The following are types of political action
committees:

(A) A corporate political action committee, as that term
is defined by subdivision (7) of this section;
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(B) A membership organization, as that term is defined by subdivision (16) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (27) of this section.

(20) "Political committee" means any candidate committee, political action committee or political party committee.

(21) "Political party" means a political party as that term is defined by section eight, article one of this chapter 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.

(22) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

(23) "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.

(24) "Targeted to the relevant electorate" means a communication 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.
"Telephone bank" means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions or trained volunteers.

"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.

"Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions of 2 U. S. C. §434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any person making an independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a
municipal election ballot, on or after the fifteenth day but
more than twelve hours before the day of any election shall
report the expenditure, on a form prescribed by the Secretary
of State, within twenty-four hours after the expenditure is
made or debt is incurred for a communication, to the
Secretary of State by hand-delivery, facsimile or other means
to assure receipt by the Secretary of State within the 24-hour
period: Provided, That a person making expenditures in the
amount of one thousand dollars or more for any statewide or
legislative candidate on or after the fifteenth day but more
than twelve hours before the day of any election shall report
such expenditures in accordance with section two-b of this
article and shall not file an additional report as provided
herein.

(c) Any independent expenditure must include a clear and
conspicuous public notice which identifies the name of the
person who paid for the expenditure and states that the
communication is not authorized by the candidate or his or
her committee.

(d) Any 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 maintain all financial records and receipts
related to such expenditure for a period of six months
following the filing of a disclosure pursuant to subsection (a)
of this section and, upon request, shall make such records and
receipts available to the Secretary of State or county clerk for
the purpose of an audit as provided in section seven of this
article.

(e) Any person who willfully fails to comply with this
section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than five hundred dollars, or
confined in jail for not more than one year, or both fined and
confined.
§3-8-2b. Disclosure of electioneering communications.

(a) Every person who has spent:

   (1) A total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year; or

   (2) A total of one thousand dollars or more on or after the fifteenth day but more than twelve hours before the day of any election 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 all of the information listed in subsection (b) of this section.

(b)(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 individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(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, the names, if known, of the candidates referred to or to be referred to therein, whether the electioneering communication is intended to support or oppose the identified candidates and the amount of the total
expenditure reported in subdivision (3) of this subsection spent to support or oppose each of the identified candidates; 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.

(c) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (b) 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.

(d) (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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

§3-8-3. Committee treasurers; required to receive and disburse funds.

Every political committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses shall be paid over to, and pass through the hands of, the treasurer, and shall be disbursed by him, and it shall be unlawful for any such committee, or any of its members, to disburse any money for
election expenses unless such money shall be paid to, and
discharged by, the treasurer. The same person may be
designated to act as treasurer for two or more political party
committees.

§3-8-4. Treasurers and financial agents; written designation
requirements.

(a) No person may act as the treasurer of any political
action committee or political party committee supporting,
aiding or opposing the nomination, election or defeat of any
candidate for an office encompassing an election district
larger than a county unless a written statement of
organization, on a form to be prescribed by the Secretary of
State, is filed with the Secretary of State at least twenty-eight
days before the election at which that person is to act as a
treasurer and is received by the Secretary of State before
midnight, eastern standard time, of that day or, if mailed, is
postmarked before that hour. The form shall include the
name of the political committee; the name of the treasurer;
the mailing address, telephone number and e-mail address, if
applicable, of the committee and of the treasurer if different
from the committee information; the chairman of the
committee; the affiliate organization, if any; type of
committee affiliation, as defined in subdivision (19), section
one-a of this article, if any; and whether the committee will
participate in statewide, county or municipal elections. The
form shall be certified as accurate and true and signed by the
chairman and the treasurer of the committee: Provided, That
a change of treasurer or financial agent may be made at any
time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate
for nomination or election to any statewide office, or to any
office encompassing an election district larger than a county
or to any legislative office unless a written statement
designating that person as the treasurer or financial agent is
filed with the Secretary of State at least twenty-eight days
before the election at which that person is to act as a treasurer
and is received by the Secretary of State before midnight,
eastern standard time, of that day or if mailed, is postmarked
before that hour: Provided, That a change of treasurer or
financial agent may be made at any time by filing a written
statement with the Secretary of State.

(c) No person may act as treasurer of any committee or
as financial agent for any candidate to be nominated or
elected by the voters of a county or a district therein, except
legislative candidates, or as the financial agent for a
candidate for the nomination or election to any other office,
unless a written statement designating him or her as the
treasurer or financial agent is filed with the clerk of the
county commission at least twenty-eight days before the
election at which he or she is to act and is received before
midnight, eastern standard time, of that day or if mailed, is
postmarked before that hour: Provided, That a change of
treasurer may be made at any time by filing a written
statement with the clerk of the county commission.

(d) Notwithstanding the provisions of subsections (a), (b)
and (c) of this section, a filing designating a treasurer for a
state or county political executive committee may be made
anytime before the committee either accepts or spends funds.
Once a designation is made by a state or county political
executive committee, no additional designations are required
under this section until a successor treasurer is designated.
A state or county political executive committee may
terminate a designation made pursuant to this section by
making a written request to terminate the designation and by
stating in the request that the committee has no funds
remaining in the committee's account. This written request
shall be filed with either the Secretary of State or the clerk of
the county commission as provided by subsections (a), (b)
and (c) of this section.
§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, treasurer, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate and the treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

(1) Of all financial transactions, whenever the total exceeds five hundred dollars, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions relating to an election exceeds five hundred dollars;

(2) Of all financial transactions which have taken place before the fifteenth day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the fifteenth day;
(3) Of all financial transactions which have taken place before the thirteenth day after each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds five hundred dollars or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

c) Every person who announces as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election: Provided, That during the election in the year two thousand eight, the statements required by this subsection shall be filed immediately prior to and after the general election.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering
communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a contribution and the amount of the contribution. If the total contributions of any one person in any one election cycle amount to more than two hundred fifty dollars, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than fifty dollars of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of section five-d of this article. The statement on which contributions are required to be reported by this subdivision may not distinguish between contributions made by individuals and contributions made by partnerships, firms, associations, committees, organizations or groups.

(4) The total amount of contributions received during the period covered by the financial statement.

(5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.
36 (6) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

37 (7) The total outstanding balance of all loans at the end of the period.

38 (8) The name, residence and mailing address of any person to whom each expenditure was made or liability incurred, including expenditures made on behalf of a candidate or political committee that otherwise are not made directly by the candidate or political committee, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

39 (9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

40 (10) The total amount of expenditures made during the period covered by the financial statement.

41 (b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

42 (c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:
(1) The type of event, date held and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.
(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less
over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(1) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party committee may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

(i) The name of the committee;

(ii) The type of fund-raising activity undertaken;

(iii) The location where the activity occurred;

(iv) The date of the fundraiser;
(v) The name of any individual who contributed more than fifty dollars worth of items to be sold;

(vi) The name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

(vii) The gross receipts of the fundraiser; and

(viii) The date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: Provided, That the financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by
the means of an internet program to be established by the
Secretary of State.

(c) Committees required to report electronically may
apply to the State Election Commission for an exemption
from mandatory electronic filing in the case of hardship. An
exemption may be granted at the discretion of the State
Election Commission.

(d) For purposes of this article, the filing date of a
financial statement shall, in the case of mailing, be the date
of the postmark of the United States Postal Service, and in
the case of hand delivery or delivery by facsimile or other
electronic means of transmission, the date delivered to the
office of the Secretary of State or to the office of the clerk of
the county commission, in accordance with the provisions of
subsection (a) of this section, during regular business hours
of such office.

(e) The sworn financial statements required to be filed by
this section with the Secretary of State shall be posted on the
internet by the Secretary of State within ten business days
from the date the financial statement was filed.

§3-8-5e. Precandidacy financing and expenditures.

(a) Notwithstanding any other provisions of this code, it
is lawful for a person, otherwise qualified to be a candidate
for any public office or position to be determined by public
election, to receive contributions or make expenditures, or
both, personally or by another individual acting as a
treasurer, to determine the advisability of becoming such a
candidate or preparing to be such a candidate: Provided, That
such contributions may be received and such expenditures
made only during the four years immediately preceding the
term for which such person may be a candidate or during the
term of office immediately preceding the term for which such
person may be a candidate, whichever is less: Provided,
however, That no person is disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall name himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in section four of this chapter before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of this section, regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by section five of this article, for the period prior to the date of filing for candidacy for the office he is considering seeking. Any person who has received contributions or made expenditures subject to the provisions of this section shall file annually on the last Saturday in March or within six days thereafter preceding the election at which the names of candidates would appear on the ballot for the public office or position which the person originally considered seeking, a detailed itemized statement setting forth all contributions received and expenditures made pursuant to the provisions of this section concerning the candidacy of that person. If the person on whose behalf such contributions are received or expenditures are made becomes a candidate for any office or position to be decided at such election then the itemized statement shall be included within the first statement required to be filed by the provisions of
section five of this article. If such person does not become a
candidate for any office or position to be decided at such
election, then the detailed itemized statements required by
this subsection shall be the only statements required to be
filed by such person. Regardless of whether such person
becomes a candidate as originally intended, or becomes a
candidate for some office other than the office or position
originally intended, or does not become a candidate, all limits
on campaign contributions and campaign expenditures
applicable to the candidacy of or advocacy of the candidacy
of such person for the office he actually seeks, shall be
applicable to and inclusive of the receipts had and
expenditures made during such precandidacy period as well
as after the person becomes a candidate.

CHAPTER 107

(S.B. 754 - By Senators Kessler, Oliverio, Foster, Green, Hunter,
Minard, Wells, White, Barnes, Deem, Hall and McKenzie)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §3-8-9 of the Code of West Virginia,
1931, as amended, relating to campaign expenditures;
clarifying language on contributions from political committees
to certain other political committees; clarifying language
regarding expenditures and contributions; prohibiting candidate
committees from contributing to another candidate committee
except in certain circumstances; and prohibiting political action
committees from contributing to other political action
committees except in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §3-8-9 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment and other furnishing of offices to be used as political headquarters and for the payment of necessary clerks, stenographers, typists, janitors and messengers actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary clerks, stenographers and typists actually employed;

(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, including contributions to charitable, educational or cultural events, for the promotion of the candidate, the candidate's name or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings and
for the payment of traveling expenses of speakers and
musicians at such meetings;

(5) For the necessary traveling and hotel expenses of
candidates, political agents and committees and for
stationery, postage, telegrams, telephone, express, freight and
public messenger service;

(6) For preparing, circulating and filing petitions for
nomination of candidates;

(7) For examining the lists of registered voters, securing
copies thereof, investigating the right to vote of the persons
listed therein and conducting proceedings to prevent unlawful
registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio
and television broadcasting of documents, articles, speeches,
arguments and any information relating to any political issue,
candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the
purpose of this section, the phrase "conducting of public
opinion poll or polls" shall mean and be limited to the
gathering, collection, collation and evaluation of information
reflecting public opinion, needs and preferences as to any
candidate, group of candidates, party, issue or issues. No
such poll shall be deceptively designed or intentionally
conducted in a manner calculated to advocate the election or
defeat of any candidate or group of candidates or calculated
to influence any person or persons so polled to vote for or
against any candidate, group of candidates, proposition or
other matter to be voted on by the public at any election:
Provided, That nothing herein shall prevent the use of the
results of any such poll or polls to further, promote or
enhance the election of any candidate or group of candidates
or the approval or defeat of any proposition or other matter to
be voted on by the public at any election;

(11) For legitimate advertising agency services, including
commissions, in connection with any campaign activity for
which payment is authorized by subdivisions (3), (4), (5), (6),
(7), (9) and (10) of this subsection;

(12) For the purchase of memorials, flowers or citations
by political party executive committees or political action
committees representing a political party;

(13) For the purchase of nominal noncash expressions of
appreciation following the close of the polls of an election or
within thirty days thereafter;

(14) For the payment of dues or subscriptions to any
national, state or local committee of any political party;

(15) For contributions to a county party executive
committee, state party executive committee or a state party
legislative caucus political committee; and

(16) For contributions to a candidate committee:
Provided, That a candidate committee may not contribute to
another candidate committee except as otherwise provided by
section ten of this article.

(b) A political action committee may not contribute to
another political action committee or receive contributions
from another political action committee: Provided, That a
political action committee may receive contributions from its
national affiliate, if any.

(c) Every liability incurred and payment made shall be
for the fair market value of the services rendered.
(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by him which shall be in such form and filed in accordance with the provisions of section four of this article.

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CHAPTER 108

(Com. Sub. for H.B. 2875 - By Delegates Webster, Proudfoot, Moore, Hatfield, Caputo, DeLong, Hrutkay, Fragale and Perdue)

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating to amending the procedure by which a vacancy on a county commission is filled in the event the remaining commissioners cannot agree on a person to fill the vacancy.

Be it enacted by the Legislature of West Virginia:

That §3-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10. FILLING VACANCIES.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election: Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner’s political party shall select and name a person to fill the vacancy from the membership of the vacating county commissioner’s political party.

Notice of the election shall be given by order of the county commission and published as prescribed in section six of this article. Nomination of candidates to fill the office for an unexpired term in the office of county commissioner or clerk of the county commission shall be made in the manner prescribed for making nominations to fill a vacancy in the office of the clerk of the circuit court.

In the event that the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the
unexpired term shall be counted second. If the candidate
with the highest number of votes for the unexpired term
resides in the same magisterial district as the candidate with
the highest number of votes for the full term, the candidate
for the full term shall be seated. The candidate with the next
highest number of votes for the unexpired term residing in a
different magisterial district shall be seated for the unexpired
term.

CHAPTER 109

(Com. Sub. for H.B. 2145 - By Delegate Yost)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact §21-3C-1 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §21-3C-2a, all relating to
limited use/limited access elevators; prohibiting installation of
certain elevators after a certain date; exemptions; and
establishing requirements for the installation of limited
use/limited access elevators.

Be it enacted by the Legislature of West Virginia:

That §21-3C-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 §21-3C-2a, all to read
as follows:
ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.

(1) "Certificate of acceptance" means a certificate issued by the Division of Labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts."

(2) "Certificate of competency" means a certificate issued by the Division of Labor certifying that an individual is qualified to inspect elevators.

(3) "Certificate of operation" means a certificate issued by the Division of Labor certifying that an elevator has been inspected and is safe for operation.

(4) "Division" means the Division of Labor.

(5) "Division inspector" means an employee or contractor of the division who has been examined and issued a certificate of competency and who only inspects elevators in state owned buildings.

(6) "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides.
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and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(7) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(8) "Inspector" means both a division inspector and a private inspector.

(9) "Limited use/limited access elevator" means a passenger elevator of which use is limited by size, capacity, rise and speed, and access is limited by its location, by the requirement of a key for its operation or by other restriction.

(10) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

(11) "Private inspector" means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

(a) On and after the first day of July, two thousand seven, no limited use/limited access elevator may be installed in nonresidential settings unless the elevator:
(1) Meets the specifications as set forth in the American Society of Mechanical Engineers (ASME) Safety Code for Elevators and Escalators A17.1-5.3 "Safety Code for Elevators";

(2) Has a method of two-way communication between the car and each floor served by the elevator; and

(3) Is operated automatically.

(b) A limited use/limited access elevator which is in use on the first day of July, two thousand seven, may continue in use so long as the elevator is inspected annually in accordance with the legislative rule of the division, and is issued a certificate of operation by the division.

CHAPTER 110

(H.B. 2944 - By Delegates Hatfield, Fleischauer, Wysong, Marshall, Hrutkay, Eldridge, Boggs, Spencer, Guthrie and Rowan)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5C-20, relating to the end-of-life care of residents of nursing homes;
and requiring that certain residents be given information about the option of hospice palliative care.

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 §16-5C-20, to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-20. Hospice palliative care required to be offered.

(a) When the health status of a nursing home facility resident declines to the state of terminal illness or when the resident receives a physician’s order for “comfort measures only,” the facility shall notify the resident with information about the option of receiving hospice palliative care. If a nursing home resident is incapacitated, the facility shall also notify any person who has been given the authority of guardian, a medical power of attorney or health care surrogate over the resident, information stating that the resident has the option of receiving hospice palliative care.

(b) The facility shall document that it has notified the resident, and any person who has been given a medical power of attorney or health care surrogate over the resident, information about the option of hospice palliative care and maintain the documentation so that the director may inspect the documentation, to verify the facility has complied with this section.
AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code; to amend said code by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; to amend and reenact §5D-1-4 of said code; to amend and reenact §5F-2-1 of said code; and to amend and reenact §22-3A-7 of said code, all relating to the creation of the Division of Energy within the Department of Commerce; charging the Division of Energy to develop energy policies; placing the Office of Coalfield Community Development within the Division of Energy; creating the position of Director of the Division of Energy; continuing and reconstituting the West Virginia Public Energy Authority; charging Director of the Division of Energy to chair and administer the functions of the Public Energy Authority; providing the director acts under the authority of the Secretary of Commerce; providing the director has authority over the Office of Coalfield Community Development and the Energy Efficiency Program of the West Virginia Development Office; providing the Public Energy Authority, the Office of Coalfield Community Development, director and other public agencies develop an energy policy and development plan and seek public input thereof; requiring submission of an energy policy and development plan to the Governor and Joint Committee on Government and Finance; setting forth matters to be addressed in the energy policy and development plan; providing that the division shall prepare an energy use database; providing that the division shall promote
initiatives to enhance the nation's energy security; providing that the division shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster; providing funding for the Division of Energy; and establishing a performance audit to be performed during the Department of Commerce’s review.

Be it enacted by the Legislature of West Virginia:

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; that §5D-1-4 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; and that §22-3A-7 of said code be amended and reenacted, all to read as follows:

5D. Public Energy Authority.
5F. Reorganization of the Executive Branch of State Government.
22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article 1. Department of Commerce.
2A. Office of Coalfield Community Development.
2F. Division of Energy.

ARTICLE 1. DEPARTMENT OF COMMERCE.

*§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

*Clerk’s Note: This section was also amended by S.B. 454 (Chapter 27), which passed subsequent to this act.
The Department of Commerce consists of the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:
   (A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and
   (B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the office of the Governor:
   (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;
   (B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and
   (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission, provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;
(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code;

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;
(B) Division of Employment Service;
(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-1. Legislative findings and declaration.

The Legislature hereby finds and declares the following:

(a) Coal mining has made and continues to make significant contributions to the economy of West Virginia. These contributions include the creation of quality jobs that pay high wages and provide good benefits; the consequent stimulation and support of mining contractors, suppliers of mining equipment and services, other mining-related industries and numerous providers of goods and services that are indirectly related to coal mining and dependent upon its existence and prosperity; the generation of significant severance and other tax revenues that support important economic development, infrastructure and education initiatives in mining communities and throughout the state; the support of civic, education and service groups in mining communities; and, in the case of surface mining operations, including mountaintop mining, the creation of much-needed flat land for economic development and recreational uses.
(b) The development and increasing prominence of surface mining operations, including mountaintop mining, has brought increasingly high levels of productivity, safety and efficiency to the state's mining industry, enabling the recovery of coal that could not otherwise be mined and marketed profitably, increasing the severance tax revenues and other economic benefits described in subsection (a) of this section and ensuring the competitiveness of the state's coal industry from a national and international perspective.

(c) Where implemented, surface mining operations, particularly mountaintop mining, tend to extract most, if not all, of the recoverable coal reserves in an accelerated fashion. For a state long dependent on the employment and revenue coal mining provides, this reality should be sobering and there is no place in which the comprehension of this reality is more crucial than the coalfields of West Virginia. Long dependent primarily on mining, this area must plan for a future without coal. The state and its subdivisions have a legitimate interest in securing that future.

(d) The coal industry and those related to the extraction of mineral resources benefit from the mining of our state's coal through mining practices which impact its citizens -- some in a negative way -- and through practices which will extract significant portions of coal reserves in an accelerated fashion. Those industries must therefore accept a greater responsibility to help address the long-term needs of the communities and citizens impacted by their activities.

(e) Once it becomes public knowledge that a permit is being sought, the marketability of property may change and the relative bargaining power of the parties may change with it. The potential for negative impact on those living in communities near surface mining operations may limit the options and bargaining power of the property owners.

(f) Surface mining operations, including mountaintop mining, present unique challenges to the coal mining industry and the state and its citizens, especially those living and working in communities that rely heavily upon these methods.
of mining. This requires that these communities, in conjunction with county commissions, state, local, county and regional development authorities, landowners and civic, community and business groups and interested citizens, develop plans related to the communities' long-term economic viability.

(g) The Division of Energy, as the state agency charged with energy policy and development activities, shall take a more active role in the long-term economic development of communities in which these mining methods are prevalent and shall establish a formal process to assist property owners in the determination of the fair market value where the property owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of such property.

§5B-2A-3. Definitions.

(a) For the purpose of this article, the following terms have the meanings ascribed to them:

(1) "Department" means the Department of Environmental Protection established in article one, chapter twenty-two of this code;

(2) "Office" means the Office of Coalfield Community Development.

(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

§5B-2A-4. Office of Coalfield Community Development.

(a) The Office of Coalfield Community Development is hereby established within the Division of Energy.

(b) The director of the Division of Energy may appoint a chief to administer the office, who will serve at the will and pleasure of the Director of the Division of Energy.

The office has and may exercise the following duties, powers and responsibilities:

(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;

(2) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

(3) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in section nine of this article and to administer the procedure so established;

(4) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

(5) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(6) To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established;

(7) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and

(8) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of
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30 economic or community assets. Such assistance may include
31 the preparation of a master land use plan pursuant to the
32 provisions of section nine of this article.

§5B-2A-12. Rulemaking.

1 The office shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of this
3 code to establish, implement and enforce the provisions of
4 this article, which rules shall include, but not be limited to:

5 (1) The development of standards for establishing the
6 value of property by the office; and

7 (2) Criteria for the development of a master plan by local,
8 county, regional or redevelopment authorities which
9 coordinates the permitting and reclamation requirements of
10 the Department of Environmental Protection with these
11 authorities.

ARTICLE 2F. DIVISION OF ENERGY.

§5B-2F-1. Short title.

This chapter shall be known and cited as the West Virginia Energy Policy and Development Act.

§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of Public Energy Authority; division to develop energy policy and development plan; contents of energy policy and development plan; and division to promote energy initiatives.

§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of Public Energy Authority; division to develop energy policy and development plan; contents of energy policy and development plan; and division to promote energy initiatives.

1 (a) Effective the first day of July, two thousand seven, the
2 Division of Energy is created as a state agency under the
3 Department of Commerce. The division may receive federal
funds. The division shall be administered by a director, who
shall be appointed by the Governor, by and with the advice
and consent of the Senate, and shall continue to serve until
his or her successor is appointed and qualified as provided.
The director shall be selected with special preference and
consideration given to his or her training, experience,
capacity and interest in energy policy and development
activities.

(b) Creation of the division is intended to provide
leadership for developing energy policies emphasizing the
increased efficiency of energy use, the increased
development and production of new and existing domestic
energy sources, the increased awareness of energy use on the
environment and the economy, dependable, efficient and
economical statewide energy systems capable of supporting
the needs of the state, increased energy self-sufficiency
where the ratio of indigenous to imported energy use is
increased, reduce the ratio energy consumption to economic
activity and maintain low-cost energy. The energy policies
and development plans shall also provide direction for the
private sector.

(c) The director shall administer the daily operations of
the Public Energy Authority provided under the provisions of
chapter five-d of this code. The director shall also have
authority over the Office of Coalfield Community
Development, created by the provisions of article two-a of
this chapter, and the energy efficiency program existing
under the West Virginia Development Office which are
hereby transferred to the division. The director shall
effectuate coordination of these entities relative to the
purposes provided in this article.

(d) The division shall develop an energy policy and shall
report the same back to the Governor and the Joint
Committee on Government and Finance before the first day
of December, two thousand seven. The energy policy shall
be a five-year plan setting forth the state’s energy policies and
shall provide a direction for the private sector. Prior to the
expiration of the energy policy, the division shall begin
review of the policy and submit a revised energy policy to the Governor and the Joint Committee on Government and Finance six months before the expiration of the policy.

(e) The director shall be a member of the Public Energy Authority and as such shall attend and participate in all official meetings and public hearings conducted under the auspices of the authority.

(f) The division shall prepare and submit an annual energy development plan to the Governor and the Joint Committee on Government and Finance on or before the first day of December of each year. The development plan shall relate to the division's implementation of the energy policy and the activities of the division during the previous year. The development plan shall include any recommended legislation. The Public Energy Authority, the Office of Coalfield Community Development, the energy efficiency program, the Department of Environmental Protection and the Public Service Commission, in addition to their other duties prescribed by this code, shall assist the division and the director in the development of an energy policy and related development plans. The energy development plan shall set forth the plans for implementing the state's energy policy and shall provide a direction for the private sector. The energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.

(g) The division shall hold public hearings and meetings with notice to receive public input regarding proposed energy policies and development plans. The energy policy and development plans required by subsections (d) and (f) of this section shall address increased efficiency of energy use, traditional and alternative energy, water as a resource and a component of energy production, energy distribution systems, the siting of energy facilities, the increased development and production of new and existing domestic
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energy sources, increased awareness of energy use on the environment and the economy, energy infrastructure, the development and implementation of renewable, clean, technically innovative and advanced energy projects in this state. Projects may include, without limitation, solar and wind energy, low-impact hydro power, geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal liquefaction technologies.

(h) The division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy policy and development plan in accordance with the provisions of this chapter.

(i) The energy policy and development plans required by subsections (d) and (f) of this section shall identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Director of the Division of Homeland Security and Emergency Management, the director of the division shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

(j) In preparing or revising the energy policy and development plan, the division may rely upon internal staff reports or the advice of outside advisors or consultants and may procure such services with the consent of the Secretary of Commerce. The division may also involve national, state and local government leadership and energy experts.
(k) The division shall prepare an energy use database, including without limitation, end-use applications and infrastructure needs for different classes of energy users including residential, commercial and industrial users, data regarding the interdependencies and sources of electricity, oil, coal, water and gas infrastructure, data regarding energy use of schools and state-owned facilities and collect data on the impact of the energy policy and development plan on the decisions and strategies of energy users of the state.

(l) The division shall promote collaboration between the state's universities and colleges, private industry and nonprofit organizations to encourage energy research and leverage available federal energy research and development resources.

(m) The division shall promote initiatives to enhance the nation's energy security through research and development directed at transforming the state's energy resources into the resources that fuel the nation.

(n) The Performance Evaluation and Research Division of the Legislative Auditor's office shall perform an agency review of the Division of Energy in two thousand ten as part of its review of the Department of Commerce as set forth in article four, chapter ten of this code.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

(a) The West Virginia Public Energy Authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the
authority of the powers conferred by this article and the
carrying out of its purposes and duties are essential
governmental functions and for a public purpose.

(b) The authority shall be controlled, managed and
operated by a seven-member board known as the West
Virginia Public Energy Authority Board, which is continued.
The seven members include the Director of the Division of
Energy or designee; the Secretary of the Department of
Environmental Protection or designee; the Director of the
Economic Development Authority or designee; and four
members representing the general public. The public
members are appointed by the Governor, by and with the
advice and consent of the Senate, for terms of one, two, three
and four years, respectively.

(c) On the thirtieth day of June, two thousand seven, the
terms of all appointed members shall expire. Not later than
the first day of July, two thousand seven, the Governor shall
appoint the public members required in subsection (b) of this
section to assume the duties of the office immediately,
pending the advice and consent of the Senate.

(d) The successor of each appointed member is appointed
for a four-year term. A vacancy is filled by appointment by
the Governor in the same manner as the original appointment.
A member appointed to fill a vacancy serves for the
remainder of the unexpired term. Each board member serves
until a successor is appointed.

(e) No more than three of the public members may at any
one time belong to the same political party. No more than
two public members may be employed by or associated with
any industry the authority is empowered to affect. One
member shall be a person with significant experience in the
advocacy of environmental protection. Board members may
be reappointed to serve additional terms.
(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two of said chapter. The Governor may remove any board member as provided in section four, article six of said chapter.

(g) The Director of the Division of Energy shall serve as chair. The board annually elects one of its members as vice chair and appoints a secretary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the affirmative vote of the majority of members present at any meeting is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(j) Each public member shall be reimbursed for reasonable expenses incurred in the discharge of official duties. All expenses incurred by the board shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.
(k) In addition to such other duties and responsibilities as may be prescribed in this code, the Director of the Division of Energy is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

*§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;

*CLERK'S NOTE: This section was also amended by S.B. 442 (Chapter 207) and S.B. 582 (Chapter 214) which passed prior to this act, and S.B. 454 (Chapter 27) which passed subsequent to this act.
(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Commission.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners'
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Health, Safety and Training for purposes of administrative support and liaison with the office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code;

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.

(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and
(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;
(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency
149 Response Commission provided in article five-a of said chapter;

151 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

153 (7) Division of Corrections provided in chapter twenty-five of this code;

155 (8) Fire Commission provided in article three, chapter twenty-nine of this code;

157 (9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

159 (10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

161 (11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

163 (i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

167 (1) Tax Division provided in article one, chapter eleven of this code;

169 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

171 (3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;
(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;
Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

Port Authority provided in article sixteen-b, chapter seventeen of this code.

Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.
(m) Any department previously transferred to and
incorporated in a department by prior enactment of this
section means a division of the appropriate department.
Wherever reference is made to any department transferred to
and incorporated in a department created in section two,
article one of this chapter, the reference means a division of
the appropriate department and any reference to a division of
a department so transferred and incorporated means a section
of the appropriate division of the department.

(n) When an agency, board or commission is transferred
under a bureau or agency other than a department headed by
a secretary pursuant to this section, that transfer is solely for
purposes of administrative support and liaison with the office
of the Governor, a department secretary or a bureau. Nothing
in this section extends the powers of department secretaries
under section two of this article to any person other than a
department secretary and nothing limits or abridges the
statutory powers and duties of statutory commissioners or
officers pursuant to this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-7. Funding.

(a) The office shall assess each operator permitted under
the provisions of this chapter a fee on each quantity of
explosive material used for any purpose on the surface
mining operations.

(b) The office shall propose a legislative rule for
promulgation in accordance with article three, chapter
twenty-nine-a of this code establishing the fees required by
this section. The fees shall be calculated to generate
sufficient money to provide for the operation of this office
and the Division of Energy as provided for in article two-f, chapter five-b of this code. These fees cannot be increased except by legislative rule and cannot be used to fund additional positions in the Division of Energy in future years.

(c) The office shall deposit all moneys received from these fees into a special revenue fund to be known as the Mountaintop Removal Fund in the State Treasury to be expended by the offices and the Division of Energy in the performance of their duties. The expenditure of moneys in the fund is not authorized from collections, but shall be appropriated by the Legislature.

CHAPTER 112

(S.B. 490 - By Senators Hunter, Foster, Kessler, Minard, Oliverio, White, Caruth, Deem and Jenkins)

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §22-17-22 of the Code of West Virginia, 1931, as amended, relating to the Underground Storage Tank Insurance Fund; providing for expiration of the fund and disposal of its assets; directing the Department of Environmental Protection to assist certain policyholders reclaim sites insured by the fund; providing that the Department of Environmental Protection is not liable for claims
against the fund nor may be bound to policy terms; providing legislative findings; directing the Secretary of the Department of Environmental Protection to develop a plan to cause remediation of these sites; authorizing the Secretary of the Department of Environmental Protection to place conditions on remediation recipients; establishing criteria and preconditions for remediations; allowing persons who have undertaken remediation or expended funds to undertake remediation of sites to be reimbursed expenses; and allowing the secretary to establish conditions for reimbursement for prior or future remediations of insured sites.

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

That §22-17-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. UNDERGROUND STORAGE TANK ACT.**

**§22-17-22. Underground storage tank insurance fund.**

1 (a) The secretary may establish an Underground Storage Tank Insurance Fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the secretary shall promulgate rules establishing an annual financial responsibility assessment to be assessed on and paid by owners or operators of
underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Assessments shall be paid into the State Treasury into a special fund designated the Underground Storage Tank Insurance Fund.

(b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the General Revenue Fund but shall remain in the Underground Storage Tank Insurance Fund. Upon the effective date of the enactment of the amendment to this section passed during the two thousand seven regular session of the West Virginia Legislature, the Underground Storage Tank Insurance Fund shall cease to operate as an insurance fund. Any remaining assets of the fund shall be administered by the secretary pursuant to subsections (c), (d), (e), (f), (g) and (h) of this section. Because the fund was intended to be self funding, the secretary is not bound by any terms, limitations or conditions contained in any insurance policies issued by the fund, but in no case may reimburse any person for an amount in excess of the limits of liability.

(c) Legislative Findings Regarding Cessation of the Fund
- The Underground Storage Tank Insurance Fund was established by the Legislature to assist storage tank owners who were mandated by federal law to have insurance but were unable to find insurance in the private market, and was funded solely by assessments of policyholders paid to the fund. Policies were issued from the years one thousand nine
hundred ninety to two thousand. As private insurance coverage became available and a number of the insured left the business, premiums paid into the fund decreased. These factors, combined with greater than anticipated remediation costs at sites remediated during the fund’s solvency, caused claims against the fund to exceed moneys collected. As a result, the fund became insolvent. Although the fund was not intended to and does not create any legal obligation for the state for any claims made against the fund, it is the sense of the Legislature that to the extent public funds are determined by the Legislature to be available, they may be appropriated to assist individuals with the remediation of these sites and to prevent potential adverse environmental impacts and harm to human health that could result from a failure to remediate. This assistance by the state in funding these remediations would be intended to provide an option for the insured to fulfill their legal duty to reclaim these sites and the Department of Environmental Protection may not assume any legal liability for remediation of these sites beyond the assistance provided pursuant to subsections (d), (e), (f), (g) and (h) of this section.

(d) The secretary shall request that the Governor include in each budget submitted to the Legislature funding to cause remediation of these existing sites as identified by the secretary. The secretary shall submit a proposal to undertake or cause to be undertaken these remediations to the Joint Committee of Government and Finance by the first day of November, two thousand seven. The secretary’s proposal shall provide, at a minimum, budget amounts needed each
year for completing these remediation activities by the thirty-first day of December, two thousand nine, but in no case later than the thirty-first day of December, two thousand twelve.

(e) The secretary shall also request funding to reimburse insured persons and vendors who have incurred costs not yet reimbursed as of the effective date of this section by the fund for work undertaken at insured sites previously authorized by the secretary.

(f) Any agreements with insured persons for payment of remediations shall provide that, prior to any remediation activities on any site or for reimbursement for expenses previously incurred, an agreement be executed that provides that the insured person or persons agree that the site will be remediated pursuant to either subsection (g) or (h) of this section.

(g) The secretary may cause remediation of an insured site to a voluntary remediation standard as provided in article twenty-two of this chapter, including any appropriate land-use covenant and other deed restrictions and any other conditions as established by the secretary prior to payment for any costs associated with a site remediation.

(h) If an insured person demonstrates to the secretary that it is more cost effective to clean up a site through an alternative program or method that will result in remediation at a standard equal to or greater than provided for in subsection (g) of this section, then the secretary may, as an alternative, authorize use of that method or program. The secretary may place any appropriate requirements upon the insured person as a condition for undertaking a remediation by an alternative program or method.
AN ACT to amend and reenact §36-1-18 of the Code of West Virginia, 1931, as amended, relating to clarifying spendthrift trusts.

Be it enacted by the Legislature of West Virginia:

That §36-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.

(a) Estates held in trust are subject to the debts of the beneficiary of the trust, except where the creator has expressly provided in the trust instrument words substantially to the effect that:

1. The income or principal, or both, may only be applied to the health, education, support or maintenance of a beneficiary, other than the creator of the trust, for the life of the beneficiary, or the income or principal, or both, may only be applied at the discretion of the trustee to or for the benefit
of a beneficiary, other than the creator of the trust, for the life
of the beneficiary, for a fixed term of years or other fixed
duration of time, or a fixed annuity amount or a unitrust
amount computed under a formula as a percentage of fair
market value of assets in the trust, regardless of whether the
same is income, principal, or both, may only be applied to or
for the benefit of a beneficiary, other than the creator of the
trust, for the life of the beneficiary or for a fixed term of
years or other fixed duration of time; and

(2) The trust is not subject to the liability of or alienation
by the beneficiary or beneficiaries.

(b) A trust, whenever created, may not be set aside or
terminated solely on the assertion of a creditor that the trustee
or trustees are the same person or persons as the beneficiary
or beneficiaries of the trust.

(c) This section applies to any trust established by an
instrument executed on or after the first day of July, two
thousand one, except as otherwise expressly provided in the
terms of the trust.

(d) This section applies to any trust established under an
instrument executed prior to the first day of July, two
thousand one, when the trustee elects, in his or her sole
discretion, to administer the trust pursuant to the provisions
of this section.

(e) Except as provided in subsection (c) of this section,
this section may not be construed to create or imply a duty on
a trustee to administer the trust pursuant to the provisions of
this section, and a trustee may not be held liable for refusing
to administer a trust pursuant to the provisions of this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all relating to creating the Eyewitness Identification Act; and establishing definitions, eyewitness identification procedures, a study task force and related training.

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 §62-1E-1, §62-1E-2 and §62-1E-3, all to read as follows:

ARTICLE 1E. EYEWITNESS IDENTIFICATION ACT.

§62-1E-1. Definitions.

§62-1E-1. Definitions.

For the purposes of this article:

(1) "Eyewitness" means a person whose identification of another person may be relevant in a criminal proceeding.
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(2) "Lineup" means a live or photographic array of persons of similar appearance.

(3) "Lineup administrator" means the person who conducts a lineup.

(4) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(5) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.


(a) Before a lineup, the eyewitness should be given the following three instructions:

(1) That the perpetrator might or might not be present in the lineup;

(2) That the eyewitness is not required to make an identification; and

(3) That it is as important to exclude innocent persons as it is to identify the perpetrator.

(b) Law-enforcement officers should make a written record of a lineup, including the following information:

(1) The date, time and location of the lineup.

(2) The names of every person in the lineup, if known, and all other persons present at the lineup.
(3) The words used by the eyewitness in any identification, including words that describe the eyewitness' certainty or uncertainty in the identification at the time the identification is made.

(4) Whether it was a photo lineup or live lineup.

(5) The number of photos or individuals that were presented in the lineup.

(6) Whether the lineup administrator knew which person in the lineup was the suspect.

(7) Whether, before the lineup, the eyewitness was instructed that the perpetrator might or might not be presented in the lineup.

(8) Whether the lineup was simultaneous or sequential.

(9) The signature, or initials, of the eyewitness, or notation if the eyewitness declines or is unable to sign.

(10) A video of the lineup and the eyewitness' response may be included.

(c) There is hereby created a task force to study and identify best practices for eyewitness identification. The task force consists of the following members:

(1) The Director of Criminal Justice Services, or his or her designee, who shall chair, without voting, the task force;

(2) The Superintendent of the State Police, or his or her designee;
(3) A victim advocate to be designated by the Director of Criminal Justice Services;

(4) The Director of Public Defender Services, or his or her designee;

(5) The Executive Director of the West Virginia Prosecuting Attorneys Institute, or his or her designee;

(6) A circuit judge designated by the Chief Justice of the West Virginia Supreme Court of Appeals;

(7) Two professionals in the field of forensic sciences, one to be designated by the Executive Director of the West Virginia Prosecuting Attorneys Institute and the other to be designated by the Director of Public Defender Services;

(8) The President of the West Virginia Fraternal Order of Police, or his or her designee;

(9) A representative of the Innocence Project of the West Virginia University College of Law;

(10) Two licensed practitioners of criminal law, one to be designated by the Executive Director of the West Virginia Prosecuting Attorneys Institute and the other to be designated by the Director of Public Defender Services;

(11) The President of the West Virginia Sheriff’s Association, or his or her designee.

(d) The task force, or their assigned designees, shall serve without compensation, and in consultation with eyewitness identification practitioners and experts, shall develop recommended guidelines for policies, procedures and training
with respect to the collection and handling of eyewitness
evidence in criminal investigations by law-enforcement
agencies that are consistent with the reliable evidence
supporting best practices. The purpose of the guidelines is to
provide law-enforcement agencies with information
regarding eyewitness identification policies and procedures
to increase the accuracy of the crime investigation process.

(e) Such guidelines shall include procedures for the
administration of live and photographic lineups and
instructions that will increase the accuracy of eyewitness
identifications. The task force, in developing these
guidelines, shall consider:

(1) The use of blind administration of live and photo
lineups;

(2) The issuance of specific instructions to the eyewitness
before and during the identification procedure;

(3) The number and selection of fillers to be used in live
and photo lineups;

(4) Sequential versus simultaneous presentation of lineup
members;

(5) Whether only one suspect should be included in any
live or photo lineup;

(6) The timing of when the administrator should request
and record the eyewitness’s statement of his confidence in his
selection;

(7) Whether to refrain from providing of any
confirmatory information to the eyewitness;
(8) The visual recording of the lineup and its administration;

(9) The video or audio recording of the lineup procedure;

(10) Any other policies or procedures the task force determines to be relevant; and

(11) What training, if any, should be made available to law-enforcement personnel in the use of these procedures.

(f) Not later than the fifteenth day of December, two thousand eight, the task force shall submit a report on the guidelines developed and recommendations concerning their use to the standing committees of the Legislature having cognizance of matters relating to criminal law and procedure. Minority reports may also be issued. The task force shall terminate on the fifteenth day of December, two thousand nine, unless earlier terminated by legislative action.


The Superintendent of State Police may create educational materials and conduct training programs to instruct law-enforcement officers and recruits how to conduct lineups in compliance with this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-4-12a, relating to the compensation and expenses of fiduciaries.

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 §44-4-12a, to read as follows:

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-12a. Compensation and expenses of personal representatives.

1 (a) Personal representatives, as defined in section one, article one, chapter forty-two of this code, shall be allowed any reasonable expenses incurred by the personal representative as such and commissions upon the amount of all the personal estate which is subject to administration, including the income from the personal estate, that is received and accounted for by them and upon the proceeds of real estate that is sold, as follows:
(1) For the first one hundred thousand dollars, at the rate
of five percent;

(2) All above one hundred thousand dollars and not
exceeding four hundred thousand dollars, at the rate of four
percent;

(3) All above four hundred thousand dollars and not
exceeding eight hundred thousand dollars, at the rate of three
percent; and

(4) All above eight hundred thousand dollars, at the rate
of two percent.

(b) Personal representatives also shall be allowed a
commission of one percent on the value of real estate that is
not sold. Personal representatives also shall be allowed a
commission of one percent on all property that is not subject
to administration and that is includable for purposes of
computing the federal estate tax. Notwithstanding the
foregoing, no commission shall be allowed on joint and
survivorship property, whether real or personal.

(c) The basis of valuation for the allowance of such
commissions on real estate sold shall be the gross proceeds
of sale, and for all other property the fair market value of the
other property as of the date of death of the decedent. The
commissions allowed to personal representatives in this
section shall be received in full compensation for all of their
ordinary services. If more that one personal representative
serves, the total compensation as set forth herein shall be
apportioned between them as agreed upon by the personal
representatives, or in the absence of an agreement between
the personal representatives, in proportion to the services
performed by them.

(d) The commission set forth herein may be denied or
reduced by the county commission upon a determination that
the personal representative has not faithfully discharged the
personal representative's duties. The commission set forth
herein may be increased by the county commission upon a
determination that the personal representative has performed
extraordinary services in discharging the personal
representative's duties.

(e) Where the personal representative of an estate is a
lawyer who renders professional services, compensation for
such professional services in addition to a commission shall
not be allowed.

(f) Notwithstanding the foregoing, a testator may deviate
from the commissions allowed herein by express language in
the testator's last will and testament.

CHAPTER 116

(Com. Sub. for H.B. 3145 - By Delegates Palumbo, Webster,
Cann, Amores, Doyle, DeLong and White)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §11-13X-1,
§11-13X-2, §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6,
§11-13X-7, §11-13X-8, §11-13X-9, §11-13X-10, §11-13X-11,
§11-13X-12 and §11-13X-13, all relating to activities of the
film industry in West Virginia; creating a tax credit on direct
production and post production expenditures directly related to
the production of film or commercial audiovisual products;
requiring approval of the West Virginia development office; and providing for reports of the cost effectiveness of the credits and recommendations for the expansion of the film industry in West Virginia.

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 §11-13X-1, §11-13X-2, §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-9, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13, all to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-1. Short title.

§11-13X-2. Legislative findings and purpose.


§11-13X-4. Creation of the tax credit.

§11-13X-5. Amount of credit allowed; limitation of the credits.

§11-13X-6. Requirements for credit.

§11-13X-7. Application of credit to state taxes.

§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.


§11-13X-11. Tax credit review and accountability.


§11-13X-1. Short title.

This article may be cited as the “West Virginia Film Industry Investment Act.”

§11-13X-2. Legislative findings and purpose.

The legislature finds that the encouragement of economic growth through the production of motion pictures and other commercial film or audiovisual projects in this state is in the
4 public interest and promotes the general welfare of the people
5 of this state. In order to encourage greater economic growth
6 and development in this state, there is hereby enacted the
7 West Virginia film industry investment act.


1 (a) General. -- When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 of this section have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required by the
5 context in which the term is used.

6 (b) Terms defined.

7 (1) “Commercial film or audiovisual project” means a
8 “film,” as defined by this subsection, or videogame intended
9 for commercial exploitation.

10 (2) “Direct production expenditure” means a transaction
11 that is subject to taxation in the State of West Virginia, including:

13 (A) Payment of wages, fringe benefits or fees for talent,
14 management, or labor to a person who is a resident of West
15 Virginia;

16 (B) Payment to a personal services corporation for the
17 services of a performing artist if:

18 (i) The personal services corporation pays West Virginia
19 income tax on those payments; and

20 (ii) The performing artist receiving payments from the
21 personal services corporation pays West Virginia income tax; and
(C) Any of the following provided by a vendor:

(i) The story and scenario to be used by a film;

(ii) Set construction and operations, wardrobe, accessories and related services;

(iii) Photography, sound synchronization, lighting, and related services;

(iv) Editing and related services;

(v) Rental of facilities and equipment;

(vi) Leasing of vehicles;

(vii) Food or lodging;

(viii) Airfare if purchased through a West Virginia-based travel agency or travel company;

(ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance agent; and

(x) Other direct costs of producing a film in accordance with generally accepted entertainment industry practices.

(3) “Eligible film production company” means a person or business entity that produces one or more “films” as defined by this subsection.

(4) “Federal new markets tax credit program” means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;
(5) “Film” means any single media or multimedia program, excluding advertising messages other than national advertising messages intended for exhibition, that:

(A) Is fixed on film, digital medium, videotape, computer disk, laser disc or other similar delivery medium;

(B) Can be viewed or reproduced;

(C) Is not intended to and does not violate a provision of article eight-c, chapter sixty-one of this code;

(D) Does not contain “obscene matter” or “sexually explicit conduct,” as defined by article eight-a, chapter sixty-one, of this code; and

(E) Is intended for reasonable commercial exploitation for the delivery medium used.

(6) “Postproduction expenditure” means an expenditure that occurs after the completion of principal and ongoing photography, including an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments.

(7) “Tax Commissioner” means the state Tax Commissioner or a designee of the state Tax Commissioner.

§11-13X-4. Creation of the tax credit.

An eligible film production company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit
in an amount equal to the percentage specified in section five of this article of:

(1) Direct production expenditures made in West Virginia that are directly attributable to the production in West Virginia of a film or commercial audiovisual product and that are subject to taxation by the State of West Virginia; and

(2) Postproduction expenditures made in West Virginia that are:

(A) Directly attributable to the production of a commercial film or audiovisual product;

(B) For services performed in West Virginia; and

(C) Subject to the taxation by the State of West Virginia.

§11-13X-5. Amount of credit allowed; limitation of the credits.

(a) Base allowance. – (1) The amount allowed to every eligible film production company, except as provided in subsection (b) of this section, shall be twenty-two percent; and

(2) For taxable years beginning prior to the first day of January, two thousand ten, an additional five percent.

(b) Extra allowance for hiring of local workers. -- Any amount allowed in subsection (a) of this section shall be increased by:

(1) An additional two percent if the eligible film production company, or its authorized payroll service company, employs ten or more West Virginia residents as
part of its full time employees working in the state or as apprentices working in the state.

(2) An additional two percent above the credit allowed under paragraph (1) of this subsection if at least twenty-five percent the full-time workforce of the eligible film production company, or its authorized payroll service company, is comprised of residents of West Virginia.

(c) Application of the credits. – The tax credit allowed under this section shall be applied to the eligible production company’s state tax burden as provided in section seven of this article.

(d) Limitation of the credits. – No more than ten million dollars of the tax credits shall be allocated by the Tax Commissioner in any given taxable year. The Tax Commissioner shall allocate the tax credits in the order the applications therefor are received.

(e) The additional five percent tax credit amount pursuant to subdivision (2), subsection (a) of this section shall not be available with respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program.

(f) The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has claimed an exemption from taxation pursuant to article fifteen or article fifteen-a of this chapter.
§11-13X-6. Requirements for credit.

(a) In order for any eligible film production company to claim a tax credit under this article, it shall comply with the following requirements:

(1) If the commercial film or audiovisual project is a motion picture, agree that the phrase “filmed in West Virginia” shall appear in the closing credits of the motion picture;

(2) Apply to the Tax Commissioner on forms and in the manner the commissioner may prescribe; and

(3) Submit to the West Virginia development office information required by the development office to demonstrate conformity with the requirements of this section and shall agree in writing:

(1) To pay all obligations the film production company has incurred in West Virginia;

(2) To publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;

(3) That outstanding obligations are not waived should a creditor fail to file by the specified date; and

(4) To delay filing of a claim for the film production tax credit until the development office delivers written notification to the Tax Commissioner that the film production company has fulfilled all requirements for the credit.
The development office shall determine the eligibility of the company and shall report this information to the Tax Commissioner in a manner and at times the development office and the Tax Commissioner shall agree upon.

(b) The application to the Tax Commissioner shall include a certificate of the amount of direct production expenditures or post production expenditures made in West Virginia for which the film production company is seeking the film production tax credit.

(c) If the eligible film production company is claiming a film tax credit under subsection (b), section five of this article, the eligible film production company shall also provide to the Tax Commissioner a list of the names and social security numbers of all West Virginia residents employed full time or hired as apprentices in the state on the commercial film or audiovisual project for which the film tax credit is being sought.

(d) If the requirements of this section have been complied with, the Tax Commissioner shall approve the film tax credit and issue a document granting the appropriate tax credit.

§11-13X-7. Application of credit to state taxes.

(a) Credit allowed. -- Beginning in the taxable year that the expenditures permitted under section four of this article are incurred, eligible film production companies and owners of eligible film production companies, as described in subsection (d) of this section, are permitted a credit, as described in section five of this article, against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.
(b) *Business franchise tax.* -- The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year, determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.

(c) *Corporation net income taxes.* -- After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

(d) *Personal income tax.* -- (1) If the eligible taxpayer is an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit, after application of subsections (b) and (c) of this subsection, is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.
§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

(a) No credit is allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(b) If the tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c) or (d), section seven of this article for that taxable year, the excess may be applied against those taxes, in the order and manner stated in section seven of this article, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used; or

(2) The expiration of the second taxable year after the taxable year in which the expenditures occurred. The tax credit remaining thereafter is forfeited.

(c) No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.


The Tax Commissioner shall propose for promulgation rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, as may be necessary to carry out the purposes of this article.


The burden of proof is on the film production company claiming the credit allowed by this article to establish by clear and convincing evidence that the film production company is entitled to the amount of credit asserted for the taxable year.
§11-13X-11. Tax credit review and accountability.

(a) Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the film industry investment act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not limited to, for each year of the two-year period:

1. The number of eligible production companies claiming the credit;
2. The number of new jobs, if any, created by the tax credit; and
3. The cost of the credit.

(b) Eligible production companies claiming the credit shall provide any information the Tax Commissioner may require to prepare the report: Provided, That the information provided is subject to the confidentiality and disclosure provisions of section five-d and five-s, article ten of this chapter.


The development office, in consultation and coordination with the appropriate public and private entities, shall promote, foster, encourage and monitor the development of the film industry in this state as part of its comprehensive economic development strategy for West Virginia and report recommendations for expanding the industry in the state to the Governor and the Joint Committee on Government and Finance annually on or before the first day of December.

1 The credit allowed by this article shall be allowed upon
2 eligible expenditures occurring after the thirty-first day of
3 December, two thousand seven.

CHAPTER 117

(Com. Sub. for S.B. 386 - By Senators Boley and Love)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §29B-1-4 of the Code of West
Virginia, 1931, as amended, relating to exempting from public
disclosure specific engineering plans of existing public utility
plants and equipment; and exempting customer proprietary
network information from public disclosure of information,
consistent with federal law.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are
2 specifically exempt from disclosure under the provisions of
3 this article:
(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or
constituting gifts to any public body upon which the donor
has attached restrictions on usage or the handling of which
could irreparably damage such record, archive, document or
manuscript;

(7) Information contained in or related to examination,
operating or condition reports prepared by, or on behalf of, or
for the use of any agency responsible for the regulation or
supervision of financial institutions, except those reports
which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by
any public body;

(9) Records assembled, prepared or maintained to
prevent, mitigate or respond to terrorist acts or the threat of
terrorist acts, the public disclosure of which threaten the
public safety or the public health;

(10) Those portions of records containing specific or
unique vulnerability assessments or specific or unique
response plans, data, databases and inventories of goods or
materials collected or assembled to respond to terrorist acts;
and communication codes or deployment plans of law
enforcement or emergency response personnel;

(11) Specific intelligence information and specific
investigative records dealing with terrorist acts or the threat
of a terrorist act shared by and between federal and
international law-enforcement agencies, state and local law
enforcement and other agencies within the Department of
Military Affairs and Public Safety;

(12) National security records classified under federal
executive order and not subject to public disclosure under
federal law that are shared by federal agencies and other
records related to national security briefings to assist state
and local government with domestic preparedness for acts of
terrorism;

(13) Computing, telecommunications and network
security records, passwords, security codes or programs used
to respond to or plan against acts of terrorism which may be
the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments,
tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other
records that show the location or layout of the facilities where
computing, telecommunications or network infrastructure
used to plan against or respond to terrorism are located or
planned to be located;

(16) Codes for facility security systems; or codes for
secure applications for such facilities referred to in
subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of
existing public utility plants and equipment; and

(18) Customer proprietary network information of other
telecommunications carriers, equipment manufacturers and
individual customers, consistent with 47 U. S. C. §222.

(b) As used in subdivisions (9) through (16), inclusive,
subsection (a) of this section, the term “terrorist act” means
an act that is likely to result in serious bodily injury or
damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of
government by intimidation or coercion;
(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 118

(Com. Sub. for S.B. 521 - By Senators Tomblin, Mr. President, Sprouse and Plymale)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to civil and criminal penalties within the Hatfield-McCoy Regional Recreation Area; establishing civil penalty fund; and providing for criminal penalties for certain offenses.

Be it enacted by the Legislature of West Virginia:

That §20-14-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§20-14-8. Violation of rules, criminal and civil penalties; fund established.

(a) Any person who violates any of the rules promulgated by the board pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars for each offense.

(b) Any person who violates any of the rules promulgated by the board pursuant of this article relating to permits or failure to purchase a permit, safety violations or other civil violations is subject to a civil penalty of one hundred dollars. Authority rangers shall issue citations for civil violations.

(c) All civil penalties for civil violations received pursuant to this section shall be remitted to the authority for deposit, on or before the last day of each month, with the State Treasurer in the State Treasury to the credit of a special revenue fund to be known as the Hatfield-McCoy Recreation Area Fund, which is hereby created for the benefit of the Hatfield-McCoy Recreation Area. Amounts collected which are found, from time to time, to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.
AN ACT to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; and to amend said code by adding thereto a new article, designated §16-5V-1, §16-5V-2, §16-5V-3, §16-5V-4, §16-5V-5, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-9, §16-5V-10, §16-5V-11, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-15, §16-5V-16, §16-5V-17, §16-5V-18, §16-5V-19, §16-5V-20, §16-5V-21, §16-5V-22, §16-5V-23, §16-5V-24, §16-5V-25, §16-5V-26, §16-5V-27, §16-5V-28, §16-5V-29, §16-5V-30, §16-5V-31, §16-5V-32, §16-5V-33 and §16-5V-34, all relating to the Consolidated Public Retirement Board; providing that the board administer the Emergency Medical Services Retirement System; establishing the Emergency Medical Services Retirement System; setting forth definitions including application of honorable service condition to plan participants; providing effective dates and voting requirement; establishing federal qualification requirements; providing for liberal construction; providing that plan is not a substitute for social security; providing for and setting membership standards; setting forth required contributions from members and employers; creating fund and
providing for investments; providing for transfer from Public Employees Retirement System; setting time limits; setting forth notice requirements; providing for the commencement of benefits, federal law maximum benefit limitations, minimum required distributions and direct rollovers; providing for retirement credited through member’s use of accrued annual or sick leave; providing for retirement benefits; setting forth annuity options; providing for refunds in certain circumstances; providing for deferred retirement; providing for forfeitures of benefits; providing awards and benefits for duty-related disability and for other causes; requiring physical examinations; establishing criteria for termination of disability; providing for prior disability; providing awards and benefits to surviving spouse and additional death benefits and scholarships for dependent children; providing for burial benefit; prohibiting double death benefits; establishing exemption from taxation, garnishment and other process; authorizing certain deductions; establishing the effect of qualified domestic relation orders; prohibiting fraud; establishing criminal penalties; requiring repayment in certain circumstances; providing for treatment of prior military service; establishing effective date of the system; providing voluntary employer participation; establishing starting date for benefits; limiting county liability; and providing for no forfeiture of benefits if system terminates.

Be it enacted by the Legislature of West Virginia:

That §5-10A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10D-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §16-5V-1, §16-5V-2, §16-5V-3, §16-5V-4, §16-5V-5, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-9,
Section 10A. Disqualification for Public Retirement Plan Benefits.

Article 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.


1. As used in this article:

2. (a) “Retirement plan” or “plan” means the Public Employees Retirement Act, pursuant to article ten, chapter five of this code; each municipal employees retirement plan, pursuant to article twenty-two, chapter eight of this code; each policemen’s and firemen’s pension and relief fund,
pursuant to article twenty-two, chapter eight of this code; the West Virginia State Police
Death, Disability and Retirement Fund, pursuant to article two, chapter fifteen of this code; the
West Virginia State Police Retirement System, pursuant to article two-a, chapter fifteen of this
code; the State Teachers Retirement System, pursuant to article seven-a, chapter eighteen of this
code; the Teachers’ Defined Contribution Retirement System, pursuant to article seven-b, chapter
eighteen of this code; the Deputy Sheriff Retirement System, pursuant to article fourteen-d, chapter seven of this
code; supplemental and additional retirement plans, pursuant to section four-a, article twenty-three, chapter eighteen of this
code; the Judges’ Retirement System, pursuant to article nine, chapter fifty-one of this code; the Emergency Medical
Services Retirement System established in article five-v, chapter sixteen of this code; and any other plan established
pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or
her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof,
whenever the plan is supported in whole or in part by public funds.

(b) “Beneficiary” means any person eligible for or receiving benefits on account of the service for a public
employer by a participant in a retirement plan.

(c) “Benefits” means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) “Conviction” means a conviction on or after the effective date of this article in any federal or state court of
record whether following a plea of guilty, not guilty or nolo contendere, and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) “Less than honorable service” means:

(1) Impeachment and conviction of a participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant which constitutes all of the elements of a crime described in either of the foregoing subdivisions (1) or (2) but for which the participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivisions (1) or (2) of this subsection; or

(ii) Having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.
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61 (f) “Participant” means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

65 (g) “Public employer” means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

68 (h) “Supervisory board” or “Board” means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen’s or firemen’s retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by section four-a, article twenty-three, chapter eighteen of this code, and any other board, commission or public body having the duty to supervise and operate any retirement plan.

ARTICLE 10D. Consolidated Public Retirement Board.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in article ten of this chapter; the Teachers Retirement System established in article seven-a, chapter eighteen of this code; the Teachers Defined Contribution Retirement System created by article seven-b of said chapter; the West Virginia State Police Death, Disability and
Retirement Fund created by article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created by article fourteen-d, chapter seven of this code; the Judges’ Retirement System created under article nine, chapter fifty-one of this code; and the Emergency Medical Services Retirement System established in article five-v, chapter sixteen of this code.

(b) The membership of the Consolidated Public Retirement Board consists of:

(1) The Governor or his or her designee;

(2) The State Treasurer or his or her designee;

(3) The State Auditor or his or her designee;

(4) The Secretary of the Department of Administration or his or her designee;

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

(6) A member, annuitant or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant or retirant of the Teachers
Retirement System; a member, annuitant or retirant of the
West Virginia State Police Death, Disability and Retirement
Fund; a member, annuitant or retirant of the Deputy Sheriff
Death, Disability and Retirement Fund; a member, annuitant
or retirant of the Teachers Defined Contribution Retirement
System; and a member, annuitant or retirant of the
Emergency Medical Services Retirement System, all to be
appointed by the Governor, with the advice and consent of
the Senate.

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

(d) The Consolidated Public Retirement Board has all the
powers, duties, responsibilities and liabilities of the Public
Employees Retirement System established pursuant to article
ten of this chapter; the Teachers Retirement System
established pursuant to article seven-a, chapter eighteen of
this code; the Teachers Defined Contribution System
established pursuant to article seven-b of said chapter; the
West Virginia State Police Death, Disability and Retirement
Fund created pursuant to article two, chapter fifteen of this
code; the West Virginia State Police Retirement System
created by article two-a of said chapter; the Deputy Sheriff
Death, Disability and Retirement Fund created pursuant to
article fourteen-d, chapter seven of this code; the Judges’
Retirement System created pursuant to article nine, chapter fifty-one of this code; and the Emergency Medical Services Retirement System established in article five-v, chapter sixteen of this code and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f)(1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: Provided, That the employer and employee contributions of the Teachers Defined Contribution System, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated
pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers’ Defined Contribution System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers’ Defined Contribution System.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-1. Title.
§16-5V-2. Definitions.
§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.
§16-5V-5. Article to be liberally construed; supplements federal social security; federal qualification requirements.
§16-5V-6. Members.
§16-5V-7. Creation of Fund; investments.
§16-5V-8. Members’ contributions; employer contributions.
§16-5V-9. Transfer from Public Employees Retirement System.
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§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.
§16-5V-33. Limitation of county liability.
§16-5V-34. Benefits not forfeited if system terminates.
§16-SV-1. Title.

This article is known and may be cited as the “West Virginia Emergency Medical Services Retirement System Act.”

§16-SV-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and six-tenths percent per year of the member’s final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section twelve of this article.

(1) The board may upon the recommendation of the board actuary increase the employees’ contribution rate to ten and five-tenths percent should the funding of the plan not reach seventy percent funded by the first day of July, two thousand twelve. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the seventy percent support objective as of any later actuarial valuation date.

(2) Upon reaching the seventy-five percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first twenty years of credited service.
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25 The maximum benefit will also be increased from sixty-seven percent to seventy percent.

27 (b) “Accumulated contributions” means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

32 (c) “Active military duty” means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

39 (d) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

43 (e) “Annual compensation” means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed one hundred thousand
(f) “Annual leave service” means accrued annual leave.

(g) “Annuity starting date” means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, “retirement” means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for such “retirement” on an application supplied by the board.

(h) “Board” means the Consolidated Public Retirement Board.

(i) “County commission or political subdivision” has the meaning ascribed to it in this code.

(j) “Covered employment” means either: (1) Employment as an emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where such secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public
Retirement Board pursuant to this code: Provided, That the
emergency medical services officer contributes to the fund
created in this article the amount specified as the member’s
contribution in section eight of this article.

(k) “Credited service,” means the sum of a member’s
years of service, active military duty, disability service and
accrued annual and sick leave service.

(l) “Emergency medical services officer” means an
individual employed by the State, county or other political
subdivision as a medical professional that is qualified to
respond to medical emergencies, aids the sick and injured and
arranges or transports to medical facilities, as defined by the
West Virginia Office of Emergency Medical Services. This
definition is construed to include employed ambulance
providers and other services such as law enforcement, rescue,
or fire department personnel who primarily perform these
functions and are not provided any other credited service
benefits or retirement plans. These persons may hold the
rank of emergency medical technician/basic, emergency
medical technician/paramedic, emergency medical
services/registered nurse, or others as defined by the West
Virginia Office of Emergency Medical Services and the
Consolidated Public Retirement Board.

(m) “Dependent child” means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;
(C) A child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member’s household at the time of the member’s death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of member’s death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(o) “Disability service” means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) “Effective date” means the first day of January, two thousand eight.

(q) “Final average salary” means the average of the highest annual compensation received for covered
employment by the member during any five consecutive plan
years within the member’s last ten years of service while
employed, prior to any disability payment. If the member did
not have annual compensation for the five full plan years
preceding the member’s attainment of normal retirement age
and during that period the member received disability
benefits under this article then “final average salary” means
the average of the monthly salary determined paid to the
member during that period as determined under section
twenty-two of this article multiplied by twelve. “Final
average salary” does not include any lump sum payment for
unused, accrued leave of any kind or character.

(r) “Fund” means the West Virginia Emergency Medical
Services Retirement Fund created by this article.

(s) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to
payment for covered employment during which time active
duties are performed. These hours shall be credited to the
member for the plan year in which the duties are performed;
and

(2) Each hour for which a member is paid or entitled to
payment for covered employment during a plan year but
where no duties are performed due to vacation, holiday,
ilness, incapacity including disability, layoff, jury duty,
military duty, leave of absence or any combination thereof,
and without regard to whether the employment relationship
has terminated. Hours under this subdivision shall be
calculated and credited pursuant to West Virginia Division of
Labor rules. A member will not be credited with any hours
of service for any period of time he or she is receiving
benefits under section nineteen or twenty of this article; and
(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(t) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (p) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(u) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(v) "Normal form" means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.
“Normal retirement age” means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service.

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or

(4) Attainment of age sixty-two years and completion of five or more years of regular contributory service.

“Public Employees Retirement System” means the West Virginia Public Employee’s Retirement System created by West Virginia Code.

“Plan” means the West Virginia Emergency Medical Services Retirement System established by this article.

“Plan year” means the twelve-month period commencing on the first day of January of any designated year and ending the following thirty-first day of December.

“Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.
(bb) “Retirement income payments” means the monthly retirement income payments payable under the plan.

(cc) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(dd) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(ee) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the State regardless of whether:

(A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological or
psychological abnormality that is demonstrated by medically
accepted clinical and laboratory diagnostic techniques. The
board may require submission of a member’s annual tax
return for purposes of monitoring the earnings limitation

(ff) “Year of service” means a member shall, except in
his or her first and last years of covered employment, be
credited with years of service credit based upon the hours of
service performed as covered employment and credited to the
member during the plan year based upon the following
schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered
employment, the member shall be credited with one twelfth
of a year of service for each month during the plan year in
which the member is credited with an hour of service. A
member is not entitled to credit for years of service for any
time period during which he or she received disability
payments under section nineteen or twenty of this article.
Except as specifically excluded, years of service include
covered employment prior to the effective date.

Years of service which are credited to a member prior to
his or her receipt of accumulated contributions upon
termination of employment pursuant to section eighteen of
this article or section thirty, article ten, chapter five of this
code, shall be disregarded for all purposes under this plan
unless the member repays the accumulated contributions with
interest pursuant to section eighteen of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

(gg) “Required beginning date” means the first day of April of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment; or (3) for members who are covered under the Public Employees Retirement System, their service shall be recognized upon transfer of asset from the Public Employees Retirement System according to the provisions of section nine of this article. Prior service for members not covered under the Public Employees Retirement System shall be recognized only upon repayment of amounts covered under the provisions of section six of this article.


Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Emergency Medical Services Retirement System. The purpose of this system is to provide for the orderly retirement of emergency medical services officers who become superannuated because of age or permanent disability and to provide certain survivor
death benefits. The retirement system shall come into effect
the first day of January, two thousand eight: Provided, That
at least seventy percent of all eligible emergency medical
services officers and at least eighty-five percent of the
eligible emergency medical services officers who are
currently active members of the Public Employees
Retirement System elect to participate in this plan by the
thirty-first day of December, two thousand seven. If this
level of participation is not reached, then all of the provisions
of this article are void and of no force and effect. All business
of the system shall be transacted in the name of the West
Virginia Emergency Medical Services Retirement System.
The board shall specify and adopt all actuarial assumptions
for the plan at its first meeting of every calendar year or as
soon thereafter as may be practicable, which assumptions
shall become part of the plan.

§16-5V-5. Article to be liberally construed; supplements
federal social security; federal qualification
requirements.

(a) The provisions of this article shall be liberally
construed so as to provide a general retirement system for
emergency medical services officers eligible to retire under
the provisions of this plan. Nothing in this article may be
construed to permit a county to substitute this plan for federal
social security now in force in West Virginia.

(b) The board shall administer the plan in accordance
with its terms and may construe the terms and determine all
questions arising in connection with the administration,
interpretation and application of the plan. The board may sue
and be sued, contract and be contracted with and conduct all
the business of the system in the name of the plan. The board
may employ those persons it considers necessary or desirable
to administer the plan. The board shall administer the plan
for the exclusive benefit of the members and their
beneficiaries subject to the specific provisions of the plan.

(c) The plan is intended to meet the federal qualification
requirements of Section 401(a) and related sections of the
Internal Revenue Code as applicable to governmental plans.
Notwithstanding any other provision of state law, the board
shall administer the plan to fulfill this intent for the exclusive
benefit of the members and their beneficiaries. Any
provision of this article referencing or relating to these
federal qualification requirements is effective as of the date
required by federal law. The board may propose rules for
promulgation and amend or repeal conflicting rules in
accordance with the authority granted to the board pursuant
to section one, article ten-d of chapter five of this code to
assure compliance with the requirements of this section.

§16-5V-6. Members.

(a) Any emergency medical services officer first
employed by a county or political subdivision in covered
employment after the effective date of this article shall be a
member of this retirement system and plan and upon such
membership does not qualify for membership in any other
retirement system administered by the board, so long as he or
she remains employed in covered employment.

(b) Any emergency medical services officer employed in
covered employment by an employer which is currently a
participating public employer of the Public Employees
Retirement System shall notify in writing both the county
commission in the county or officials in their political
subdivision in which he or she is employed and the board of
his or her desire to become a member of the plan by the
thirty-first day of December, two thousand seven. Any emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System in this plan: Provided, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement Fund System pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the Public Employees Retirement System have been repaid pursuant to this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the emergency medical services officer’s covered employment shall be counted as years of service for the purposes of this article. Each
transferring emergency medical services officer shall be given credited service for the purposes of this article for all covered employment transferred from the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as an emergency medical services officer. All service in the Public Employees Retirement System accrued by a transferring emergency medical services officer shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all covered service which is transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System if the transfer had not occurred. In connection with each emergency medical services officer receiving credit for prior employment provided in this subsection, a transfer from Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article.

(d) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(e) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a
question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§16-SV-7. Creation of Fund; investments.

(a) There is hereby created the “West Virginia Emergency Medical Services Retirement Fund” for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except amounts designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the consolidated pensions fund administered by the West Virginia Investment Management Board as provided by law.

§16-SV-8. Members’ contributions; employer contributions.

There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. Any active member who has concurrent employment in an additional job or jobs and such additional employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as an emergency medical services officer as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional employment which additional employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code.
medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional ten and one-half percent of the monthly salary of each member shall be paid to the fund by the concurrent employer by which the member is employed. All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board upon the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally.

§16-5V-9. Transfer from Public Employees Retirement System.

(a) The Consolidated Retirement Board shall, within one hundred eighty days of the effective date of the transfer of an emergency medical services officer from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) The amount of assets to be transferred for each transferring emergency medical services officer shall be computed as of the first day of January, two thousand eight, using the first day of July, two thousand seven, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual
(1) Compute the market value of the Public Employees Retirement System assets as of the first day of July, two thousand seven actuarial valuation date, under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of the first day of July, two thousand seven actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of the first day of July, two thousand seven by reducing the assets value under subdivision one by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of the first day of July, two thousand seven actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members’ actuarial accrued liabilities under the Public Employees Retirement System as of the first day of July, two thousand seven by dividing the active members’ market value of assets under subdivision three by the active members’ actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the first day of July, two thousand seven for active emergency medical
services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members’ funded percentage determined under subdivision (5) of this subsection by the transferring active members’ actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting such asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of the first day of July, two thousand seven through the first day of the month in which the asset transfer is to be completed.

(c) Once an Emergency Medical Services Officer has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System, and constitutes an agreement whereby the transferring emergency medical services officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until such time as that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.
(d) Eligible emergency medical services officers that transfer from plans other than the Public Employees Retirement System shall have service recognized under this plan through the purchase of the service through payment by the member of sixty percent of the actuarial accrued liabilities which would result if the service is fully credited under the Emergency Medical Services Retirement System. The purchase of the service must begin within twelve months of the effective date and full payment must be made within sixty months by either equal monthly or a one time lump sum payment.

§16-5V-10. Notice requirements; test case.

(a) Each county commission or political subdivision shall prepare a written notice to be delivered to each emergency medical services officer employed prior to the first day of July, two thousand seven. This notice shall clearly and accurately explain the benefits, financial implications and consequences to an emergency medical services officer of electing to participate in the retirement plan created in this article, including the consequences and financial implications in regard to the benefits under the Public Employees Insurance Plan as set forth in this code for those emergency medical services officers employed by a county commission or political subdivision which participates in that insurance plan. This notice shall be distributed to each emergency medical services officer and the county or political subdivision shall obtain a signed receipt from each emergency medical services officer acknowledging that the emergency medical services officer was provided a copy of the notice required in this subsection. If an emergency medical services officer makes the election provided in section six of this article, he or she shall be considered to
have made a voluntary, informed decision in regard to the
election to participate in the retirement system created in this
article.

(b) Nothing in this section may be construed to alter,
affect or change any of the rights and benefits of any
emergency medical services officer who has insurance
coverage under article sixteen, chapter five of this code as a
result of being a spouse or dependant of a participant who is
the primary insured under article sixteen, chapter five of this
code.

(c) Nothing contained in this section may be construed to
affect or pertain to any life insurance coverage under article
sixteen, chapter five of this code.

§16-5V-11. Retirement; commencement of benefits.

(a) Except for duty disability retirement, no member may
retire before the first day of January, two thousand eleven.

(b) A member may retire and commence to receive
retirement income payments on the first day of the calendar
month following written application for his or her voluntary
petition for retirement coincident with or next following the
later of the date the member ceases employment, or the date
the member attains early or normal retirement age, in an
amount as provided under this article: Provided, That
retirement income payments under this plan are subject to the
provisions of this article. Upon receipt of the petition, the
board shall promptly provide the member with an explanation
of his or her optional forms of retirement benefits and upon
receipt of properly executed forms from the member, the
board shall process member’s request for and commence
payments as soon as administratively feasible.
§16-5V-12. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be determined by the board in a manner that maximizes the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.


The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and its regulations. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the
required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary, commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or
(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§16-5V-14. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancies of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (D) any hardship distribution described in Section 401(k) (2) (B) (i) (iv) of the Internal Revenue Code;
(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) “Distributee” means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the plan to the eligible retirement plan.

§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand eight. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or
limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (A) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (B) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (C) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) “Permissive service credit” means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the
benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§16-5V-15. Retirement credited service through member’s use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days at the time of retirement to acquire additional credited service in this retirement system: Provided, That the accrued annual or sick leave may not be used to purchase health insurance under the Public Employees Insurance Agency until the member reaches the age of fifty-five. The days shall be applied on the basis of two workdays’ credit granted for each one day of accrued annual or sick leave days, with each
month of retirement service credit to equal twenty workdays
and with any remainder of ten workdays or more to constitute
a full month of additional credit and any remainder of less
than ten workdays to be dropped and not used,
notwithstanding any provisions of the code to the contrary.
The credited service shall be allowed and not considered to
controvert the requirement of no more than twelve months’
credited service in any year’s period.

§16-5V-16. Retirement benefits.

This section provides for the adjustment of a member’s
accrued benefit to reflect the difference in age, in years and
months, between the member’s annuity starting date and the
date the member attains normal retirement age. This age
adjustment shall be made based upon the normal form of
benefit and shall be the actuarial equivalent of the accrued
benefit at the member’s normal retirement age. The member
shall receive the age adjusted retirement income in the
normal form or in an actuarial equivalent amount in an
optional form as provided under this chapter. The first day
of the calendar month following the month of birth shall be
used in lieu of any birth date that does not fall on the first day
of a calendar month.

(a) Normal retirement. -- A member whose annuity
starting date is the date the member attains normal retirement
age, is entitled to his or her accrued benefit without
adjustment for age at commencement. To the extent that a
member’s starting date is later than his or her normal
retirement age, the amount of that member’s retirement
income benefit shall be adjusted as provided in subsection (c)
of this section.

(b) Early retirement. -- A member who ceases covered
employment and has attained early retirement age while in
covered employment may elect in writing by completion of
an application for retirement required by and submitted to the
board to receive retirement income payments commencing on
the first day of the month coincident with or following the
date the member ceases covered employment and submits the
proper application to the board. "Normal retirement age" for
such a member is the first day of the calendar month
coincident with or next following the month in which the
member attains the age of fifty years. If the member’s
annuity starting date is prior to the date the member attains
normal retirement age, his or her accrued benefit is reduced
to the actuarial equivalent benefit amount based on the years
and months by which his or her annuity starting date precedes
the date he or she attains normal retirement age. If the
member’s annuity starting date is later than the date the
member attains the age of fifty years, the accrued benefit is
adjusted as provided in subsection (c) of this section.

(c) Late retirement. -- A member whose annuity starting
date is later than the date the member attains normal
retirement age shall receive retirement income payments in
the normal form which is the benefit to which he or she is
entitled according to his or her accrued benefit based on his
or her final average salary and credited service at the time of
his or her actual retirement and following the completion of
an application for retirement as required by the board.

(d) Retirement benefits shall be paid monthly in an
amount equal to one twelfth of the retirement income
payments elected and at those times established by the board.
Notwithstanding any other provision of the plan, a member
who is married on the annuity starting date will receive his or
her retirement income payments in the form of a sixty-six and
two-thirds percent joint and survivor annuity with his or her
spouse unless prior to the annuity starting date the spouse
waives the form of benefit.
§16-5V-17. Annuity options.

Prior to the effective date of retirement, but not after that date, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A-- Contingent joint and survivor annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member’s life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) Option B -- Ten years certain and life annuity. -- A life annuity payable during the member’s lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member’s estate.

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to
receive from the fund the member’s accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who withdraws accumulated contributions from either this plan or the Public Employees Retirement System and thereafter becomes reemployed in covered employment may not receive any credited service for the prior covered employment unless following his or her return to covered employment, the member re-deposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the emergency medical services officer’s reemployment or if later, within sixty months of the effective date of this article.

(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing emergency medical services functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, one of whom shall be named by the board, the member is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates, the compensation under this section.

(b) If the member is totally disabled, the member shall receive ninety percent of his or her average monthly compensation for the twelve-month period preceding the member’s disability, or the shorter period if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided in sections sixteen and seventeen of article.

§16-5V-20. Same -- Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or
becomes totally disabled from any cause other than those set forth in section nineteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, one of whom shall be named by the board, he or she is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average monthly compensation for the twelve-month period preceding the disability, or the shorter period, if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided in sections sixteen and seventeen of this article.

(d) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary for the position last held by the member.
§16-5V-21. Same — Physical examinations; termination of disability.

The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X-ray, medical and physicians’ fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as an emergency medical services officer; (2) a physician who has examined the member has found that considering the opportunities for emergency medical services in West Virginia, the member could be so employed as an emergency medical services officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled, then the disability benefits shall cease. Benefits shall cease once the member has been found to be no longer totally disabled: Provided, That the board shall require annual recertification.


Any emergency medical services officer who became totally disabled as a result of illness or injury incurred in the line of duty prior to the effective date of this article may be a member of the plan at his or her election and is entitled to
disability, death and retirement benefits under this article in lieu of any other disability, death or retirement benefits provided solely in conjunction with a retirement system of this state or his or her county of employment: Provided, That the emergency medical services officer would have been eligible for disability under section nineteen of this article had that section been in effect at the time of the disability. The amounts of the benefits shall be determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability. For the purposes of this section, benefits paid pursuant to chapter twenty-three of this code are not death or retirement benefits provided solely in conjunction with a retirement system of this state or county of this state.

§16-5V-23. Awards and benefits to surviving spouse -- When member dies in performance of duty, etc.

(a) The surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as an emergency medical services officer, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to section nineteen of this article, is entitled to receive and shall be paid from the fund benefits as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of:

(1) Two thirds of the annual compensation received in the
preceding twelve-month period by the deceased member; or
(2) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, section twenty-five and section twenty-six of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

§16-5V-24. Same—When member dies from nonservice-connected causes.

(a) If a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section twenty-three of this article and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One half of the annual compensation received in the preceding twelve-month employment period by the deceased member; or (2) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. Where the member is receiving disability benefits under this article at the time of his or her death, the most recent monthly compensation determined under section twenty-two of this article.
article shall be substituted for the annual compensation in subdivision (1) of this subsection.

(b) Benefits for a surviving spouse received under this section, or other sections of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

§16-5V-25. Additional death benefits and scholarships -- Dependent children.

(a) In addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse one hundred dollars monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse’s entitlement under this article divided by the number of dependant children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(c) Any person qualifying as a dependent child under this, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that
person. This sum, up to but not exceeding six thousand dollars per year, shall be paid from the fund to any university or college in this State or to any trade or vocational school or other entity in this State approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.


Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit shall be paid to the member’s spouse. If the member is not married, the burial benefit shall be paid to the member’s estate for the purposes of paying burial expenses, settling the member’s final affairs, or both.

§16-5V-27. Double death benefits prohibited.

A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.
§16-5V-28. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; benefits exempt from taxes.

The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: Provided, That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: Provided, however, That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The assets of the retirement system are hereby exempt from state, county and municipal taxes.

§16-5V-29. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement system in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars, by confinement in jail not to exceed one year, or by both fine
and confinement. Any increased benefit received by any
person as a result of the falsification or fraud shall be
returned to the fund upon demand by the board.

§16-5V-30. Credit toward retirement for member’s prior
military service; credit toward retirement when
member has joined armed forces in time of
armed conflict; qualified military service.

(a) Any member who has previously served on active
military duty is entitled to receive additional years of service
for the purpose of determining his or her years of credited
service for a period equal to the active military duty not to
exceed five years, subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That he or she substantiates by appropriate
documentation or evidence his or her period of active
military duty; and

(3) That he or she is receiving no benefits from any other
retirement system for his or her active military duty.

(b) In addition, any member who while in covered
employment was commissioned, enlisted or inducted into the
armed forces of the United States or, being a member of the
reserve officers’ corps, was called to active duty in the armed
forces between the first day of September, one thousand nine
hundred forty, and the close of hostilities in World War II, or
between the twenty-seventh day of June, one thousand nine
hundred fifty, and the close of the armed conflict in Korea on
the twenty-seventh day of July, one thousand nine hundred
fifty-three, between the first day of August, one thousand
nine hundred sixty-four, and the close of the armed conflict
in Vietnam, or during any other period of armed conflict by
the United States whether sanctioned by a declaration of war
by Congress or by executive or other order of the President,
is entitled to and shall receive credited service, for a period
equal to the full time that he or she has or, pursuant to that
commission, enlistment, induction or call, shall have served
with the armed forces subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That within ninety days after honorable discharge
from the armed forces, he or she presented himself or herself
to the county commission or other political subdivision and
offered to resume service as an emergency medical services
officer; and

(3) That he or she has made no voluntary act, whether by
reenlistment, waiver of discharge, acceptance of commission
or otherwise, to extend or participate in extension of the
period of service with the armed forces beyond the period of
service for which he or she was originally commissioned,
enlisted, inducted or called.

(c) The total amount of service allowable under
subsections (a) and (b) of this section may not exceed five
years.

(d) Any service credit allowed under this section may be
credited one time only for each emergency medical services
officer, regardless of any changes in job title or
responsibilities.
(e) Notwithstanding any provision of this section to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

§16-5V-31. How a county commission or political subdivision becomes a participating public employer.

Any county commission or political subdivision employing emergency medical services officers may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its emergency medical services officers in the membership of the plan. The clerk or secretary of each such county commission or political subdivision electing to become a participating public employer shall certify the determination of the county commission or political subdivision to the Consolidated Public Retirement Board within ten days from and after the vote of the governing body or the canvass of votes upon such action. Once a county commission or political subdivision elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.
§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.

(a) The provisions of this article become effective the first day of January, two thousand eight: Provided, That no payout of any benefits may be made to any person prior to the first day of January, two thousand eleven: Provided, however, That members who retired due to a disability may begin receiving the benefits at the rate and in the amount specified in this article, from this fund after the thirtieth day of June, two thousand eight: Provided further, That until the thirtieth day of June, two thousand eight those members who retired due to a disability may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the eighteen-month period before the payout of benefits begins, the Joint Committee on Government and Finance shall cause an interim study or studies to be conducted on potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: Provided, That after the effective date of this provision, the Director of the Public Employees Insurance Agency shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the funding of health insurance coverage for retirees under the plan provided in this article who are in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: Provided, however, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.
§16-5V-33. Limitation of county liability.

1 No county which has timely met all of its obligations under this article is liable for any payments or contributions to the emergency medical services retirement plan which are owed to the plan by another county or counties.

§16-5V-34. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of the termination or discontinuance, to the extent then funded, are not forfeited.

CHAPTER 120

(Com. Sub. for S.B. 447 - By Senators Caruth, Prezioso, Stollings, Jenkins, McKenzie and Guills)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating generally to the regulation of opioid treatment centers; and providing for specific minimum requirements established by the rules provided in said section.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

The secretary may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: Provided, that no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit; (2) propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams or sources of water supply;
HEALTH

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals, and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section;
recordkeeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with article seven of this chapter as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: Provided, That any regulation of emergency medical service attendants and emergency medical care technician-paramedics shall not exceed the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: Provided, That the secretary may not require an owner of a bed and breakfast providing
sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility:

Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;

(i) The collection of data on health status, the health system and the costs of health care;

(j) Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code. The Health Care Authority shall develop new certificate of need standards, pursuant to the provisions of article two-d of this chapter, that are specific for opioid treatment program facilities. No applications for a certificate of need for opioid treatment programs shall be approved by the Health Care Authority as of the effective date of the two thousand seven amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: Provided, That there shall be a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of the two thousand seven amendments to this subsection, which shall continue until the Legislature determines that there is a necessity for additional opioid treatment facilities in West Virginia. The secretary shall file revised emergency rules with the Secretary of State to regulate opioid programs in compliance with subsections (1) through (9), inclusive, of
Provided, however, that any opioid treatment program facility that has received a certificate of need pursuant to article two-d, of this chapter by the Health Care Authority shall be permitted to proceed to license and operate the facility. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of the revised emergency rules as required herein. The revised emergency rules shall provide at a minimum:

(1) That the initial assessment prior to admission for entry into the opioid treatment program shall include an initial drug test to determine whether an individual is either opioid addicted or presently receiving methadone for an opioid addiction from another opioid treatment program. The patient may be admitted to the program if there is a positive test for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all other criteria set forth in the rule for admission into an opioid treatment program are met: Provided, That admission to the program may be allowed to the following groups with a high risk of relapse without the necessity of a positive test or the presence of objective symptoms: Pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

(2) That within seven days of the admission of a patient, the opioid treatment program shall complete an initial assessment and an initial plan of care. Subsequently, the opioid treatment program shall develop a treatment plan of care by the thirtieth day after admission and attach to the patient’s chart no later than five days after such plan is
developed. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program.

(3) That each opioid treatment program shall report and provide statistics to the Department of Health and Human Resources at least semiannually which includes the total number of patients; the number of patients who have been continually receiving methadone treatment in excess of two years, including the total number of months of treatment for each such patient; the state residency of each patient; the number of patients discharged from the program, including the total months in the treatment program prior to discharge and whether the discharge was for:

(A) Termination or disqualification;

(B) Completion of a program of detoxification;

(C) Voluntary withdrawal prior to completion of all requirements of detoxification as determined by the opioid treatment program; or

(D) An unexplained reason.

(4) That random drug testing of patients be conducted during the course of treatment. For purposes of these rules, random drug testing shall mean that each patient of an opioid treatment program facility has a statistically equal chance of being selected for testing at random and at unscheduled times. Any refusal to participate in a random drug test shall be considered a positive test: Provided, That nothing contained in this section or the legislative rules promulgated in conformity herewith will preclude any opioid treatment program from administering such additional drug tests as determined necessary by the opioid treatment program.
(5) That all random drug tests conducted by an opioid treatment program shall, at a minimum, test for the following:

(A) Opiates, including oxycodone at common levels of dosing;

(B) Methadone and any other medication used by the program as an intervention;

(C) Benzodiazepines including diazepam, lorazepan, clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine; and

(F) Other drugs determined by community standards, regional variation or clinical indication.

A positive test shall be a test that results in the presence of any drug or substance listed in this schedule and any other drug or substance prohibited by the opioid treatment program;

(6) That a positive drug test result after the first six months in an opioid treatment program shall result in the following:

(A) Upon the first positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling to the patient, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification
in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of thirty days; and

(B) Upon a second positive drug test result within six months of a previous positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days; and

(3) Provide mandatory documented treatment team meetings with the patient.

(C) Upon a third positive drug test result within a period of six months the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred twenty days; and
(3) Provide mandatory and documented treatment team meetings with the patient which will include, at a minimum:

- The need for continuing treatment;
- A discussion of other treatment alternatives; and
- The execution of a contract with the patient advising the patient of discharge for continued positive drug tests.

(D) Upon a fourth positive drug test within a six-month period, the patient shall be immediately discharged from the opioid treatment program or, at the option of the patient, shall immediately be provided the opportunity to participate in a 21-day detoxification plan, followed by immediate discharge from the opioid treatment program.

(7) That the opioid treatment program must report and provide statistics to the Department of Health and Human Resources demonstrating compliance with the random drug test rules including confirmation that:

- (A) The random drug tests were truly random in regard to both the patients tested and to the times random drug tests were administered by lottery or some other objective standard so as not to prejudice or protect any particular patient.

- (B) The total number and the number of positive results;

- (C) The number of expulsions from the program.

(8) That all opioid treatment facilities be open for business seven days per week: Provided, That the opioid treatment center maybe closed for eight holidays and two training days per year.

(9) That the Office of Health Facility Licensure and Certification develop policies and procedures in conjunction
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with the Board of Pharmacy that will allow access to the
Prescription Drug Registry maintained by the Board of
Pharmacy before administration of methadone or other
treatment in an opioid treatment program, after any positive
drug test, and at each ninety-day treatment review to ensure
the patient is not seeking prescription medication from
multiple sources.

(k) Other health-related matters which the department is
authorized to supervise and for which the rule-making
authority has not been otherwise assigned.

CHAPTER 121

(H.B. 3057 - By Delegate Perdue)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §16-2K-1 and
§16-2K-2, all relating to programs for all-inclusive care of the
erly, known as “PACE”; setting forth legislative intent;
defining terms; and exempting “PACE” programs from
regulation by the Insurance Commissioner.

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 §16-2K-1 and §16-2K-2,
all to read as follows:
ARTICLE 2K. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY, “PACE”.

§16-2K-1. Legislative findings and statement of purpose.
§16-2K-2. “PACE” program operation; exemption from regulation as an insurer; annual reports to the Legislature.

§16-2K-1. Legislative findings and statement of purpose.

1 (a) The United States Department of Health and Human Services has established a model of managed care service delivery that encourages innovative integrated health care delivery systems to serve frail and disabled elders with effective primary, preventive, restorative, supportive and palliative care. The program, as authorized in 42 CFR §460, §462, §466, §473 and §476, provides for the establishment of local programs to reorganize and reintegrate local health care delivery systems.

(b) The program for all-inclusive care for the elderly or “PACE” is a capitated program that is operated in accordance with federal law by a public, private, nonprofit or proprietary entity to provide comprehensive health and social services to disabled and frail elderly persons, certified by the state as nursing home eligible to maximize the autonomy and continued independence of these elderly persons.

(c) The Legislature finds that the “PACE” programs will enhance the quality of life, function and health of elderly persons.
(d) In order to promote the expansion of medical, social and long-term care services for the elderly, it is the intent of the Legislature to eliminate legal, statutory and regulatory barriers to the establishment of “PACE” programs by exempting health providers participating in these programs from regulation as insurers.

§16-2K-2. “PACE” program operation; exemption from regulation as an insurer; annual reports to the Legislature.

(a) A “PACE” program may operate in this state only in accordance with a contract with the United States Department of Health and Human Services, which is prepared in consultation with and approved by the West Virginia Department of Health and Human Resources.

(b) Notwithstanding the provisions of chapter thirty-three of this code to the contrary, participation by providers in a “PACE” program created and authorized pursuant to this article is not considered as providing insurance or as offering insurance services, and “PACE” 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 from the definition of “health maintenance organization” as defined in article twenty-five-a of this code. Participating “PACE” providers are not unauthorized insurers pursuant to section four, article forty-four of chapter thirty-three of this code. These “PACE” programs are not subject to regulation by the Insurance Commissioner except to the extent set forth in this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-16, relating to requiring hospitals, extended care facilities operated in connection with a hospital, ambulatory health care facilities, or ambulatory surgical facilities, freestanding or operated in connection with a hospital, licensed in the State of West Virginia to provide public notice of such hospital’s or facility’s intent to terminate operations; and requiring that the notice be at least three weeks prior to such termination of operations.

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 §16-5B-16, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-16. Public notice regarding the closure of a licensed health care facility or hospital.

1 Any hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility freestanding or operated in
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connection with a hospital, licensed in the State of West Virginia under this article that intends to terminate operations shall provide at least three weeks notice of such intent to the public prior to the actual termination of operations. Pursuant to the provisions of Article 3 of Chapter 59 of this code, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located. The first publication of the Class III legal advertisement shall occur at least three weeks prior to the date the hospital or facility intends to terminate operations. The Class III legal advertisement shall include, but is not limited to, a statement, along with the specific or proximate date, that the hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility freestanding or operated in connection with a hospital, intends to terminate operations.

CHAPTER 123

(Com. Sub. for H.B. 2583 - By Delegates Hatfield, Perdue, Boggs, Brown and Border)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §16-22-3 of the Code of West Virginia, 1931, as amended, relating to the expansion of newborn testing to include sickle cell anemia, congenital adrenal hyperplasia, cystic fibrosis, biotinidase deficiency, isovaleric acidemia, glutaric acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency,
methylmalonic acidemia-mutase deficiency form, 3- methylcrotonyl-CoA carboxylase deficiency, methylmalonic acidemia, Cbl A and Cbl B forms, propionic acidemia, beta- ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain acyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake defeat, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing deficiency.

Be it enacted by the Legislature of West Virginia:

That §16-22-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. DETECTION AND CONTROL OF DISEASES IN NEWBORN CHILDREN.

§16-22-3. Tests for diseases specified by the State Public Health Commissioner; reports; assistance to afflicted children; Public Health Commissioner to propose rules.

(a) The hospital or birthing center in which an infant is born, the parents or legal guardians, the physician attending a newborn child, or any person attending a newborn child not under the care of a physician shall require and ensure that each such child be tested for phenylketonuria, galactosemia, hypothyroidism, sickle cell anemia and certain other diseases specified by the Bureau for Public Health. No later than the first day of July, two thousand seven, the Bureau for Public Health shall also require testing for congenital adrenal hyperplasia, cystic fibrosis and biotinidase deficiency. No later than the first day of July, two thousand eight, the Bureau
for Public Health shall also require testing for isovaleric acidemia, glutaric acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency, methylmalonic acidemia-mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain hydroxyacyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake defeat, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing deficiency.

(b) A positive result on any test specified in subsection (a) of this section, or a positive result for any other diseases specified by the Bureau for Public Health, shall be promptly reported to the Bureau for Public Health by the director of the laboratory performing such test.

(c) The Bureau for Public Health shall propose rules for legislative approval in accordance with article three, chapter twenty-nine of this code. These legislative rules shall include:

(1) A means for the Bureau for Public Health, in cooperation with other state agencies, and with attending physicians, to provide medical, dietary and related assistance to children determined to be afflicted with any disease specified in subsection (a) of this section and certain other diseases specified by the Bureau for Public Health; and

(2) A means for payment for the screening provided for in this section; and

(3) Anything further considered necessary by the Bureau for Public Health to implement the provisions of this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10, all relating to creating a revolving loan fund to be administered by the West Virginia Health Care Authority Board to provide loans to assist hospitals in the rationalization and restructuring of their health care delivery systems; setting forth the criteria and conditions for approving hospital restructuring plans and loans from the revolving funds; and providing the Health Care Authority Board with reporting responsibilities and rule making authority to implement the provisions of the new article.

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 §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10, all to read as follows:
§16-29I-1. Legislative findings; purpose.

(a) The Legislature hereby finds and declares that the rationalization and restructuring of the health care delivery system, particularly for services provided by hospitals can provide for efficiencies and corresponding reduced costs for the delivery and provision of health care services provided by hospitals. Further, the Legislature finds and declares that the rationalization and restructuring of the health care delivery system by a hospital or combination of hospitals can, if undertaken properly, provide health care cost savings for both public health care funds administered or funded by the state and for private payors and health care insurers operating within the State of West Virginia.

(b) The Legislature further finds that state support of the rationalization and restructuring of the delivery of hospital services with state resources can be used to promote beneficial cost containment restructuring for the health care delivery system in the State of West Virginia.

(c) Therefore, the purpose of this article is to provide for a revolving loan fund to be administered and used by the board to provide loans, including low interest or no interest loans to hospitals or combinations of hospitals to assist in the rationalization and restructuring of the health care delivery system in the State of West Virginia.

§16-29I-2. Short title.

This article may be cited as the West Virginia Health Care Authority Revolving Loan Fund Act.

Definitions of words and terms defined in articles two-d, five-f and twenty-nine-b of this chapter are incorporated in this section for the purposes of this article unless this article contains different definitions.

(a) "Fund" means the West Virginia Health Care Authority Revolving Loan Fund created under section four of this article.

(b) "Hospital Restructuring Plan" means a plan submitted by a hospital or combination of hospitals to the board for review and approval pursuant to section five of this article.

§16-291-4. Revolving fund created.

(a) (1) The board shall create and establish a special revolving fund of moneys made available to the fund by appropriation, grant, contribution, loan, or statutory dedication to be known as the West Virginia Health Care Authority Revolving Loan Fund. The fund shall be governed, administered and accounted for by the board.

(2) Any money collected pursuant to this section, including the repayment of loans made by the board, shall be paid into the fund by any state agent or entity charged with the collection of the money, credited to the fund, and used only for the purposes set forth in this article.

(b) The board may pledge revenues to the fund and from time to time establish one or more restricted accounts within the fund for the purpose of providing funds to guarantee loans made pursuant to this article. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted
account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or loan guarantees have been made.

(c) Each loan or loan guarantee made or provided by the board from the fund shall be evidenced by a loan document, a loan guarantee document or any other writing or document or documents as the board may consider appropriate, between the Health Care Authority Board and the hospital or hospitals to which the loan, or loan guarantee, was made available or provided. The agreements shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated total costs of the hospital restructuring plan, the amount of the loan, or loan guarantee and the terms of repayment and the security for the loan if any;

(2) The specific purposes for which the loan proceeds shall be expended and the conditions and procedures for dispersing a loan proceeds; and

(3) The duties, conditions and obligations imposed by the board upon the hospital or hospitals regarding the hospital restructuring plan.

(d) Moneys in the fund shall be approved for expenditure by the Health Care Authority Board only as the moneys are available in the fund. Approval of expenditures by the board may occur without appropriation by the Legislature prior to the first day of July, two thousand eight. After the first day of July, two thousand eight, expenditures from the fund shall be made by the board only pursuant to available amounts appropriated by the Legislature.
§16-291-5. Use of revolving loan funds by loan hospital restructuring plans.

1 A hospital or combination of hospitals, whether or not related by common ownership or management, may submit to the board for its approval, a hospital restructuring plan which provides for the rationalization and restructuring of health care delivery services provided by the hospital or combination of hospitals. The submission of a hospital restructuring plan or plans by a hospital or a combination of hospitals, shall be in a form and manner authorized by the board and shall include the following information:

10 (1) The sponsoring hospital or combination of hospitals submitting the hospital restructuring plan;

12 (2) All financial information required by the board relevant to an analysis of the proposed hospital restructuring plan and the subsequent delivery of impacted services;

15 (3) An estimate of savings and the methodologies used to calculate those savings for both public and private health care payors attributable to the implementation of the hospital restructuring plan;

19 (4) The amount of any loan requested by the hospital or combination of hospitals and the purposes for which any loan will be used by the hospital or combination of hospitals, to implement the hospital restructuring plan;

23 (5) An identification of any other benefits or enhancements of services provided by the hospital or combination of hospitals attributable to the implementation of the hospital restructuring plan; and
(6) Any other relevant information requested by the board necessary to review and analyze the submitted hospital restructuring plan.


(a) The board shall review and may approve or reject hospital restructuring plans submitted to it from time to time. Upon approval of any submitted plan, the board may in its sole discretion provide from the fund a loan, low-interest loan, or no-interest loan, in a form and on those terms and conditions as the board considers appropriate to assist in the implementation of the hospital restructuring plan. Prior to approving any plan, the board shall make a factual determination that the implementation of the hospital restructuring plan will rationalize and restructure the delivery of health care services provided by the hospital or combination of hospitals submitting the plan, and shall further determine that the implementation of the plan will provide a cost savings for hospital services delivered by the hospital or combination of hospitals for both public and private health care payors.

(b) The board may approve hospital restructuring plans and loans from the revolving fund contingent upon any conditions considered necessary by the board to assure the repayment of any loan, which may include but need not be limited to the successful implementation of the cost containment objectives of any hospital restructuring plan.

(c) The board may withhold future rate approvals, certificates of need and rural health system loans and grants if any of the terms or conditions of the loan provided by the board are not subsequently satisfied or met by the hospital or combination of hospitals receiving the loan from the fund.
§16-291-7. Temporary exemption for approval process.

The board may conduct any hearing or hearing it considers necessary for the consideration of hospital restructuring plans: Provided, That both the application consideration process and the loan approval process provided for in this article and undertaken by the board and completed prior to the first day of July, two thousand eight, are exempt from the requirements of articles two-d and twenty-nine-b of this chapter for holding hearings upon the written demand of any person alleging that they are interested in or affected by any act or failure to act by the board pursuant to article twenty-nine-b of this chapter.


A final decision of the board accepting or rejecting a hospital restructuring plan submitted pursuant to the terms of this article, shall upon request of the hospital or combination of hospitals making application of the plan be reviewed and approved pursuant to the provisions of article twenty-nine-b of this chapter: Provided, That no appeal or review authority shall have the authority or jurisdiction to require the board to provide or alter the conditions of any loan.


The board may propose rules, including emergency rules, for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities contained in this article.

§16-291-10. Annual report.

The board shall within thirty days following the close of the fiscal year, or from time to time as requested by the
Legislature, prepare and transmit to the Governor and the Legislative Oversight Commission on Health and Human Resources Accountability, a report of its operations and activities for the proceeding year regarding the consideration, denial or approval of hospital restructuring plans and any loans made pursuant to the approval of the plans.

CHAPTER 125

(Com. Sub. for H.B. 3093 - By Delegate Perdue)

(Passed March 10, 2007; in effect ninety days from passage.)
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §16-30-4 of the Code of West Virginia, 1931, as amended, relating to providing a form for a combined medical power of attorney and living will.

Be it enacted by the Legislature of West Virginia:

That §16-30-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-4. Executing a living will or medical power of attorney or combined medical power of attorney and living will.

(a) Any competent adult may execute at any time a living will or medical power of attorney. A living will or medical power of attorney made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person
in the principal’s presence at the principal’s express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public as provided in subsection (d) of this section.

(b) In addition, a witness may not be:

(1) The person who signed the living will or medical power of attorney on behalf of and at the direction of the principal;

(2) Related to the principal by blood or marriage;

(3) Entitled to any portion of the estate of the principal under any will of the principal or codicil thereto: Provided, That the validity of the living will or medical power of attorney shall not be affected when a witness at the time of witnessing such living will or medical power of attorney was unaware of being a named beneficiary of the principal’s will;

(4) Directly financially responsible for principal’s medical care;

(5) The attending physician; or

(6) The principal’s medical power of attorney representative or successor medical power of attorney representative.

(c) The following persons may not serve as a medical power of attorney representative or successor medical power of attorney representative: (1) A treating health care provider of the principal; (2) an employee of a treating health care
provider not related to the principal; (3) an operator of a
health care facility serving the principal; or (4) any person
who is an employee of an operator of a health care facility
serving the principal and who is not related to the principal.

(d) It shall be the responsibility of the principal or his or
her representative to provide for notification to his or her
attending physician and other health care providers of the
existence of the living will or medical power of attorney or a
revocation of the living will or medical power of attorney.
An attending physician or other health care provider, when
presented with the living will or medical power of attorney,
or the revocation of a living will or medical power of
attorney, shall make the living will, medical power of
attorney or a copy of either or a revocation of either a part of
the principal’s medical records.

(e) At the time of admission to any health care facility,
each person shall be advised of the existence and availability
of living will and medical power of attorney forms and shall
be given assistance in completing such forms if the person
desires: Provided, That under no circumstances may
admission to a health care facility be predicated upon a
person having completed either a medical power of attorney
or living will.

(f) The provision of living will or medical power of
attorney forms substantially in compliance with this article by
health care providers, medical practitioners, social workers,
social service agencies, senior citizens centers, hospitals,
nursing homes, personal care homes, community care
facilities or any other similar person or group, without
separate compensation, does not constitute the unauthorized
practice of law.
(g) The living will may, but need not, be in the following
form and may include other specific directions not
inconsistent with other provisions of this article. Should any
of the other specific directions be held to be invalid, such
invalidity shall not affect other directions of the living will
which can be given effect without the invalid direction and to
this end the directions in the living will are severable.

STATE OF WEST VIRGINIA
LIVING WILL
Living will made this __________________ day of

The Kind of Medical Treatment I Want and Don’t Want
If I Have a Terminal Condition or
Am In a Persistent Vegetative State

_________ month, year).

I, ________________________________, being of
sound mind, willfully and voluntarily declare that I want my
wishes to be respected if I am very sick and not able to
communicate my wishes for myself. In the absence of my
ability to give directions regarding the use of life-prolonging
medical intervention, it is my desire that my dying shall not
be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes
for myself and I am certified by one physician, who has
personally examined me, to have a terminal condition or to
be in a persistent vegetative state (I am unconscious and am
neither aware of my environment nor able to interact with
others), I direct that life-prolonging medical intervention that
would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

Signed

Address

I did not sign the principal’s signature above for or at the direction of the principal. I am at least eighteen years of age
and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal’s medical care. I am not the principal’s attending physician or the principal’s medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

Witness DATE

Witness DATE

STATE OF

COUNTY OF

I, _____________________, a Notary Public of said County, do certify that _____________________, as principal, and ___________ and ___________, as witnesses, whose names are signed to the writing above bearing date on the ________ day of ______, 20____, have this day acknowledged the same before me.

Given under my hand this ______ day of ______, 20__.

My commission expires: _______________________
(h) A medical power of attorney may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the medical power of attorney which can be given effect without invalid direction and to this end the directions in the medical power of attorney are severable.

STATE OF WEST VIRGINIA

MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions For Me When I Can’t Make Them for Myself

Dated: _________________, 20_____  

I, _____________________________, hereby (Insert your name and address) appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)
The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint:

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document and it is my intent
that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, funeral arrangements, autopsy and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

Signature of the Principal

I did not sign the principal’s signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under
any will of the principal or codicil thereto, or legally
responsible for the costs of the principal’s medical or other
care. I am not the principal’s attending physician, nor am I
the representative or successor representative of the principal.

Witness: DATE

Witness: DATE

STATE OF

COUNTY OF

I, ______________________, a Notary Public of said
County, do certify that__________________________, as
principal, and ___________ and __________, as
witnesses, whose names are signed to the writing above
bearing date on the _______ day of ________, 20__,
have this day acknowledged the same before me.

Given under my hand this ______ day of _____, 20__.

My commission expires:_________________________

Notary Public

(i) A combined medical power of attorney and living will
may, but need not, be in the following form, and may include
other specific directions not inconsistent with other
provisions of this article. Should any of the other specific
directions be held to be invalid, such invalidity does not
affect other directions of the combined medical power of
attorney and living will which can be given effect without invalid direction and to this end the directions in the combined medical power of attorney and living will are severable.

STATE OF WEST VIRGINIA
COMBINED MEDICAL POWER OF ATTORNEY
AND LIVING WILL

The Person I Want to Make Health Care Decisions For Me When I Can’t Make Them for Myself And The Kind of Medical Treatment I Want and Don’t Want

Dated: ______________________, 20_____ 

I, ________________________________, hereby (Insert your name and address) appoint as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is: ________________________________
(Insert the name, address, area code and telephone number of the person you wish to designate as your representative).

If my representative is unable, unwilling or disqualified to serve, then I appoint as my successor representative: ________________________________
(Insert the name, address, area code and telephone
number of the person you wish to designate as your
successor representative).

This appointment shall extend to, but not be limited to,
health care decisions relating to medical treatment, surgical
treatment, nursing care, medication, hospitalization, care and
treatment in a nursing home or other facility, and home
health care. The representative appointed by this document
is specifically authorized to be granted access to my medical
records and other health information and to act on my behalf
to consent to, refuse or withdraw any and all medical
treatment or diagnostic procedures, or autopsy if my
representative determines that I, if able to do so, would
consent to, refuse or withdraw such treatment or procedures.
Such authority shall include, but not be limited to, decisions
regarding the withholding or withdrawal of life-prolonging
interventions.

I appoint this representative because I believe this person
understands my wishes and values and will act to carry into
effect the health care decisions that I would make if I were
able to do so, and because I also believe that this person will
act in my best interest when my wishes are unknown. It is
my intent that my family, my physician and all legal
authorities be bound by the decisions that are made by the
representative appointed by this document, and it is my intent
that these decisions should not be the subject of review by
any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and
effective and that this document be taken as a formal
statement of my desire concerning the method by which any
health care decisions should be made on my behalf during
any period when I am unable to make such decisions.
HEALTH

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments).

1. If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me, to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others,) I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

2. Other directives: ________________________________

_______________________________
_______________________________
_______________________________
_______________________________

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

Signature of the Principal
I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness ____________________ DATE __________
Witness ____________________ DATE __________

STATE OF _________________________
COUNTY OF _________________________

I, _________________________, a Notary Public of said county, do certify that _________________________, as principal, and _________________________ and _________________________, as witnesses, whose names are signed to the writing above bearing date on the ____ day of __________, 20__, have this day acknowledged the same before me.

Given under my hand this _____ day of ________, 20__.

My commission expires: _________________________

Signature of Notary Public
AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2-12 of said code; and to amend and reenact §17C-17B-3 and §17C-17B-4, all relating to the funding of entities ensuring transportation public safety on state highways; eliminating certain funding from the state road fund or reimbursement from the Division of Motor Vehicles; and providing for the funding of a courtesy patrol.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §15-2-12 of said code be amended and reenacted; and that §17C-17B-3 and §17C-17B-4 of said code be amended and reenacted, all to read as follows:

Chapter
15. Public Safety.
17C. Traffic Regulations and Laws of the Road.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism promotion fund continued; use of funds.

1 There is hereby continued in the State Treasury the special 2 revenue fund known as the “Tourism Promotion Fund” created 3 under prior enactment of section nine, article one of this chapter.
(a) The Legislature finds that a courtesy patrol program providing assistance to motorists on the state’s highways is one of the most beneficial methods to introduce a tourist visiting the state of the state’s hospitality and good will. For that reason, four million seven hundred thousand dollars of the moneys deposited in the fund each year shall be deposited in a special revenue account in the State Treasury to be known as the “Courtesy Patrol Fund”. Expenditures from the fund shall be used solely to fund the courtesy patrol program providing assistance to motorists on the state’s highways. Amounts collected in the fund which are found from time to time to exceed funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) If there are funds remaining after the distribution required in subsection (a) of this section, a minimum of five percent of the moneys deposited remaining in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended with the approval of the Director of the Division of Natural Resources to effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines, and outdoor billboards, or any combination thereof.

(c) The balance of the moneys deposited in the fund shall be used for direct advertising within the state’s travel regions as defined by the commission. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-five, according to legislative rules authorized for promulgation by the Tourism Commission.
(d) All advertising expenditures over twenty-five thousand dollars from the tourism promotion fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-12. Mission of the State Police; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia State Police shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.

(b) The superintendent and each of the officers and members of the division are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, to make arrests without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever a complaint is made and a warrant is issued thereon for the arrest, and the person arrested shall be immediately brought before the proper tribunal for examination and trial in the county where the offense for which the arrest has been made was committed;
(2) To serve criminal process issued by any court or magistrate anywhere within this state: Provided, That they may not serve civil process; and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the Division of Highways, Division of Motor Vehicles and of West Virginia State Police for any license, permit or certificate that may be lawfully issued by these divisions of state government.

(c) Members of the West Virginia State Police are hereby designated as forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of forest patrolmen and game and fish wardens, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code.

The West Virginia State Police is at any time subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of such officer in civil matters.

(d) Any member of the West Virginia State Police knowing or having reason to believe that any person has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for the offender, execute the warrant and bring the person before the proper
tribunal having jurisdiction. The member shall make return on all warrants to the tribunals and his or her official title shall be "member of the West Virginia State Police". Members of the West Virginia State Police may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before the tribunal and make return thereon as provided by law. Any return by a member of the West Virginia State Police showing the manner of executing the warrant or process has the same force and effect as if made by a sheriff.

(e) Each member of the West Virginia State Police, when called by the sheriff of any county, or when directed by the Governor by proclamation, has full power and authority within the county, or within the territory defined by the Governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When called, any officer or person is, during the time his or her assistance is required, for all purposes a member of the West Virginia State Police and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section of any turnpike or toll road, operated by the West Virginia Parkways, Economic Development and Tourism Authority: Provided, That the authority shall reimburse the West Virginia State Police for salaries paid to the members and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual or estimated costs determined by the superintendent.
(g) The West Virginia State Police may develop proposals for a comprehensive county or multicounty plan on the implementation of an enhanced emergency service telephone system and may cause a public meeting on the proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) By the first day of July, one thousand nine hundred ninety-three, the superintendent shall establish a network to implement reports of the disappearance of children by local law-enforcement agencies to local school division superintendents and the State Registrar of Vital Statistics. The network shall be designed to establish cooperative arrangements between local law-enforcement agencies and local school divisions concerning reports of missing children and notices to law-enforcement agencies of requests for copies of the cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the State Registrar of Vital Statistics.

(i) The superintendent may at his or her discretion and upon the written request of the West Virginia Alcohol Beverage Control Commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

(j) Notwithstanding the provisions of article one-a, chapter twenty of this code, the superintendent of the West Virginia State Police may sell any surplus real property to which the West Virginia State Police or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the West Virginia State Police. There is hereby created a special revolving fund in the State Treasury
which shall be designated as the "surplus real property proceeds fund." The fund shall consist of all money received from the sale of surplus real property owned by the West Virginia State Police. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(k) Notwithstanding any other provision of this code, the agency for surplus property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment and commodities belonging to the West Virginia State Police to a special revenue account within the West Virginia State Police entitled the West Virginia State Police surplus transfer account. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Any funds transferred to this account may be utilized by the superintendent to defray the cost of normal operating needs of the division.

(l) If the State Police or any other law-enforcement agency in this state receives a report that a person who has Alzheimer's disease and related dementia is missing, the State Police or any other law-enforcement agency shall immediately open an investigation for the purpose of determining the whereabouts of that missing person. Any policy of the State Police or any other law-enforcement agency relating to a waiting period prior to initiation of an investigation of a missing person shall not apply.
in the case of a person who has Alzheimer's disease or other related dementia of the type referred to in this subsection.

(m) Notwithstanding any provision of this code to the contrary, effective on and after the first day of July, two thousand seven, the expenses and salaries paid to the members of the West Virginia State Police for the monitoring and enforcement duties defined in chapter seventeen-c of this code may not be paid from the state road fund or subject to reimbursement from the Division of Motor Vehicles but shall be subject to appropriation by the Legislature.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION AND EMPLOYEES TO PUBLIC SERVICE COMMISSION.

§17C-17B-3. Transfer of certain employees from Department of Transportation to Public Service Commission.

§17C-17B-4. Costs of enforcement to be funded from revenues in General Revenue Fund or from fees collected by Public Service Commission.

§17C-17B-3. Transfer of certain employees from Department of Transportation to Public Service Commission.

Effective the first day of July, two thousand three, employees of the Department of Transportation whose primary governmental duties as of the thirtieth day of June, two thousand three, included the administration and enforcement of this code and rules promulgated under this code relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the Department of Transportation to the Public Service Commission of West Virginia.
§17C-17B-4. Costs of enforcement to be funded from revenues in General Revenue Fund or from fees collected by Public Service Commission.

(a) On and after the first day of July, two thousand three, the cost of enforcement of this code and rules promulgated under this code, relating to vehicular weight, including inspections of vehicles and loads, training of enforcement officers, administrative proceedings, personal services, employees benefits and all other costs associated with enforcement matters, shall be funded by revenues in the state road fund, established pursuant to the provisions of section one, article three, chapter seventeen of this code: Provided, That effective on and after the first day of July, two thousand seven, all of the costs described in this subsection shall be funded by fees collected from the Public Service Commission or other appropriation by the Legislature: Provided, however, That the foregoing proviso may not be construed to require appropriation by the Legislature.

(b) The secretary of transportation and the treasurer shall take all actions necessary to implement the transfer of funding to effectuate the purposes of this article.

(c) For fiscal years beginning on and after the first day of July, two thousand four, the commission shall include in its budget to the Legislature the costs of implementation and continuing enforcement of this article for payment and appropriation into the Public Service Commission Fund.
AN ACT to amend and reenact §19-23-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-23-10 and §19-23-13b of said code, all relating to horse and dog racing generally; providing that in the event a yearling was born in another state and transported to this state, the definition of "Raiser of an accredited West Virginia horse" does not apply to any pari-mutuel racing facility in Jefferson County; providing for a five-year sunset provision relative to the applicability of this definition at any pari-mutuel racing facility in Hancock County; changing formula for distribution of the greyhound breeder development fund moneys to equalize purses by establishment of a points system as approved by the West Virginia Racing Commission; authorizing use of reserve balance funds for a training facility; authorizing the racing commission to annually establish appropriate numbers of West Virginia whelped greyhounds at racetrack kennels; sanctions for not kenneling the minimum number of West Virginia whelped greyhounds; adding accreditation to the qualification of a West Virginia thoroughbred sire; adding a minimum of fourteen stakes horse races at Charles Town for restricted races; races adding two restricted per racing day where sufficient horses and purse funds are available; funding for additional races at Charles Town; and continuing limitation on certain purse funds at Mountaineer Park.
Be it enacted by the Legislature of West Virginia:

That §19-23-3, §19-23-10 and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.


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

1. "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

2. "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

3. "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle and shall not include any form of horse racing in which the horses are mounted by jockeys;

4. "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

5. "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;
(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";
(16) "Racing commission" means the West Virginia Racing Commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the racing commission, and the reasonable rules shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;
(24) "Accredited thoroughbred horse" means a thoroughbred horse that is: (a) Foaled in West Virginia; (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days’ grace: (A) for the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company; or (B) for obtaining veterinary services, documented by veterinary reports;

(25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders Association;

(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. In the event the yearling was born in another state and transported to this state, this definition does not apply after the thirty-first day of December, two thousand seven, to any pari-mutuel racing facility located in Jefferson County; nor shall it apply after the thirty-first day of December, two thousand twelve, and thereafter to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;
HORSE AND DOG RACING

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided in section thirteen-b of this article;

(30) “Registered greyhound owner” means an owner of a greyhound that is registered with the National Greyhound Association;

(31) "Fund" means the West Virginia Thoroughbred Development Fund established in section thirteen-b of this article; and

(32) “Regular purse” means both regular purses and stakes purses.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.
(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at two percent of the pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at one and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at one percent of the pool; for fiscal year one thousand nine hundred ninety, seven tenths of one percent, and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter be calculated at four tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at three and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at three percent of the pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at two and one-half percent; for fiscal
year one thousand nine hundred eighty-nine, be calculated at
two percent of the pool; for fiscal year one thousand nine
hundred ninety, be calculated at one and seven-tenths percent of
the pool; and for fiscal year one thousand nine hundred ninety-
one and each fiscal year thereafter, be calculated at one and
four-tenths percent of the pool: Provided, That out of the
amount realized from the three tenths of one percent decrease in
the tax effective for fiscal year one thousand nine hundred
ninety-one and thereafter, which decrease correspondingly
increases the amount of commission retained by the licensee,
the licensee shall annually expend or dedicate: (i) One half of
the realized amount for capital improvements in its barn area at
the track, subject to the racing commission's prior approval of
the plans for the improvements; and (ii) the remaining one half
of the realized amount for capital improvements as the licensee
may determine appropriate at the track. The term "capital
improvement" shall be as defined by the Internal Revenue Code:
Provided, however, That any racing association operating a
horse racetrack in this state having an average daily pari-mutuel
pool on horse racing of two hundred eighty thousand dollars or
less per day for the race meetings of the preceding calendar year
shall, in lieu of payment of the pari-mutuel pool tax, calculated
as in this subsection, be permitted to conduct pari-mutuel
wagering at the horse racetrack on the basis of a daily pari-
mutuel pool tax fixed as follows: On the daily pari-mutuel pool
not exceeding three hundred thousand dollars the daily pari-
mutuel pool tax shall be one thousand dollars plus the otherwise
applicable percentage rate imposed by this subsection of the
daily pari-mutuel pool, if any, in excess of three hundred
thousand dollars: Provided further, That upon the effective date
of the reduction of the daily pari-mutuel pool tax to one
thousand dollars from the former two thousand dollars, the
association or licensee shall daily deposit five hundred dollars
into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to thirteen races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: And provided further, That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia thoroughbred development fund for more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and
conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding, a training facility and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the registered greyhound owner of the accredited West Virginia whelped greyhound must be a bona fide resident of this state. To qualify as a bona fide
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147 resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this State on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The racing commission and the West Virginia registered greyhound owners and breeders association shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West
Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall be the same as approved by the racing commission to be effective April 1, 2007.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog's earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia greyhound breeder's development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: Provided, That not more than one million dollars from the
balance in the purse supplemental fund shall be used for the
construction and maintenance of a dog training track and
facilities if such be approved by the West Virginia Racing
Commission. The West Virginia Racing Commission shall be
authorized to promulgate rules governing dog training tracks.

In an effort to further promote the breeding of quality West
Virginia whelped greyhounds, a bonus purse supplement shall
be established in the amount of fifty thousand dollars per
annum, to be paid in equal quarterly installments of twelve
thousand five hundred dollars per quarter using the same
method to calculate and distribute these funds as the regular
supplemental purse awards. This bonus purse supplement is for
three years only, commencing on the first day of July, one
thousand nine hundred ninety-three, and ending the thirtieth day
of June, one thousand nine hundred ninety-six. This money
would come from the current existing balance in the greyhound
development fund.

Each pari-mutuel greyhound track shall provide stakes races
for accredited West Virginia whelped greyhounds: Provided,
That each pari-mutuel track shall have one juvenile and one
open stake race annually. To assure breeders of accredited West
Virginia whelped greyhounds an opportunity to participate in
the West Virginia Greyhound Breeding Development Fund the
West Virginia Racing Commission by the first day of July each
year shall establish and announce the minimum number of
accredited West Virginia whelped greyhounds that greyhound
racing kennels at West Virginia dog tracks must have on their
racing active list during the calendar year following such action.
The minimum number may vary from dog track to dog track.
The minimum number shall be established after consultation
with the West Virginia Greyhound Owners and Breeders
Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may for review by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The racing commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the racing commission and placed in a special revenue account hereby created in the State Treasury called the "administration, promotion and educational and capital improvement account". The racing commission is authorized to expend the moneys deposited in the administration, promotion and educational and capital improvement account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That beginning with fiscal year one
In each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The racing commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system.
used for pari-mutuel tickets and betting, prepared in accordance
with generally accepted auditing standards, as certified by an
experienced public accountant or a certified public accountant.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

(a) The Racing Commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account -- West Virginia Thoroughbred Development Fund": Provided, That after the West Virginia Lottery Commission has divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning the first day of October, two thousand five, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), section twelve-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as “West Virginia Racing Commission...
25 Special Account – West Virginia Thoroughbred Development
26 Fund” and shall name the licensee for which the special account
27 has been established: Provided, however, That the Racing
28 Commission shall deposit all moneys paid into the
29 Thoroughbred Development Fund by a thoroughbred racetrack
30 licensee that did not participate in the Thoroughbred
31 Development Fund for at least four consecutive calendar years
32 prior to the thirty-first day of December, one thousand nine
33 hundred ninety-two from the eighth day of July, two thousand
34 five until the effective date of the amendment to this section
35 passed during the fourth extraordinary session of the seventy-
36 seventh Legislature shall be paid into the purse fund of that
37 thoroughbred racetrack licensee: Provided further, That the
38 moneys paid into the Thoroughbred Development Fund by a
39 thoroughbred racetrack licensee that did not participate in the
40 Thoroughbred Development Fund for at least four consecutive
41 calendar years prior to the thirty-first day of December, one
42 thousand nine hundred ninety-two, shall be transferred into that
43 licensee’s purse fund until the first day of April, two thousand
44 six. Notice of the amount, date and place of the deposits shall
45 be given by the Racing Commission, in writing, to the State
46 Treasurer. The purpose of the funds is to promote better
47 breeding and racing of thoroughbred horses in the state through
48 awards and purses for accredited breeders/raisers, sire owners
49 and thoroughbred race horse owners: And provided further,
50 That five percent of the deposits required to be withheld by an
51 association or licensee in subsection (b), section nine of this
52 article shall be placed in a special revenue account hereby
53 created in the State Treasury called the "Administration and
54 Promotion Account".
55
56 (b) The Racing Commission is authorized to expend the
57 moneys deposited in the administration and promotion account
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at times and in amounts as the Commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first eight hundred thousand dollars shall be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. The weights for all accredited stakes races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all
mares, starting with the breeding season beginning the first day of February through the thirty-first day of July, two thousand four, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The accredited stake races shall be chosen by the committee set forth in subsection (f) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders’/raisers’ awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders’/raisers’ awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse’s breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision may only be paid on the first one hundred thousand dollars of any purse and not on any amounts in excess of the first one hundred thousand dollars.

(2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at
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a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners’ awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse and not on any amounts in excess of the first one hundred thousand dollars.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse and not on any amounts in excess of the first one hundred thousand dollars.
(4) In no event may purses earned at a meet held at a track which did not make a contribution to the Thoroughbred Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be used to fund the races established in subsection (f) of this section. Any amount not so used shall revert into the general account of the Thoroughbred Development Fund for each racing association or licensee for distribution in the next year.

Distribution shall be made on the fifteenth day of each February for the preceding year's achievements.

(f) (1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per racing day: Provided, that sufficient horses and funds are available. For purposes of this subsection, there are sufficient horses if there are at least seven single betting interests received for the race: Provided further, that, if sufficient horses and funds are available, any thoroughbred horse racetrack whose licensee participated in the Thoroughbred Development Fund for at least four consecutive calendar years prior to the thirty-first day of December one thousand nine hundred ninety-two, shall provide two restricted races per racing day, at least one of which may be split at the discretion of the racing secretary. The restricted race required by this section must be included in the first nine races written in the condition book for that racing day.
(2) The restricted races established in this subsection shall be administered by a three-member committee at each track consisting of:

(A) The racing secretary;

(B) A member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and

(C) A member appointed by the West Virginia Thoroughbred Breeders Association.

(3) Restricted races shall be funded by each racing association from:

(A) Moneys placed in the general purse fund: Provided, that a thoroughbred horse racetrack which did not participate in the West Virginia Thoroughbred Development fund for a period of more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two, may fund restricted races in an amount not to exceed one million dollars per year.

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the "West Virginia Accredited Race Fund".

(4) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(5) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race,
the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: Provided, That no moneys may be dedicated back to a general purse fund if the dedication would leave less than two hundred fifty thousand dollars in the fund.

(g) As used in this section, "West Virginia bred-foal" means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia bred-foal.

(i) From the first day of July, two thousand one, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which the licensee participates in the West Virginia Thoroughbred Development Fund.

(j) Beginning the first day of July, two thousand six, any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting
pari-mutuel wagering under the provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.

(k) The Commission shall, during calendar year two thousand nine, conduct a study of the adequacy of funding provided for the Thoroughbred Development Fund at any thoroughbred racetrack which has not participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, and shall report its findings and recommendations to the Joint Committee on Government and Finance on or before the first day of December, two thousand nine.

CHAPTER 128

(Com. Sub. for S.B. 178 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed March 10, 2007; in effect ninety days from passage.] [Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §7-18-2 and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to hotel occupancy tax; allowing counties to increase the hotel occupancy tax to not more than six percent; requiring public hearing prior to enacting increase; and including incentives for passenger air service within the state, emergency services in certain areas and the support of the Hatfield-McCoy Recreational Authority, its purposes and operations by participating counties as permissible expenditures of the proceeds from the hotel occupancy tax.
Be it enacted by the Legislature of West Virginia:

That §7-18-2 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-2. Rate of tax.
§7-18-14. Proceeds of tax; application of proceeds.

§7-18-2. Rate of tax.

1 (a) The rate of tax imposed shall be three percent of the consideration paid for the use or occupancy of a hotel room.

(b) On and after the first day of July, two thousand five, a municipality may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided, That notwithstanding any other provision of this article to the contrary, a municipality may not impose any tax authorized by this article on a hotel located within its corporate limits upon which a county was imposing a tax authorized by this article on or after the first day of January, two thousand five, and continuously thereafter to and including the effective date of annexation of the territory in which the hotel is located pursuant to article six, chapter eight of this code and, as to that hotel, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of three percent of the consideration paid for the use or occupancy of a hotel room: Provided, however, That after the thirtieth day of June, two thousand seven, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided further, That prior to any increase in the rate of tax, the county shall comply with the requirements
of subsection (c) of this section: *And provided further*, That
in the event the county commission duly enters an order of
record that ceases to impose the tax authorized by this article
on that hotel, then, as to that hotel, the municipality in which
the hotel is located by reason of the annexation may impose
the tax authorized by this article. Prior to the second reading
of an ordinance proposed by a municipality to increase the
rate of tax, the municipality shall conduct a properly noticed
public hearing on the issue.

(c) On and after the first day of July, two thousand seven,
a county may by ordinance increase the rate of tax imposed
in this section to not more than six percent of the
consideration paid for the use or occupancy of a hotel room.
At least ten days prior to the final vote of a county
commission on an ordinance proposed by a county
commission to increase the rate of tax, the county
commission shall conduct a properly noticed public hearing
on the issue.

(d) The consideration paid for the use or occupancy of a
hotel room shall not include the amount of tax imposed on
the transaction under article fifteen, chapter eleven of this
code or charges for meals, valet service, room service,
television service or other charges or consideration not paid
for use or occupancy of a hotel room.

§7-18-14. Proceeds of tax; application of proceeds.

(a) *Application of proceeds*. -- The net proceeds of the tax
collected and remitted to the taxing authority pursuant to this
article shall be deposited into the General Revenue Fund of
such municipality or county commission and, after
appropriation thereof, shall be expended only as provided in
subsections (b) and (c) of this section.
(b) Required expenditures. -- At least fifty percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities. -- If a convention and visitor's bureau is located within the municipality, county or region, the governing body of such municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor's bureau is not located within such municipality, county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within such municipality, county or region may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: Provided, That prior to appropriating any moneys to such hotel, such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau located within a municipality, county or region, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.
(C) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) Counties. -- If a convention and visitor's bureau is located within a county or region, the county commission shall appropriate the percentage required by this subsection to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:

(A) Any hotel located within such county or region may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: Provided, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(B) If there is more than one convention and visitor's bureau located within a county or region, the county commission may allocate the tax authorized by this article to one or more of such bureaus in such portion as the county commission in its sole discretion determines.

(C) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the county is located.
(3) **Legislative finding.** -- The Legislature hereby finds and declares that in order to attract new business and industry to this state and to retain existing business and industry all to provide the citizens of the state with economic security, and to advance the business prosperity and economic welfare of this state, it is necessary to enhance recreational and tourism opportunities. Therefore, in order to promote recreation and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving and maintaining projects, agencies and facilities which promote recreation and tourism. The Legislature also finds that the support of convention and visitor's bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor's bureaus, hotels and regional travel councils receiving funds under this subsection may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subdivisions (1) and (2) of this subsection.

(c) **Permissible expenditures.** -- After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers and convention centers;
(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotion of conventions;

(4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities, including land acquisition;

(5) The promotion of the arts;

(6) Historic sites;

(7) Beautification projects;

(8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in this state;

(9) Medical care and emergency services, in an amount not exceeding two hundred thousand dollars, in any county where:

(A) There is an urgent necessity to preserve the delivery of acute medical care and emergency services;

(B) There is an increase in need for acute medical care and emergency services directly related to tourism;

(C) Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;

(D) There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;
(E) There is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety;

(F) There is one and only one hospital within the county; and

(G) The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist; or

(10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreational Authority.

(d) Definitions. -- For purposes of this section, the following terms are defined:

(1) Convention and visitor's bureau and visitor's and convention bureau. -- "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable and shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality, county or region in which such convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.

(2) Convention center. -- "Convention center" means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in
conjunction with the convention center and forming reasonable appurtenances thereto.

(3) Fiscal year. -- "Fiscal year" means the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.

(4) Net proceeds. -- "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) Promotion of the arts. -- "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

(6) Recreational facilities. -- "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) Region. -- "Region" means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor's bureau to promote those counties.

(8) Regional travel council. -- "Regional travel council" means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.
(9) Historic site. -- "Historic site" means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open, from time to time, to accommodate visitors.

(e) Any member of a governing body who willingly and knowingly votes to or causes to be expended moneys generated by the provisions of this section for purposes other than specifically set forth in this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

CHAPTER 129

(S.B. 613 - By Senators Fanning, Bowman and Barnes)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to restrictions on carrying a crossbow afield and in a vehicle.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the director or by law;

4 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it is lawful to hunt or take raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision: Provided, however, That it is lawful to hunt or take coyotes by the use of amber- or red-colored artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or...
trapping a wild bird or wild animal, or unless the artificial
light (other than the head lamps of an automobile or other
land conveyance) is attached to, a part of or used from within
or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is
guilty of a misdemeanor and, upon conviction thereof, shall
for each offense be fined not less than one hundred dollars
nor more than five hundred dollars and shall be imprisoned
in jail for not less than ten days nor more than one hundred
days;

(4) Hunt for, take, kill, wound or shoot at wild animals or
wild birds from an airplane, or other airborne conveyance, an
automobile, or other land conveyance, or from a
motor-driven water conveyance, except as authorized by
rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than
by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or
snare or like device of any kind any wild turkey, ruffed
grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully
the nest or eggs of any wild bird or have in his or her
possession the nest or eggs unless authorized to do so under
rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry
an uncased or loaded gun in any of the woods of this state
except during the open firearms hunting season for wild
animals and nonmigratory wild birds within any county of
the state unless he or she has in his or her possession a permit
in writing issued to him or her by the director: Provided,
That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock antemeridian on that Sunday: Provided, That traps
previously and legally set may be tended after the hour of
five o'clock antemeridian on Sunday and the person so doing
may carry only a twenty-two caliber firearm for the purpose
of humanely dispatching trapped animals. Any person
violating the provisions of this subdivision is guilty of a
misdemeanor and, upon conviction thereof, in addition to any
fines that may be imposed by this or other sections of this
code, shall be subject to a one hundred dollar fine;

(11) Hunt with firearms or long bow while under the
influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal
or bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals
unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any
fish at any time by any means other than by rod, line and
hooks with natural or artificial lures unless otherwise
authorized by law or rules issued by the Director: Provided,
That snaring of any species of suckers, carp, fallfish and
creek chubs shall at all times be lawful;

(15) Employ or hire, or induce or persuade, by the use of
money or other things of value, or by any means, any person
to hunt, take, catch or kill any wild animal or wild bird except
those species on which there is no closed season, or to fish
for, catch, take or kill any fish, amphibian or aquatic life
which is protected by the provisions of this chapter or rules
of the director or the sale of which is prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport,
possess or use any migratory game or nongame birds
included in the terms of conventions between the United
States and Great Britain and between the United States and
United Mexican States for the protection of migratory birds
and wild mammals concluded, respectively, the sixteenth day
of August, one thousand nine hundred sixteen, and the
seventh day of February, one thousand nine hundred
thirty-six, except during the time and in the manner and
numbers prescribed by the federal Migratory Bird Treaty Act,
16 U. S. C. §703, et seq., and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession,
living or dead, any wild bird other than a game bird; or
expose for sale or transport within or without the state any
bird except as aforesaid. No part of the plumage, skin or
body of any protected bird shall be sold or had in possession
for sale except mounted or stuffed plumage, skin, bodies or
heads of the birds legally taken and stuffed or mounted,
irrespective of whether the bird was captured within or
without this state, except the English or European sparrow
(passer domesticus), starling (sturnus vulgaris) and cowbird
(molothrus ater), which may not be protected and the killing
thereof at any time is lawful;

(18) Use dynamite or any like explosive or poisonous
mixture placed in any waters of the state for the purpose of
killing or taking fish. Any person violating the provisions of
this subdivision is guilty of a felony and, upon conviction
thereof, shall be fined not more than five hundred dollars or
imprisoned for not less than six months nor more than three
years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or
arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife,
unless the person possesses a Class Y permit;
(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six of this article. The person responsible for obtaining
the permit shall prepare and keep an accurate record of the
names and addresses of all persons participating in said trial
and make same readily available for inspection by any
conservation officer upon request;

(26) Except as provided in section four of this article,
hunt, catch, take, kill or attempt to hunt, catch, take or kill
any wild animal, wild bird or wild fowl except during the
open season established by rule of the director as authorized
by subdivision (6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o'clock
antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement which wildlife can be taken, on
private lands on Sunday after the hour of five o'clock
antemeridian: Provided, That the provisions of this
subdivision do not apply in any county until the county
commission of the county holds an election on the question
of whether the provisions of this subdivision prohibiting
hunting on Sunday shall apply within the county and the
voters approve the allowance of hunting on Sunday in the
county. The election is determined by a vote of the resident
voters of the county in which the hunting on Sunday is
proposed to be authorized. The county commission of the
county in which Sunday hunting is proposed shall give notice
to the public of the election by publication of the notice as a
Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code and
the publication area for the publication shall be the county in
which the election is to be held. The date of the last
publication of the notice shall fall on a date within the period
of the fourteen consecutive days next preceding the election.
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218 On the local option election ballot shall be printed the following:

220 Shall hunting on Sunday be authorized in ________ County?

222 [ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

224 Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

232 If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or
prohibition of Sunday hunting may be enacted and the
provisions of this article preempt all regulations, rules,
ordinances and laws of any county or municipality in conflict
with this subdivision.

(29) Hunt or conduct hunts for a fee where the hunter is
not physically present in the same location as the wildlife
being hunted within West Virginia.

CHAPTER 130

[Com. Sub. for H.B. 2078 - By Delegate Talbott (By Request)]

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §20-2-22 of the Code of West
Virginia, 1931, as amended, relating to tagging of certain game;
providing tagging procedure; completing and placing the game
tag; reporting to a conservation officer or an official checking
station and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-22 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22. Tagging, removing, transporting and reporting bear,
bobcat, deer, wild boar and wild turkey.

(a) Each person killing a bear, bobcat, deer, wild boar, or
wild turkey found in a wild state shall either attach a
completed game tag to the animal or remain with the animal and have upon his or her person a completed game tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, bobcat, deer, wild boar, or wild turkey from where it was killed, each person shall either attach a completed game tag to the animal or have upon his or her person a completed game tag.

c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a game tag to the killed bear, bobcat, deer, wild boar, or wild turkey. The game tag shall remain on the carcass until it is retagged by a conservation officer or an official checking station.

d) If a person who does not possess a game tag kills a bear, bobcat, deer, wild boar, or wild turkey, he or she shall make a tag. The tag shall bear the name, address, and if applicable, the license number, of the hunter, and the time, date and county of killing.

e) The carcass of a wild turkey shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

f) The fresh skin and head or carcass of the deer shall be delivered to a conservation officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.

g) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two a, article two, chapter twenty-two.

h) For each violation of this section, a person is subject to the penalties provided in this article.
AN ACT to amend and reenact §20-7-9 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalties for violation of certain hunting and fishing laws by nonresidents.

Be it enacted by the Legislature of West Virginia:

That §20-7-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-9. Violations of chapter generally; penalties.

Any person violating any of the provisions of this chapter or rules promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than twenty nor more than three hundred dollars or confined in jail not less than ten or more than one hundred days, or be both fined and imprisoned within the limitations aforesaid and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor.
and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided: Provided, That any person violating subdivision (3), section five, article two of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned for not less than ten days nor more than one hundred days: Provided, however, That any person who is in violation of section twenty-seven, article two of this chapter as a result of their failure to have a valid Class E nonresident hunting and trapping license, as defined by section forty-two-d of this article, or a valid Class EE nonresident bear hunting license, as defined by section forty-two-e of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or confined in jail not less than ten nor more than one hundred days, or both fined and imprisoned: Provided further, That any person who is in violation of section twenty-seven, article two of this chapter as a result of their failure to have a Class F nonresident fishing license, as defined by section forty-two-f of this article, shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than one hundred dollars nor more than three hundred dollars or confined in jail not less than ten nor more than one hundred days, or both fined and imprisoned: And provided further, That any person violating any parking or speeding regulations as promulgated by the director on any state parks, state forests, public hunting and fishing areas and all other lands and waters owned, leased or under the control of the Division of Natural Resources shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two nor more than one hundred dollars or imprisoned in jail not more than ten days, or both fined and imprisoned.
CHAPTER 132

(Com. Sub. for S.B. 425 - By Senators Kessler and McKenzie)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §16-13E-2, §16-13E-4, and §16-13E-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22C-2-1 and §22C-2-5 of said code, all relating to enhancement of existing public infrastructure funding sources; adding water treatment and wastewater treatment as authorized projects in community enhancement districts; expanding the definition of “local entity” for purposes of eligibility for funding from the Water Pollution Control Revolving Fund; and authorizing the Water Development Authority to take security or other interest in certain property to secure loans made from the fund.

Be it enacted by the Legislature of West Virginia:

That §16-13E-2, §16-13E-4 and §16-13E-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22C-2-1 and §22C-2-5 of said code be amended and reenacted, all to read as follows:

Chapter
16. Public Health,
22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.
§16-13E-4. Petition for creation or expansion of community enhancement district; petition requirement.
§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.

§ 16-13E-2. Definitions.

For purposes of this article:

(a) “Assessment bonds” means special obligation bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

(b) “Assessment” means the fee, including interest, paid by the owner of real property located within a community enhancement district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses related thereto, which fee is in addition to all taxes and other fees levied on the property.

(c) “Board” means a community enhancement board created pursuant to this article.

(d) “Code” means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

(e) “Community enhancement district” or “district” means a community enhancement district created pursuant to this article.
(f) “Cost” means the cost of:

(1) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by the district;

(2) All machinery and equipment, including machinery and equipment needed to expand or enhance county or city services to the district;

(3) Financing charges and interest prior to and during construction and, if deemed advisable by the district or governing body, for a limited period after completion of the construction;

(4) Interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty;

(5) Costs of issuance in connection with the issuance of assessment bonds;

(6) The design of extensions, enlargements, additions and improvements to the facilities of any district;

(7) Architectural, engineering, financial and legal services;

(8) Plans, specifications, studies, surveys and estimates of costs and revenues;

(9) Administrative expenses necessary or incident to determining to proceed with any project; and
(10) Other expenses as may be necessary or incident to the construction, acquisition and financing of a project.

(g) “County commission” means the governing body of a county as defined in section one, article one, chapter seven of this code.

(h) “Governing body” means, in the case of a county, the county commission and in the case of a municipality, the mayor and council together, the council or the board of directors as charged with the responsibility of enacting ordinances and determining the public policy of such municipality.

(i) “Governmental agency” means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed enhancement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, school districts, urban renewal authorities or regional governmental authorities established pursuant to this code.

(j) “Municipality” means a municipality as defined in section two, article one, chapter eight of this code.

(k) “Person” means an individual, firm, partnership, corporation, voluntary association or any other type of entity.

(l) “Project” means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of water source of supply, treatment, transmission and distribution facilities, sewage treatment, collection and transmission facilities, stormwater systems, police stations,
fire stations, libraries, museums, schools, other public
buildings, hospitals, piers, docks, terminals, drainage
systems, culverts, streets, roads, bridges (including
approaches, causeways, viaducts, underpasses and connecting
roadways), motor vehicle parking facilities (including
parking lots, buildings, ramps, curb-line parking, meters and
other facilities deemed necessary, appropriate, useful,
convenient or incidental to the regulation, control and
parking of motor vehicles), public transportation, public
recreation centers, public recreation parks, swimming pools,
tennis courts, golf courses, equine facilities, motor vehicle
competition and recreational facilities, flood protection or
relief projects, or the grading, regrading, paving, repaving,
surfacing, resurfacing, curbing, recurbing, widening, lighting
or otherwise improving any street, avenue, road, highway,
alley or way, or the building or renewing of sidewalks and
flood protection; and the terms shall mean and include any
project as a whole, and all integral parts thereof, including all
necessary, appropriate, useful, convenient or incidental
appurtenances and equipment in connection with any one or
more of the above.

§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.

(a) The owners of at least sixty-one percent of the real
property, determined by acreage, located within the
boundaries of the area described in the petition, by metes and
bounds or otherwise in a manner sufficient to describe the
area, may petition a governing body to create or expand a
community enhancement district.

(b) The petition for the creation or expansion of a
community enhancement district shall include, where
applicable, the following:
The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A detailed project description;

(3) A map showing the proposed project, including all proposed improvements;

(4) A list of estimated project costs and the preliminary plans and specifications for such improvements, if available;

(5) A list of nonproject costs and how they will be financed;

(6) A consultant study outlining the projected assessments, setting forth the methodology for determining the assessments and the methodology for allocating portions of an initial assessment against a parcel expected to be subdivided in the future to the various lots into which the parcel will be subdivided and demonstrating that such assessments will adequately cover any debt service on bonds issued to finance the project and ongoing administrative costs;

(7) A development schedule;

(8) A list of recommended members for the board;

(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district, if any, that said utility or utilities:
INFRASTRUCTURE FUNDING

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility’s reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless such projects are to be owned by the district;

(10) If the project includes improvements other than as set forth in subdivision (9) of this subsection that will be transferred to another governmental agency, written evidence that such agency will accept such transfer, unless such projects are to be owned by the district;

(11) The benefits that can be expected from the creation of the district and the project; and

(12) A certification from each owner of real property within the proposed district who joins in the petition that he or she is granting an assessment against his or her property in such an amount as to pay for the costs of the project and granting a lien for said amount upon said property enforceable in accordance with the provision of this article.

(c) After reviewing the petition presented pursuant to this section, the governing body may by order or ordinance determine the necessity and economic feasibility of creating

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a community enhancement district and developing, constructing, acquiring, improving or extending a project therein. If the governing body determines that the creation of a community enhancement district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the petition to be filed with the clerk of the county commission or the clerk or recorder of the municipality, as the case may be, and be made available for inspection by interested persons before the meeting.

(d) Notwithstanding any other provision of this article to the contrary, nothing in this article shall modify:

(1) The jurisdiction of the public service commission to determine the convenience and necessity of the construction of utility facilities, to resolve disputes between utilities relating to which utility should provide service to a district or otherwise to regulate the orderly development of utility infrastructure in the state; or

(2) The authority of the infrastructure and jobs development council as to the funding of utility facilities to the extent that loans, loan guarantees, grants or other funding assistance from a state infrastructure agency are involved.

§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.

(a) Each community enhancement district shall be created by adoption or enactment of an order or ordinance.
(b) From and after the date of the adoption or enactment of the order or ordinance creating a community enhancement district, it shall thereafter be a public corporation and political subdivision of this state, but without any power to levy or collect ad valorem taxes. Each community enhancement district is hereby empowered and authorized, in addition to any other rights, powers and authorities conferred upon it in this article or elsewhere in this code, to:

1. Acquire, own and hold, in its corporate name, by purchase, lease, right of eminent domain, gift or otherwise, such property, both real and personal and other interests in real estate, or any other property, whether tangible or intangible, as may be necessary or incident to the planning, financing, development, construction, acquisition, extension, improvement and completion of a project;

2. Design, plan, finance, develop, construct, acquire, extend, improve and complete one or more projects and assess the cost of all or any portion of a project on real property located within the community enhancement district;

3. Sue or be sued;

4. Establish a bank account or accounts in its name;

5. Enter into agreements or other transactions with any person or governmental agency necessary or incident to the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project;

6. Annually, on or before the seventh day of June, certify to the sheriff of the county in which the property is
located the assessments granted against all property in the
district for inclusion in the tax ticket;

(7) Expend funds to acquire, or construct part of a project
on property located outside of a community enhancement
district, and for any work undertaken thereon, as may be
necessary or incident to the completion of a project;

(8) Enter into agreements with one or more counties,
municipalities, public service districts or community
enhancement districts to plan, develop, construct, acquire or
improve a project jointly;

(9) Accept appropriations, gifts, grants, bequests and
devises and use or dispose of the same to carry out its
corporate purpose;

(10) Make and execute contracts, releases, assignments,
compromises and other instruments necessary or convenient
for the exercise of its powers, or to carry out its corporate
purpose;

(11) Have a seal and alter the same;

(12) Raise funds by the issuance and sale of assessment
bonds;

(13) Obtain options to acquire real property, or any
interest therein, by purchase, lease or otherwise, which is
found by the board to be suitable as a site, or part of a site,
for the construction of a project;

(14) Pledge funds generated by assessments in a district
or proceeds from the sale of assessment bonds to payment of
debt service on tax increment financing obligations issued
under article eleven-b, chapter seven of this code for the
day of time determined by the community enhancement
board; and

(15) Take any and all other actions consistent with the
purpose of this article and not in violation of the constitution
of this state as may be necessary or incident to the
construction and completion of a project.

(c) The powers of each community enhancement district
shall be vested in and exercised by a community
enhancement board which shall be composed of five
members, four of whom shall be appointed by the governing
body of the county or municipality in which the community
enhancement district is located and one of whom shall be the
sheriff or his or her designee of the county or the treasurer or
his or her designee of the municipality (or such other person
serving in an equivalent capacity if there is no treasurer), as
the case may be, in which the community enhancement
district is located. At least three members of the board shall
be residents of the assessment district: Provided, That should
less than three persons reside within the boundaries of the
community enhancement district, then at least three members
of the board shall be residents of the county or municipality,
as the case may be: Provided, however, That if no persons
reside within the boundaries of the community enhancement
district then at least three members must be approved by the
owner or owners of the land. No more than three initial
members of the board may be from the same political party.

(d) The four members appointed by the governing body
shall be appointed for overlapping terms of four years each
and thereafter until their respective successors have been
appointed and have qualified. For the purpose of initial
appointments, one member shall be appointed for a term of four years; one member shall be appointed for a term of three years; one member shall be appointed for a term of two years; and one member shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the constitution of this state. Vacancies shall be filled by appointment by the governing body of the county or municipality creating the assessment district for the unexpired term of the member whose office shall be vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall be entitled to no more than fifty dollars per meeting and reasonable expenses associated with their services.

(e) The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chairman, one to serve as treasurer and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the community enhancement district, which shall also be available for inspection as other public records. Duplicate records shall be filed with the clerk or recorder, as the case may be, of the county or municipality which created the community enhancement district and shall include the minutes of all board meetings. The secretary and treasurer shall perform such other duties pertaining to the affairs of the
(f) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the community enhancement district’s operation, finances and affairs for inspection and audit. The board shall meet at least semiannually.

(g) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(h) Staff, office facilities and costs of operation of the board may be provided by the county or municipality which created the community enhancement district or by contract and said costs of operations shall be funded from assessments collected within the district.

(i) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organizational meeting.

(j) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. The members of the board shall not be personally liable or responsible for any obligations of the assessment district or
the board but are answerable only for willful misconduct in the performance of their duties.

(k) The official name of a community enhancement district created under the provisions of this article may contain the name of the county or municipality, as the case may be, in which it is located.

(l) Notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on community enhancement districts may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

§22C-2-5. Collection of money due to the fund.

§22C-2-1. Definitions.

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

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for
carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

1. Developmental, planning and feasibility studies, surveys, plans and specifications;
2. Architectural, engineering, financial, legal or other special services;
3. Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
4. Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
5. The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service and the funding of accounts and reserves which the authority may require; and
6. Other items that the Department of Environmental Protection determines to be reasonable and necessary.

(c) "Fund" means the State Water Pollution Control Revolving Fund provided for in this article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33 U. S. C. §1251, et seq., as amended, the
Federal Safe Drinking Water Act 42 U. S. C. §300f through §300j-26, inclusive, as amended, or by the executive order of the Governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U. S. C. §1251, et seq., as amended, and the Federal Safe Drinking Water Act 42 U. S. C. §300f through §300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;
(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law.

§22C-2-5. Collection of money due to the fund.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the
project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(b) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision. The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

(c) For loans made for projects defined in subdivision (6), subsection (f), section one of this article, at the direction of the Department of Environmental Protection, the authority shall take a security or other interest in real or personal property with the right to foreclose upon a default to secure loans made from the fund.
AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §9-5-20; to amend said code by adding thereto a new section, designated §33-15-4i; to amend said code by adding thereto a new section, designated §33-16-3s; to amend said code by adding thereto a new section, designated §33-24-7i; to amend said code by adding thereto a new section, designated §33-25-8g; and to amend said code by adding thereto a new section, designated §33-25A-8h, all relating to modifying required insurance benefits; 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, health care corporations and health maintenance organizations; requiring insurance policies and medical benefit plans to include certain coverages when medically appropriate and consistent with relevant national guidelines; requiring coverage from Medicaid for testing for chronic kidney disease; public education of providers on management of chronic kidney disease; defining diagnostic criteria for chronic kidney disease; ensuring the Public Employees Insurance Agency will
continue and maintain medical and prescription drug coverage
for Medicare-eligible retired employees; and providing that if
a Medicare/Advantage Prescription Drug Plan should fail, the
Public Employees Insurance Agency will take all Medicare-
eligible retired employees back into the existing Public
Employees Insurance Agency plan or provide another plan of
equal or better coverage.

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 said code be amended
by adding thereto a new section, designated §9-5-20; that said code
be amended by adding thereto a new section, designated §33-15-4i;
that said code be amended by adding thereto a new section,
designated §33-16-3s; that said code be amended by adding thereto
a new section, designated §33-24-7i; that said code be amended by
adding thereto a new section, designated §33-25-8g; and that said
code be amended by adding thereto a new section, designated
§33-25A-8h, 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

*Clerk's Note: This section was also amended by S.B. 129 (Chapter 208), which passed subsequent to this act.
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) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation.

(4) 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 cesarean section delivery, if the attending physician considers discharge medically inappropriate;

(5) 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.
(6) 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.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by
providing that coverage through one of the existing plans or
by enrolling the Medicare-eligible retired employees into a
Medicare-specific plan, including, but not limited to, the
Medicare/Advantage Prescription Drug Plan. In the event
that a Medicare-specific plan would no longer be available or
advantageous for the agency and the retirees, the retirees
shall remain eligible for coverage through the agency.

§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.

(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;

(4) A checkup for prostate cancer annually for men age fifty or over; and

(5) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation.

(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 Purchasing 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 for 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 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-20. Medicaid program; chronic kidney disease; evaluation and classification.

(a) Any enrollee in Medicaid who is eligible for services and who has a diagnosis of diabetes or hypertension or, who
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3 has a family history of kidney disease, shall receive coverage
4 for an evaluation for chronic kidney disease through routine
5 clinical laboratory assessments of kidney function.

(b) Any enrollee in Medicaid who is eligible for services
7 and who has been diagnosed with diabetes or hypertension or
8 who has a family history of kidney disease and who has
9 received a diagnosis of kidney disease shall be classified as
10 a chronic kidney patient.

(c) The diagnostic criteria used to define chronic kidney
disease should be those generally recognized through clinical
practice guidelines which identify chronic kidney disease or
its complications based on the presence of kidney damage
and level of kidney function.

(d) Medicaid providers shall be educated by the Bureau
17 for Public Health in an effort to increase the rate of
18 evaluation and treatment for chronic kidney disease.
19 Providers should be made aware of:

(i) Managing risk factors, which prolong kidney function
21 or delay progression to kidney replacement therapy;

(ii) Managing risk factors for bone disease and
23 cardiovascular disease associated with chronic kidney
24 disease;

(iii) Improving nutritional status of chronic kidney
26 disease patients; and

(iv) Correcting anemia associated with chronic kidney
28 disease.
ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4i. Third-party reimbursement for kidney disease screening.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for annual kidney disease screening and laboratory testing as recommended by the National Kidney Foundation may not be denied for any person when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for kidney disease screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: Any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing.

(b) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to kidney disease screening and laboratory testing.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3s. Third-party reimbursement for kidney disease screening.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for annual kidney
disease screening and laboratory testing as recommended by
the National Kidney Foundation may not be denied for any
person when reimbursement or indemnity for laboratory or
X-ray services are covered under the policy and are
performed for kidney disease screening or diagnostic
purposes at the direction of a person licensed to practice
medicine and surgery by the board of medicine. The tests are
as follows: Any combination of blood pressure testing, urine
albumin or urine protein testing and serum creatinine testing.

(b) The same deductibles, coinsurance, network
restrictions and other limitations for covered services found
in the policy, provision, contract, plan or agreement of the
covered person may apply to kidney disease screening and
laboratory testing.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7i. Third-party reimbursement for kidney disease
screening.

(a) Notwithstanding any provision of any policy,
provision, contract, plan or agreement applicable to this
article, reimbursement or indemnification for annual kidney
disease screening and laboratory testing as recommended by
the National Kidney Foundation may not be denied for any
person when reimbursement or indemnity for laboratory or
X-ray services are covered under the policy and are
performed for kidney disease screening or diagnostic
purposes at the direction of a person licensed to practice
medicine and surgery by the board of medicine. The tests are
as follows: Any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing.

(b) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to kidney disease screening and laboratory testing.

ARTICLE 25. HEALTH CARE CORPORATION.

§33-25-8g. Third-party reimbursement for kidney disease screening.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for annual kidney disease screening and laboratory testing as recommended by the National Kidney Foundation may not be denied for any person when reimbursement or indemnity for laboratory or X-ray services are covered under the policy and are performed for kidney disease screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of medicine. The tests are as follows: Any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing.

(b) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to kidney disease screening and laboratory testing.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8h. Third-party reimbursement for kidney disease screening.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this
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3 article, reimbursement or indemnification for annual kidney
disease screening and laboratory testing as recommended by
the National Kidney Foundation may not be denied for any
person when reimbursement or indemnity for laboratory or
X-ray services are covered under the policy and are
performed for kidney disease screening or diagnostic
purposes at the direction of a person licensed to practice
medicine and surgery by the board of medicine. The tests are
as follows: Any combination of blood pressure testing, urine
albumin or urine protein testing and serum creatinine testing.

(b) The same deductibles, coinsurance, network
restrictions and other limitations for covered services found
in the policy, provision, contract, plan or agreement of the
covered person may apply to kidney disease screening and
laboratory testing.

CHAPTER 134

(Com. Sub. for H.B. 2940 - By Delegates Cann, Kominar,
White, Beach, Barker, Perry, Perdue and Evans)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §5-16-13 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §33-16-
1a of said code, all relating to the public employees insurance
program and group accident and sickness insurance; and
increasing the age of certain dependents for health insurance
coverage.
Be it enacted by the Legislature of West Virginia:

That §5-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-16-1a of said code be amended and reenacted, all to read as follows:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) Cost-sharing. -- The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.
(b) Spouse and dependent coverage. -- Each employee is entitled to have his or her spouse and dependents included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section, “dependent” means an eligible employee’s unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a “qualifying child” or a “qualifying relative” in section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(c) Continuation after termination. -- If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer’s share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the
full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, one thousand nine hundred eighty-eight. — Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, one thousand nine hundred eighty-eight.
insurancethousand nine hundred eighty-eight. -- Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section when an employee participating in the plan who elected to participate in the plan on and after the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after the first day of July, one thousand nine hundred eighty-eight.

(f) Increased retirement benefits for retired employees with accrued annual and sick leave. -- In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section,
the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system. However, the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees. — Except as otherwise provided in subsection (1) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for "family" coverage.

(h) Any employee who retired prior to the twenty-first day of April, one thousand nine hundred seventy-two, and
who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) Retiree participation. -- All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the twenty-first day of April, one thousand nine hundred seventy-two; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(j) Surviving spouse and dependent participation. -- A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any group insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) Elected officials. -- In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be
thereafter usable as premium paying credits for which the
officials may claim extended insurance benefits.

(1) Participation of certain former employees. — An
employee, eligible for coverage under the provisions of this
article who has twenty years of service with any agency or
entity participating in the public employees insurance
program or who has been covered by the public employees
insurance program for twenty years may, upon leaving
employment with a participating agency or entity, continue
to be covered by the program if the employee pays one
hundred and five percent of the cost of retiree coverage:
Provided, That the employee shall elect to continue coverage
under this subsection within two years of the date the
employment with a participating agency or entity is
terminated.

(m) Prohibition on conversion of accrued annual and
sick leave for extended coverage upon retirement for new
employees who elect to participate in the plan after June, two
thousand one. — Any employee hired on or after the first day
of July, two thousand one who elects to participate in the plan
may not apply accrued annual or sick leave toward the cost
of premiums for extended insurance coverage upon his or her
retirement. This prohibition does not apply to the conversion
of accrued annual or sick leave for increased retirement
benefits, as authorized by this section: Provided, That any
person who has participated in the plan prior to the first day
of July, two thousand one, is not a new employee for
purposes of this subsection if he or she becomes reemployed
with an employer participating in the plan within two years
following his or her separation from employment and he or
she elects to participate in the plan upon his or her
reemployment.
§33-16-1a. Definitions.

As used in this article:

(a) "Bona fide association" means an association which has been actively in existence for at least five years; has been formed and maintained in good faith for purposes other than obtaining insurance; does not condition membership in the association on any health status-related factor relating to an individual; makes accident and sickness insurance offered through the association available to all members regardless of any health status-related factor relating to members or individuals eligible for coverage through a member; does not make accident and sickness insurance coverage offered through the association available other than in connection with a member of the association; and meets any additional requirements as may be set forth in this chapter or by rule.

(b) "Commissioner" means the commissioner of insurance.

(c) "Creditable coverage" means, with respect to an individual, coverage of the individual after the thirtieth day of June, one thousand nine hundred ninety-six, under any of the following, other than coverage consisting solely of excepted benefits:

(1) A group health plan;

(2) A health benefit plan;
(3) Medicare Part A or Part B, 42 U. S. C. §1395 et seq.; Medicaid, 42 U. S. C. §1396a et seq. (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act); Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), 10 U. S. C., Chapter 55; and a medical care program of the Indian Health Service or of a tribal organization;

(4) A health benefits risk pool sponsored by any state of the United States or by the District of Columbia; a health plan offered under 5 U. S. C., chapter 89; a public health plan as defined in regulations promulgated by the federal secretary of health and human services; or a health benefit plan as defined in the Peace Corps Act, 22 U. S. C. §2504(e).

(d) "Dependent" means an eligible employee's spouse or any unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in section 152 of the Internal Revenue Code.

(e) "Eligible employee" means an employee, including an individual who either works or resides in this state, who meets all requirements for enrollment in a health benefit plan.

(f) "Excepted benefits" means:

(1) Any policy of liability insurance or contract supplemental thereto; coverage only for accident or disability income insurance or any combination thereof; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; workers' compensation insurance; or other similar insurance under which benefits for medical care are secondary or incidental to other insurance benefits; or
(2) If offered separately, a policy providing benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof, dental or vision benefits or other similar, limited benefits; or

(3) If offered as independent, noncoordinated benefits under separate policies or certificates, specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or coverage, such as medicare supplement insurance, supplemental to a group health plan; or

(4) A policy of accident and sickness insurance covering a period of less than one year.

(g) "Group health plan" means an employee welfare benefit plan, including a church plan or a governmental plan, all as defined in section three of the Employee Retirement Income Security Act of 1974, 29 U. S. C. §1003, to the extent that the plan provides medical care.

(h) "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance organization contract; or plan provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits.

(i) "Health insurer" means an entity licensed by the commissioner to transact accident and sickness in this state and subject to this chapter. "Health insurer" does not include a group health plan.
(j) "Health status-related factor" means an individual’s health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) or disability.

(k) "Medical care" means amounts paid for, or paid for insurance covering, the diagnosis, cure, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body, including amounts paid for transportation primarily for and essential to such care.

(l) "Mental health benefits" means benefits with respect to mental health services, as defined under the terms of a group health plan or a health benefit plan offered in connection with the group health plan.

(m) "Network plan" means a health benefit plan under which the financing and delivery of medical care are provided, in whole or in part, through a defined set of providers under contract with the health insurer.

(n) "Preexisting condition exclusion" means, with respect to a health benefit plan, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the enrollment date for such coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before the enrollment date.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-3a; and to amend and reenact §33-2-7 and §33-2-19 of said code, all relating to investigations of violations of insurance laws; clarifying that the Insurance Commissioner may investigate noncriminal violations; authorizing use of Class A registration plates; clarifying that immunity granted in certain cases applies to criminal prosecutions only; and clarifying the authority and duties of the Insurance Commissioner with regard to information obtained during investigations.

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 §33-2-3a; and that §33-2-7 and §33-2-19 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-3a. Administrative investigations.

(a) In addition to the authority granted to the fraud unit created in article forty-one of this chapter and to the workers'
compensation fraud and abuse unit previously transferred to
the commissioner pursuant to section one-b, article one,
chapter twenty-three of this code, the commissioner has the
authority to conduct investigations whenever he or she has
cause to believe that a violation of any provision of this
chapter or of chapter twenty-three of this code has been or is
being committed.

(b) Employees designated by the commissioner are
permitted to operate vehicles owned or leased by the state
displaying Class A registration plates when engaged in
carrying out the investigative duties assigned to the
commissioner by this chapter.


If any person shall ask to be excused from attending and
testifying or from producing any books, papers, records,
correspondence or other documents at any hearing conducted
pursuant to this chapter or chapter twenty-three of this code
or in any cause or proceeding instituted by the commissioner
pursuant to this chapter or chapter twenty-three of this code
on the ground that the testimony or evidence required of him
may tend to incriminate him or subject him to a criminal
penalty and shall notwithstanding be directed by the
commissioner to give such testimony or produce such
evidence, he must nonetheless comply with such direction,
but he shall not thereafter be prosecuted or subjected to any
criminal penalty for or on account of any matter or thing
concerning which he may testify or produce evidence,
pursuant thereto, and no testimony so given or evidence
produced shall be received against him upon any criminal
action, investigation or proceeding: Provided, That no such
individual so testifying shall be exempt from prosecution or
punishment for any perjury or false swearing, committed by
him while so testifying and the testimony or evidence so
given or produced is admissible against him upon any
criminal action, investigation or proceeding concerning such
perjury or false swearing, nor is he exempt from the refusal,
revocation or suspension of any license, permission or
authority conferred, or to be conferred, pursuant to this
chapter. Any such individual may execute, acknowledge and
file in the office of the commissioner a statement expressly
waiving such immunity or privilege in respect to any
transaction, matter or thing specified in such statement and
thereupon the testimony of such person or such evidence in
relation to such transaction, matter or thing may be received
or produced before any judge or justice, court, tribunal, grand
jury or otherwise, and if so received or produced such
individual is not entitled to any immunity or privilege on
account of any testimony he may so give or evidence so
produced.


(a) Documents, materials or other information in the
possession or control of the commissioner that are obtained
in an investigation of any suspected violation of any
provision of this chapter or chapter twenty-three of this code
are confidential by law and privileged, are not subject to the
provisions of chapter twenty-nine-b of this code and are not
open to public inspection. The commissioner may use the
documents, materials or other information in the furtherance
of any regulatory or legal action brought as a part of the
commissioner's official duties. The commissioner may use
the documents, materials or other information if they are
required for evidence in criminal proceedings or for other
action by the state or federal government and in such context
may be discoverable only as ordered by a court of competent
jurisdiction exercising its discretion.
(b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

(c) In order to assist in the performance of the commissioner's duties, the commissioner may:

(1) Share documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with regulatory and law-enforcement officials of other foreign or domestic jurisdictions: Provided, That the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(2) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) Enter into agreements governing sharing and use of information consistent with this subsection.
AN ACT to amend and reenact §33-4-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 and §33-41-11 of said code; and to amend said code by adding thereto a new section, designated §33-41-8b, all relating to insurance fraud; clarifying that the insurance code contains specific criminal penalties for felony offenses; authorizing certain employees of the fraud unit of the Insurance Commissioner to investigate fraud relating to the Public Employees Insurance Agency and to present criminal complaints directly to a magistrate with the approval of a prosecuting attorney; and modifying the monetary threshold for felonies to comport with general felony provisions.

Be it enacted by the Legislature of West Virginia:

That §33-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 and §33-41-11 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8b, all to read as follows:

Article
41. Insurance Fraud Prevention Act.
ARTICLE 4. GENERAL PROVISIONS.

§33-4-8. General penalty.

1 In addition to the refusal to renew, suspension or
2 revocation of a license, or penalty in lieu of the foregoing,
3 because of violation of any provision of this chapter, it is a
4 misdemeanor for any person to violate any provision of this
5 chapter unless the violation is declared to be a felony by this
6 chapter or other law of this state. Unless another penalty is
7 provided in this chapter or by the laws of this state, every
8 person convicted of a misdemeanor for the violation of any
9 provision of this chapter shall be fined not more than one
10 thousand dollars or confined in jail not more than six months,
11 or both fined and confined.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia Insurance
1 Fraud Unit within the office of the Insurance Commissioner
2 of West Virginia. The commissioner may employ full-time
3 supervisory, legal and investigative personnel for the unit
4 who shall be qualified by training and experience in the areas
5 of detection, investigation or prosecution of fraud within and
6 against the insurance industry to perform the duties of their
7 positions. The director of the fraud unit is a full-time
8 position and shall be appointed by the commissioner and
9 serve at his or her will and pleasure. The commissioner shall
10 provide office space, equipment, supplies, clerical and other
11 staff that is necessary for the unit to carry out its duties and
12 responsibilities under this article.
(b) The fraud unit may in its discretion:

1. Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: This chapter; chapter twenty-three of this code; article three, chapter sixty-one of this code; and section five, article four of said chapter.

2. Notwithstanding any provision of this code to the contrary, the fraud unit may, with the agreement of the Director of the Public Employees Insurance Agency, conduct investigations related to possible fraud under article sixteen, chapter five of this code;

3. Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation;

4. Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The insurance fraud unit may:

1. Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this article;

2. Inspect, copy or collect records and evidence;
(3) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(4) Share records and evidence with federal, state or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be deemed a criminal justice agency under all federal and state laws and regulations and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states;

(7) The insurance fraud unit may initiate investigations and participate in the development of and, if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance;

(8) Specific personnel, designated by the commissioner, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;
(9) Notwithstanding any provision of this code to the contrary, specific personnel designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: Provided, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of section one, article twenty-nine, chapter thirty of this code; and

(10) The insurance fraud unit shall not be subject to the provisions of article nine-a, chapter six of this code and the investigations conducted by the insurance fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

(d) The insurance fraud unit shall perform other duties as may be assigned to it by the commissioner.

§33-41-8b. Fraud investigators may present complaint directly to magistrate.

Notwithstanding any other provision of this code to the contrary, any person authorized under this article to initiate and conduct investigations may submit complaints directly to a magistrate after review and approval by the prosecuting attorney, if the complaint is related to the business of insurance and may be prosecuted as a criminal violation under this chapter; chapter twenty-three of this code; article three, chapter sixty-one of this code; or section five, article four of said chapter.
The complaint shall be in the form of a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn before a magistrate in the county where the offense is alleged to have occurred.

If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall be issued to any officer authorized by law to arrest persons charged with offenses against the state.

§33-41-11. Fraudulent claims to insurance companies.

(a) Any person who knowingly and willfully and with intent to defraud submits a materially false statement in support of a claim for insurance benefits or payment pursuant to a policy of insurance or who conspires to do so is guilty of a crime and is subject to the penalties set forth in the provisions of this section.

(b) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is one thousand dollars or more in value is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than ten years, fined not more than ten thousand dollars, or both, or in the discretion of the circuit court confined in jail for not more than one year and fined not more than ten thousand dollars, or both.

(c) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is less than one thousand dollars in value is guilty of a misdemeanor and, upon conviction thereof, shall be confined
in jail for not more than one year, fined not more than two thousand five hundred dollars, or both.

(d) Any person convicted of a violation of this section is subject to the restitution provisions of article eleven-a, chapter sixty-one of this code.

(e) In addition to the foregoing provisions, the offenses enumerated in sections twenty-four-e through twenty-four-h, inclusive, article three, chapter sixty-one of this code are applicable to matters concerning workers’ compensation insurance.

(f) The circuit court may award to the unit or other law-enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.

CHAPTER 137

(Com. Sub. for S.B. 559 - By Senators Hunter and Minard)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-21, relating to predatory insurance sales practices; and authorizing the Insurance Commissioner to promulgate emergency rules to protect military personnel.

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 §33-4-21, to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-21. Deceptive sales on military bases prohibited; rules.

1. No person in the business of insurance may engage in dishonest or predatory insurance sales practices on federal land or facilities in this state. The commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to identify certain false, misleading, deceptive and unfair insurance sales practices as dishonest or predatory and to protect service members of the United States armed forces from these practices. To the extent permitted by federal law, the commissioner may enforce this chapter and the rules promulgated pursuant to this chapter on federal land and facilities in this state.

CHAPTER 138

(Com. Sub. for H.B. 2763 - By Delegates Kominar, Barker, Moore, Perry, Ashley, Walters and Hartman)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §33-7-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-33-2 and §33-33-6 of said code, all relating to financial examinations of insurers; eliminating the exclusion of certain
assets in the determination of the financial condition of insurers; defining term; prohibiting use of indemnification agreements by accountants performing certain audits; and permitting mediation or arbitration agreements in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §33-7-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-33-2 and §33-33-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-3. Assets not allowed.

In addition to assets impliedly excluded by the provisions of section one of this article, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(a) Goodwill, trade names and other like intangible assets.

(b) Advances to officers (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only.

(c) Stock of the insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation or business unit.
(d) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, and except, in the case of any insurer, personal property the insurer is permitted to hold pursuant to article eight of this chapter, or which is acquired through foreclosure of chattel mortgages acquired pursuant to said article or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(e) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this chapter.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

(a) "Accountant" and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.

(b) "Annual statement" means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) "Audited financial report" means and includes those items specified in section four of this article.
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13 (d) "Indemnification" for the purposes of this article means an agreement of indemnity or a release from liability where the intent or effect of the agreement or release is a shifting or a limitation to any degree of the potential liability to the person or firm for failure to adhere to applicable auditing or other professional standards regardless of whether the potential liability arises from known misrepresentations made by the insurer or its representatives.

14 (e) "Insurer" for purposes of this article means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

15 (f) "Workpapers" means and includes audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support the opinion thereon.

§33-33-6. Qualifications of independent certified public accountants.

1 (a) The commissioner may not recognize any person or firm as a qualified independent certified public accountant for purposes of performing the annual audited financial report if the person or firm:

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(1) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(2) Has either directly or indirectly entered into an indemnification with respect to an audit of the insurer.

(b) Except as otherwise provided herein, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the West Virginia Board of Accountancy.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event a delinquency proceeding is commenced against the insurer under article ten of this chapter, the mediation or arbitration provisions shall operate at the option of the receiver.

(d) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following a period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:
(1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or

(3) Number of jurisdictions in which the insurer transacts business.

(e) The commissioner may not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this article; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this article.

(f) The commissioner may hold a hearing to determine whether a certified public accountant is qualified and considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the audited financial report made pursuant to this article and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this article.
CHAPTER 139

(Com. Sub. for H.B. 2764 - By Delegates Kominar, Barker, Moore, Perry, Ashley, Walters, Schoen and Hartman)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-37, relating to criminal history checks for applicants for insurance producer licenses; defining terms; authorizing Insurance Commissioner to establish and collect fees; requiring applicants to submit fingerprints; requiring the Insurance Commission to transmit fingerprints to the State Police and Federal Bureau of Investigation; requiring certain records be confidential; exempting certain information from disclosure pursuant to subpoena or discovery; and authorizing Insurance Commissioner to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-37, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-37. Authorization for criminal history record check; fees; rules.
(a) In furtherance of the national goal of promoting uniformity and reciprocity among the states with regard to producer licensing, this section sets forth the requirements to obtain access to the Federal Bureau of Investigation Criminal Justice Information Services Division criminal history record information and to secure information or reports from the Federal Bureau of Investigation Criminal Justice Information Services Division. The scope of this section is to set forth the applicability of the criminal history record check to applicants for a home state insurance producer license.

(b) As used in this section, the following terms have the meanings ascribed in this subsection, unless a different meaning is clearly required by the context:

(1) “Applicant” means a natural person applying for:

(A) An initial home state license as an insurance producer;

(B) An additional line of authority under an existing home state insurance producer license where a criminal history record check has not been obtained; or

(C) A resident insurance producer license under change of home state provisions.

“Applicant” does not mean a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license.

(2) “Fingerprint” means an impression of the lines on the finger taken for the purpose of identification. The impression
may be obtained electronically or in ink converted to an electronic format.

(c) In order to make a determination of license eligibility, the commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform the criminal history record checks to the West Virginia State Police and to the Federal Bureau of Investigation for the state and national criminal history record checks.

(d) The commissioner shall require a criminal history record check on each applicant in accordance with this section. The commissioner shall require each applicant to submit a full set of fingerprints, including a scanned file from a hard copy fingerprint, in order for the commissioner to obtain and receive national criminal history records from the Federal Bureau of Investigation Criminal Justice Information Services Division.

(e) The commissioner shall collect a fee from each applicant in an amount established by rule. The amount of the fee must be sufficient to cover:

(1) The cost of the collection and transmittal of fingerprints by persons, including local law enforcement agencies that are approved by the commissioner to capture fingerprints, to the West Virginia State Police and the Federal Bureau of Investigation; and

(2) The cost of any amounts charged by the State Police and the Federal Bureau of Investigation to perform the criminal history record checks.
(f) The commissioner may contract for the collection and transmission of fingerprints authorized under this section and may order that the fee for collecting and transmitting fingerprints be payable directly by the applicant to the contractor.

(g) The commissioner is authorized to receive criminal history record information directly from the Federal Bureau of Investigation, in lieu of via transmission of the information from the Federal Bureau of Investigation to the West Virginia State Police.

(h) The commissioner shall treat and maintain an applicant’s fingerprints and any criminal history record information obtained under this section as confidential and shall apply security measures consistent with the Federal Bureau of Investigation Criminal Justice Information Services Division standards for the electronic storage of fingerprints and necessary identifying information. The commissioner shall limit the use of records solely to the purposes authorized in this section. The fingerprints and the criminal history record information in the custody of the commissioner are not subject to subpoena, other than one issued in a criminal action or investigation; are confidential by law and privileged; and are not subject to discovery or admissible in evidence in any private civil action.

(i) The commissioner shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code as are necessary for the administration of this section, including rules governing the issuance of provisional producer licences pending receipt of the criminal background check.
AN ACT to amend and reenact §33-16-3a of the Code of West Virginia, 1931, as amended, relating to extending mental health benefit packages; removing the sunset provision for mandated insurance parity; and removing insurance commissioner reporting requirement.

Be it enacted by the Legislature of West Virginia:

That §33-16-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Same -- Mental health.

(a)(1) Notwithstanding the requirements of subsection (b) of this section, any health benefits plan described in this article that is delivered, issued or renewed in this state shall provide benefits to all individual subscribers and members and to all group members for expenses arising from treatment of serious mental illness. The expenses do 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.

(2) Notwithstanding any other provision in this section to
the contrary, in the event that an insurer can demonstrate
actuarially to the insurance commissioner that its total
anticipated costs for treatment for 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 insurer may
apply whatever cost containment measurers 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: Provided, That for any
group with twenty-five members or less, the insurer may
apply such additional cost containment measures as may be
necessary if the total anticipated actual costs for the treatment
of mental illness will exceed one percent of the total costs for
the group.

(3) The insurer 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, utilization
review, use of provider networks, implementation of cost
ccontainment measures, preauthorization for certain
treatments, setting coverage levels including the number of
visits in a given time period, using capitated benefit
arrangements, using fee-for-service arrangements, using
third-party administrators, and using patient cost sharing in
the form of copayments, deductibles and coinsurance.

(4) The provisions of this subsection shall apply with
respect to group health plans for plan years beginning on or
after the first day of January, two thousand three.

(b) With respect to mental health benefits furnished to an
enrollee of a health benefit plan offered in connection with a
group health plan, for a plan year beginning on or after the
first day of January, one thousand nine hundred ninety-eight,
the following requirements shall apply to aggregate lifetime
limits and annual limits.

(1) Aggregate lifetime limits:

(A) If the health benefit plan does not include an
aggregate lifetime limit on substantially all medical and
surgical benefits, as defined under the terms of the plan but
not including mental health benefits, the plan may not impose
any aggregate lifetime limit on mental health benefits;

(B) If the health benefit plan limits the total amount that
may be paid with respect to an individual or other coverage
unit for substantially all medical and surgical benefits (in this
paragraph, "applicable lifetime limit"), the plan shall either
apply the applicable lifetime limit to medical and surgical
benefits to which it would otherwise apply and to mental
health benefits, as defined under the terms of the plan, and
not distinguish in the application of the limit between medical
and surgical benefits and mental health benefits, or not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average aggregate lifetime limit for the applicable lifetime limit.

(2) Annual limits:

(A) If a health benefit plan does not include an annual limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any annual limit on mental health benefits, as defined under the terms of the plan;

(B) If the health benefit plan limits the total amount that may be paid in a twelve-month period with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, "applicable annual limit"), the plan shall either apply the applicable annual limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the limit between medical and surgical benefits and mental health benefits, or not include any annual limit on mental health benefits that is less than the applicable annual limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different annual limits on
different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average annual limit for the applicable annual limit.

(3) If a group health plan or a health insurer offers a participant or beneficiary two or more benefit package options, this subsection shall apply separately with respect to coverage under each option.

CHAPTER 141

(H.B. 2141 - By Delegate Pino)

[Passed February 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on February 23, 2007.]

AN ACT to amend and reenact §52-1-8 of the Code of West Virginia, 1931, as amended, relating to raising the age at which a person may request to be excused from jury duty from sixty-five to seventy.

Be it enacted by the Legislature of West Virginia:

That §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-8. Disqualification from jury service.
(a) The court, upon request of a prospective juror or on
its own initiative, shall determine on the basis of information
provided on the juror qualification form or interview with the
prospective juror or other competent evidence whether the
prospective juror is disqualified for jury service. The clerk
shall enter this determination in the space provided on the
juror qualification form and on the alphabetical lists of names
drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury
if the prospective juror:

1. Is not a citizen of the United States, at least eighteen
   years old and a resident of the county;

2. Is unable to read, speak and understand the English
   language. For the purposes of this section, the requirement of
   speaking and understanding the English language is met by
   the ability to communicate in American sign language or
   signed English;

3. Is incapable, by reason of substantial physical or
   mental disability, of rendering satisfactory jury service; but
   a person claiming this disqualification may be required to
   submit a physician's certificate as to the disability and the
   certifying physician is subject to inquiry by the court at its
   discretion;

4. Has, within the preceding two years, been summoned
to serve as a petit juror, grand juror or magistrate court juror,
and has actually attended sessions of the magistrate or circuit
court and been reimbursed for his or her expenses as a juror
pursuant to the provisions of section twenty-one of this
article, section thirteen, article two of this chapter, or
JURIES

pursuant to an applicable rule or regulation of the Supreme
Court of Appeals promulgated pursuant to the provisions of
section eight, article five, chapter fifty of this code;

(5) Has lost the right to vote because of a criminal
conviction; or

(6) Has been convicted of perjury, false swearing or other
infamous offense.

c (c) A prospective juror seventy years of age or older is
not disqualified from serving, but shall be excused from
service by the court upon the juror's request.

d (d) A prospective grand juror is disqualified to serve on
a grand jury if the prospective grand juror is an officeholder
under the laws of the United States or of this state except that
the term "officeholder" does not include notaries public.

e (e) A person who is physically disabled and can render
competent service with reasonable accommodation shall not
be ineligible to act as juror or be dismissed from a jury panel
on the basis of disability alone: Provided, That the circuit
judge shall, upon motion by either party or upon his or her
own motion, disqualify a disabled juror if the circuit judge
finds that the nature of potential evidence in the case
including, but not limited to, the type or volume of exhibits
or the disabled juror's ability to evaluate a witness or
witnesses, unduly inhibits the disabled juror's ability to
evaluate the potential evidence. For purposes of this section:

(1) Reasonable accommodation includes, but is not
limited to, certified interpreters for the hearing impaired,
spokespersons for the speech impaired and readers for the
visually impaired.
(2) The court shall administer an oath or affirmation to any person present to facilitate communication for a disabled juror. The substance of such oath or affirmation shall be that any person present as an accommodation to a disabled juror will not deliberate on his or her own behalf, although present throughout the proceedings, but act only to accurately communicate for and to the disabled juror.

(f) Nothing in this article shall be construed so as to limit in any way a party's right to preemptory strikes in civil or criminal actions.

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CHAPTER 142

(S.B. 204 - By Senators Kessler, Oliverio, Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to assessing the cost of petit juries in magistrate court.

Be it enacted by the Legislature of West Virginia:

That §52-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
JURIES

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

(a) A juror shall be paid mileage, at the rate set by the Secretary of the Department of Administration, for travel expenses to and from the juror's residence to the courthouse or other place where the court is convened and shall be reimbursed for other expenses incurred as a result of his or her required attendance at sessions of the court at a rate of not less than fifteen dollars nor more than forty dollars, set at the discretion of the circuit court or the chief judge of the circuit court, for each day of required attendance. The reimbursement shall be based on vouchers submitted to the sheriff and shall be paid out of the State Treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide the jury with meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court. The costs of the meals and lodging shall be paid out of the State Treasury.

(c) Any time a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual cost of the jurors' service: Provided, That the actual cost of a magistrate jury can only be assessed where the jury request or demand occurs on or after the first day of July, two thousand seven. For any magistrate court case in which the jury request or demand occurred prior to the first day of July, two thousand seven, the jury cost assessed shall be two hundred dollars. The jury costs shall be assessed against the parties as follows:
(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or elect for a bench trial; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons for waiving the fee in a written order: Provided, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge of the circuit court, has reviewed the reasons set forth in the order by the magistrate and has approved the waiver.

(d)(1) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the State Treasurer for deposit as described in subdivision (2) of this subsection all jury costs collected and the clerk and the clerk's surety are liable for the collection on the clerk's official bond as for other money coming into the clerk's hands by virtue of the clerk's office. When the amount of the jury costs collected in a magistrate court case exceeds two hundred dollars, the magistrate court clerk shall separately delineate the portion of the collected jury costs which exceeds two hundred dollars.

(2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the State Treasurer be deposited as follows:
(A) All jury costs collected in a magistrate court case which exceed two hundred dollars shall be deposited in the state’s General Revenue Fund; and

(B) The remaining balance of the collected jury costs shall be deposited as follows:

(i) One-half shall be deposited into the Parent Education and Mediation Fund created in section six hundred four, article nine, chapter forty-eight of this code; and

(ii) One-half shall be deposited into the Domestic Violence Legal Services Fund created in section six hundred three, article twenty-six of chapter forty-eight of this code.

(e) The sheriff shall pay into the State Treasury all jury costs received from the court clerks and the sheriff shall be held to account in the sheriff’s annual settlement for all moneys.

CHAPTER 143

(S.B. 59 - By Senators Prezioso and McCabe)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §5-11A-3 and §5-11A-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §21-11-3 of said code; and to amend said code by adding thereto a new section, designated §21-11-10a, all
relating to defining “universal design”; providing immunity from civil damages to a worker, contractor, engineer or architect who, in good faith, provides services for materials, without remuneration, to build or install basic universal design features in accordance with applicable codes and state and federal laws; and providing for a standard form informational list of basic universal design features to be provided to a future buyer of any proposed residential housing in the state by the licensed contractor.

Be it enacted by the Legislature of West Virginia:

That §5-11A-3 and §5-11A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21-11-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-11-10a, all to read as follows:

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

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 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, architects; immunity from civil liability.

1 As used in this article:

2 (a) "Commission" means the West Virginia Human
3 Rights Commission;

4 (b) "Dwelling" means any building, structure or portion
5 thereof which is occupied as, or designed or intended for
6 occupancy as, a residence or sleeping place by one or more
7 persons or families and any vacant land which is offered for
8 sale or lease for the construction or location thereon of any
9 such building, structure or portion thereof;

10 (c) "Family" includes a single individual;

11 (d) "Person" includes one or more individuals,
12 corporations, partnerships, associations, labor organizations,
13 legal representatives, mutual companies, joint-stock
14 companies, trusts, unincorporated organizations, trustees,
15 trustees in cases under Title 11 of the United States Code,
16 receivers and fiduciaries;

17 (e) "To rent" includes to lease, to sublease, to let and
18 otherwise to grant for a consideration the right to occupy
19 premises not owned by the occupant;

20 (f) "Discriminatory housing practice" means an act that
21 is unlawful under section five, six, seven or nineteen of this
22 article;

23 (g) "Handicap" means, with respect to a person:
(1) A physical or mental impairment which substantially
limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but
such term does not include current, illegal use of or addiction
to a controlled substance, as defined in Section 102 of the
Controlled Substances Act, Title 21, United States Code,
Section 802;

(h) "Aggrieved person" includes any person who:

(1) Claims to have been injured by a discriminatory
housing practice; or

(2) Believes that such person will be injured by a
discriminatory housing practice that is about to occur;

(i) "Complainant" means the person, including the
commission, who files a complaint under section eleven of
this article;

(j) "Familial status" means:

(1) One or more individuals who have not attained the
age of eighteen years being domiciled with:

(A) A parent or another person having legal custody of
such individual or individuals; or

(B) The designee of such parent or other person having
such custody with the written permission of such parent or
other person; or
(2) Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of such complaint through informal negotiations involving the aggrieved person, the respondent and the commission;

(l) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation;

(m) "Respondent" means:

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under subsection (a), section eleven of this article;

(n) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he or she chooses to receive; and

(o) The term “basic universal design” means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.
§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install basic universal design features as set forth in section ten-a, article eleven, chapter twenty-one of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: Provided, That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

CHAPTER 21. LABOR

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


(a) "Commissioner" means the Commissioner of the Division of Labor.

(b) "Board" means the West Virginia Contractor Licensing Board.

(c) "Contractor" means a person who in any capacity for compensation, other than as an employee of another,
undertakes, offers to undertake, purports to have the capacity to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is two thousand five hundred dollars or more.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this subsection and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(d) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

(e) "General building contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

(f) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports
and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto.

(g) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures.

(h) "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this article.

(i) "Multifamily contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure.

(j) "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects or any combination thereof.

(k) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods.

(l) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension and
alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating and piping for stand pipes.

(m) "Residential contractor" means a person whose principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.

(n) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(o) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

(p) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.
(q) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

(r) "Division" means the Division of Labor.

(s) "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of this article.

(t) The term “basic universal design” means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

§21-11-10a. Informational list for basic universal design features; penalties.

(a) Ninety days after the Contractor Licensing Board certifies and makes available to the general public the standard form informational list of basic universal design features pursuant to this section, a licensed contractor of any proposed residential housing in the state shall provide to the buyer an informational list of basic universal design features that would make the home entrance, interior routes of travel, the kitchen and the bathroom or bathrooms universally accessible. Basic universal design features are to include, but not be limited to, the following:

1. At least one nonstep entrance into the dwelling;

2. All doors on the entry-level floor, including bathrooms, have a minimum of thirty-six inches;
(3) At least one accessible bathroom on the entry-level floor with ample maneuvering space;

(4) Kitchen, general living space and one room capable of conversion into a bedroom, all with ample maneuvering space, on the entry-level floor; and

(5) Any other external or internal feature requested at a reasonable time by the buyer and agreed to by the seller.

(b) If a buyer is interested in a specific informational feature on the list established by subsection (a) of this section, the seller or builder upon request of the buyer shall indicate whether the feature is standard, limited, optional or not available and, if available, shall further indicate the cost of such a feature to the buyer.

(c) The standard form informational list of basic universal design features shall be certified and made available for reproduction by the board, in accordance with the provisions of subsection (a) of this section, based on mutual recommendation of the board, the American Institute of Architects-West Virginia, the Home Builders Association of West Virginia and the West Virginia Center for Excellence in Disabilities.
AN ACT to amend and reenact §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all relating to employment of unauthorized workers; defining terms; authorizing limited access to state agency information to confirm legal status of workers; establishing criminal penalties for violations of article; denying tax deduction for certain employment expenses if convicted of violating this article; authorizing suspension or revocation of license; creating presumption for administrative action against license upon conviction; and establishing notice requirements.

Be it enacted by the Legislature of West Virginia:

That §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.
§21-1B-2. Definitions.

“Employer” means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state or other business entity which employs or seeks to employ an individual or individuals.

(b) “Commissioner” means the labor commissioner or his or her designated agent.

(c) “Unauthorized worker” means a person who does not have the legal right to be employed or is employed in violation of law.

(d) “Records” means records that may be required by the commissioner of labor for the purposes of compliance with the provisions of this article.

(e) “Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person’s conduct is of that nature or that the circumstance exists. Failure to request or review documentation of an employee’s legal status or authorization to work is deemed to be “knowingly”.
(f) “License” means any permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued for the purpose of operating a business in this state.

§21-1B-3. Unauthorized workers; employment prohibited.

(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for him or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law.

(b) Employers shall be required to verify a prospective employee’s legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration or nonimmigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the Division of Labor, a valid permit issued by the Department of Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

(d) For purposes of enforcing the provisions of this article, and notwithstanding any other provision of this code to the contrary, the commissioner or his or her authorized representative may access information maintained by any other state agency, including, but not limited to, the Bureau
25 of Employment Programs and the Division of Motor
26 Vehicles, for the limited purpose of confirming the validity
27 of a worker’s legal status or authorization to work. The
28 commissioner shall promulgate rules in accordance with the
29 provisions of chapter twenty-nine-a of this code to safeguard
30 against the release of any confidential or identifying
31 information that is not necessary for the limited purpose of
32 enforcing the provisions of this article.

§21-1B-5. Penalties.

(a) Any employer who knowingly violates the provisions
of section three of this article by employing, hiring, recruiting
or referring an unauthorized worker is guilty of a
misdemeanor and, upon conviction thereof, is subject to the
following penalties:

(1) For a first offense, a fine of not less than one hundred
dollars nor more than one thousand dollars for each violation;

(2) For a second offense, a fine of not less than five
hundred dollars nor more than five thousand dollars for each
violation;

(3) For a third or subsequent offense, a fine of not less
than one thousand dollars nor more than ten thousand dollars,
or confinement in jail for not less than thirty days nor more
than one year, or both.

(b) Any employer who knowingly and willfully provides
false records as to the legal status or authorization to work of
any employee to the commissioner or his or her authorized
representative is guilty of a misdemeanor and, upon
19 conviction thereof, shall be confined in jail not more than one
20 year or fined not more than two thousand five hundred
21 dollars, or both.

22 (c) Any employer who knowingly and willfully and with
23 fraudulent intent sells, transfers or otherwise disposes of
24 substantially all of the employer’s assets for the purpose of
25 evading the record-keeping requirements of section four of
26 this article is guilty of a misdemeanor and, upon conviction
27 thereof, shall be confined in jail not more than one year or
28 fined not more than ten thousand dollars, or both.

§21-1B-6. Denial of deductible business expense.

1 On or after the first day of January, two thousand eight,
2 no wages or remuneration for services paid to an
3 unauthorized worker of six hundred dollars ($600.00) or
4 more per annum may be claimed and allowed as a deductible
5 business expense for state income tax purposes by a taxpayer
6 if the employer has been convicted under this article of
7 employing, hiring, recruiting or referring the unauthorized
8 worker. The commissioner shall notify the Department of
9 Revenue of any conviction of an employer under this article
10 and the department is to take the appropriate action against
11 the taxpayer.

§21-1B-7. Suspension or revocation of license.

1 (a) If, upon examination of the record or records of
2 conviction, the commissioner determines that an employer
3 has been convicted of a third or subsequent offense under
subsection (a), section five of this article or has been convicted of the offenses described in subsection (b) or (c) of said section, the commissioner may enter an order imposing the following disciplinary actions:

(1) Permanently revoke or file an action to revoke any license held by the employer; or

(2) Suspend a license or move for a suspension of any license held by the employer for a specified period;

(b) The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of the record of conviction by the commissioner a presumption exists that the person named in the record of conviction is the person named in the commissioner’s order and this constitutes sufficient evidence to support a revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the record of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.
AN ACT to amend and reenact §21-9-2 of the Code of West Virginia, 1931, as amended, relating to the elimination of the licensure exemption for certain contractors of manufactured housing installation.

Be it enacted by the Legislature of West Virginia:

That §21-9-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.


1 (a) “Board” means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

4 (b) “Commissioner” means the Commissioner of the West Virginia State Division of Labor.
“Contractor” means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

A person who personally does work on a manufactured home which the person owns or leases.

“Dealer” means any person engaged in this state in the sale, leasing or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

“Defect” includes any defect in the performance, construction, components or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

“Distributor” means any person engaged in this state in the sale and distribution of manufactured homes for resale.

“Federal standards” means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the secretary of HUD to implement that act.
(h) “HUD” means the United States Department of Housing and Urban Development.

(i) “Manufacturer” means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty or more feet in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site.

(k) “Purchaser” means the first person purchasing a manufactured home in good faith for purposes other than resale.